

# Verizon Visiting Professorship in Business Ethics and Information Technology

*A public lecture by*

**Thomas Donaldson**

Mark O. Winkelman Professor at the  
Wharton School of the University of Pennsylvania and  
Director of the Wharton Ethics Program

*"Ethics in Cyberspace: Have We Seen This Movie Before?"*

**Monday, February 5, 2001**

**Wilder Pavilion, Adamian Academic Center**

**Bentley College**

**Waltham, Massachusetts**

As business ethics has grown over the past 25 years, scores of centers have appeared. What you should know is that at Bentley, you are in the presence, hands down, no competition, of the leading center for business ethics in the world. And it is a tribute for what Mike and his team have done, and for that reason it is a pleasure for me to be here as the Verizon Visiting Professor.

My topic, ethics in cyberspace, should be approached with considerable humility. Like an extraterrestrial object that has come into view, the internet has dramatically affected our lives while frustrating our attempts to understand it. We should be mindful that in the past great intellects have been undone by the appearance of new phenomena. In writing the *Wealth of Nations*, Adam Smith devoted only one paragraph to the topic of the emerging phenomenon of the business corporation. He did so because he believed corporations were never going to amount to much, except, as he allowed, possibly in the areas of canal building or banking. Professor Smith was profoundly wrong. And, for that matter, I may be profoundly wrong today as I venture into cyberspace to untangle its ethical implications. In my attempt I am most concerned to separate the old from the new, that is, to discern which value changes we're encountering are really old stuff, like a movie we've seen before but with a different cast, and what is fundamentally new. An answer to this question should help us, in turn, to discover how, if at all, the internet promises to change our values and what ethical controversies it is likely to provoke.

The internet has permanently marked our world. A recent newspaper cartoon depicted two parents sitting with their eight-year-old son in front of the family computer. Their faces show obvious concern. One parent says, 'Think hard, Johnny, do you remember where you transferred all of our assets?' Unscrupulous acts, impossible a decade ago, are possible now. *Fortune Magazine* devoted an entire series of articles dealing with fraud and bad ethics and the internet, especially e-business. And Bill Joy, co-founder and chief scientist of Sun Microsystems, has predicted that the Wall Street fiascos of a decade ago will be eclipsed by the dot.com revolution when it hits full bottom. Joy provided the title for this speech when he noted that dot.com

collapse will cause considerable hand wringing afterwards, and concluded "we have seen this movie before."

### **Privacy: Old issue with new implications**

Privacy issues are the most salient of all the dot.com challenges. If someone followed you around the mall keeping track of your purchases, you might consider that an invasion of your privacy. Would that be fundamentally different from the cookie tracking practiced today by cyberspace marketers? Sometimes, clearly, the invasions become ominous. Here are some of the transactions you can do on the net today. You can get anybody's bank or credit card statements for \$95 or a list of someone's stocks or bonds, including their account numbers, for \$309. You can get someone's social security number, the physical description of their spouse, details about their car, and information about their former addresses and employers - all for small amounts of money.

Does obtaining this information constitute a violation of privacy? While such information was available before, the fact that it is now readily packaged and

universally accessible means that we must confront issues of misuse as never before. On occasion, it has turned extremely ominous, as when a stalker gathered information from the internet and used it to murder his victim.

Nonetheless, the misuse of private information appears to be an old ethical issue, albeit with an internet twist. Are there any fundamentally new issues on the internet horizon? Can technology by itself launch fundamentally new ethical issues? I believe it can. Consider: several historical examples reveal how technology can drive values. Think of the printing press and how it undermined the authority of the Catholic Church in the Renaissance. Many scholars believe it was a principal force underlying the Protestant reformation. People no longer had to rely on priests for their interpretation of the Bible; they could read it themselves and, as a result, develop their own relationship with God. The Industrial Revolution, another instance of technological evolution, pushed people of the 19th century out of homes and cottage industries into factories. It led to children working six days a week, 13 hours a day in factories. This stirred debate over value issues never encountered before. Subsequently, child labor laws were created to deal with the problems. Now, industrial innovations such as biotechnology pose their own challenges. Art Caplan, who is head of the Bioethics Center at the University of Pennsylvania, has remarked, "I learned ethics at my mother's knee, but she did not tell me about fetal transplants." I like that quote because almost all of us learned our ethics at our mother's knee; yet, when it comes to fetal transplants and organ donation, surrogate motherhood, cloning, and even business innovations such as highly leveraged derivative transactions, intuitions that were honed in our family background may not be so applicable in our brave new technological world.

### **Internet inspired social contracts**

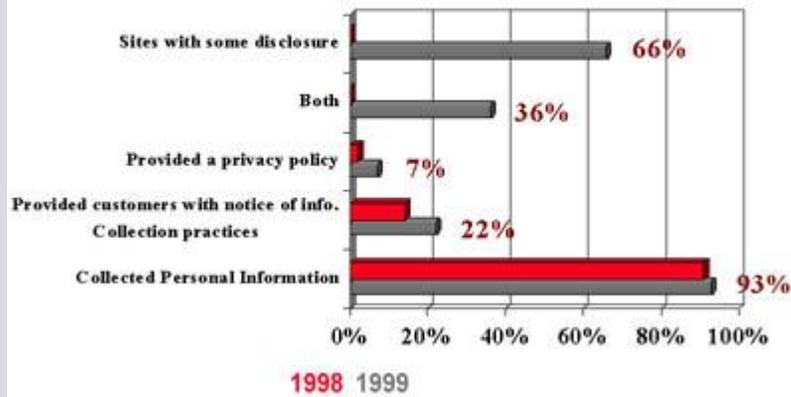
I wish to make my theoretical prejudices clear. I prefer a social contract approach to business ethics. I view the emergence of powerful new technology as reflecting social contracts in collision. Consider the technological impetus of the Industrial Revolution. Embedded cultural values existed prior to the Industrial Revolution. Then, along came behavior driven by technological innovation such as the monotony of the assembly line, child labor, and new forms

of corporate ownership. Out of this fermenting brew arose a new social contract, one that constituted a contractual compromise between the behaviors driven by technological innovation and pre-existing social values. Something similar is happening with the internet.



Such changes are not always slow. Typically, when technological innovation challenges our old values, there is a gradual path of evolution. But consider data from Georgetown University's U.S. Federal Trade Commission (FTC) survey of e-commerce, conducted by Mary Culnan in conjunction with the FTC. In 1998, 2% of the surveyed web sites featured a policy of privacy protection and, another 14% offering some notice about information collection practices. A total of only 16% of sites safeguarded users' privacy to some degree. But within one year, 66% of internet sites featured at least some disclosure about users' privacy. (I should note that the population sample is different from 1998 to 1999.) However, the fact remains that a dramatic shift toward sites that provide privacy information has taken place, thereby quickly leading to a social contract between users and internet service providers.

## 1998/1999 Georgetown/FTC Survey of E-Commerce Sites



While internet technology is new, many old issues persist. New score keeping tricks and an emphasis on revenues rather than profits became the watchword for dot.coms. When discounts and coupons were counted as revenues, thus putting them in a new place on the balance sheet, the notion of bartering took on new meaning. Subsequently, we saw e-businesses trading advertising space as a source of increasing revenues. Or consider how the stock value of Sycamore Corporation was enhanced dramatically when it became public knowledge that a big customer had committed to buying, for a period of four or five years, a large amount of technological equipment manufactured by Sycamore. But this development happened too quickly for most people to realize that Sycamore had provided stock, through its friends and family stock proviso, to executives of the customer company. So here too, we confront a fundamentally old strategy, albeit one that is more pernicious when companies are expanding rapidly. We may conclude that tricks like these have been around for a long time, and that the internet merely provides a new vehicle for them to dupe investors.

Nonetheless, I think there is something new under the sun that drives fundamentally new behaviors on the internet. They can be found in four areas: reach, replication, anonymity, and language lock.



“S” = Digital Speed: Functions as an amplifier.

### **Internet reach blurs community boundaries**

First, let's look at the issue of reach. The internet and e-business can reach anywhere, even into a bedroom in Budapest, Hungary, after midnight. It can connect people who were never capable of being connected before and in ways that were unimaginable only a decade ago. The world is becoming smaller, and as a result, the boundary lines of communities have blurred. I read recently that terrorists can now maintain precise contact in different countries using the web. This can be done with coded pictures of key target spots, pictures that can only be translated if you have the right software, and in this way terrorist networks are able to maintain critical strategic alliance over large distances. On a more positive note, the net enables rebellious factions inside autocratic governments to communicate with exiled members, thereby maintaining pressure on existing regimes. Think of the dissident movement in modern China, which has now been fragmented around the world but is glued together by internet communication. Or consider how Serbian dictator Milosevich was undone, in part, by the use of the internet to provide information despite his government's dominance of the public television medium. Some people have even suggested that space and time itself, or at least our conception of these realities, is changing as a result of the internet's reach. Here the speed of information amplifies the technological effect of the web since its ability to coordinate people in networks, fast, has a power of its own.

### **Replication redefines intellectual property rights**

Next, the internet entails special powers of replication, and what, in turn, is called the "first-copy phenomenon." As Shapiro and Varian have noted, information is expensive to produce in the first copy, but nearly costless in succeeding copies (Shapiro & Varian, 1999). The U.S. Constitution grants Congress the duty "to promote the progress of science and useful arts by securing, for limited times to authors and inventors, the exclusive rights to their respective writings and discoveries." What happens to that proviso in an age when, through the power of replication, hackers can bring down a piece of intellectual property in a matter of seconds. Software, once it is posted on the web, can disappear in terms of its property value in seconds.

The replication phenomenon also robs authority from the caretakers of systems and is not unlike Gutenberg and his printing press. Today as never before, more people have direct access to the intellectual creations of others. It is noteworthy that the web's digital speed is not unique, but shared by many other systems, e.g., homing systems in rockets. But when digital speed is added to the replication and reach properties of the internet, the consequences for human behavior are staggering.

### **Anonymity raises concerns about information sources**

The third net value driver is anonymity. Someone once noted that no one knows you are a dog on the net. Quality of information becomes an issue when one is ignorant of its source. Talking with professors here at Bentley College, I was struck by how, as teachers, we share internet-related problems. When completing course work, students in earnestness and good faith find web sites with relevant information, but the source and quality of their information is often not clear. Instead of the Encyclopedia Britannica, it may be Crackpot Incorporated. The phenomenon is reminiscent of the sociological research done on small and large towns. In smaller towns, repeat interactions with the same people create an ethic that binds the community to certain standards of behavior. To use theoretic or game metaphors, in large towns such as New York City, there are fewer "iterated encounters" or "repeat plays." In New York City, you can afford to be nastier to people around you. Anonymity escalates. And anonymity also camouflages the internet; certainly, I cannot be sure that the person who claims to be a young girl and who is conversing with my 11-year-old daughter on AOL is not some guy with a hairy chest, in short sleeves, and drinking a beer.

### **Language lock reflects network effects**

The fourth characteristic driving new behaviors on the internet may be called "language lock." When a product's value depends on its numbers of users, economists say that it exhibits network externalities or "network effects." With cell phones, for example, the more people who use a given cell network makes each individual cell phone more valuable. Chat networks are another example of language lock or the network effect. The more people who use a given chat network, the more valuable each access point to the network becomes. As a result, the growth of network effects becomes a strategic imperative, not just to achieve the usual production side economics of scale, but to also reach the demand side economics of scale they can generate. To become the standard, Netscape gave its products away, but it made back that money by selling very expensive server programs required to maintain its browser.

Issues of legal versus technological enforcement around intellectual property arise within the context of such network effects. Many users of the internet prize freedom and push against the rights of intellectual property. Think of Napster and its effect on the distribution of music. Or, consider the company, Real Audio, a company that professed in the beginning not to rely on its copyrights. It persisted until competitors began to sell translators of its software, at which time Real Audio came to defend its intellectual property rights with legal vengeance.

Self-fulfilling prophecies abound in a networked world. The product that people think will become a standard often becomes the standard. Competitive pre-announcement of a product's appearance constitutes a form of expectation management. So-called "vaporware" is an instance

of a similar strategy. IBM in an earlier age was found guilty of antitrust activity, in part because of its product

pre-announcements. However, decades later some of the big phone companies advertised DSL nearly a year before it was available.

Another aspect of language lock is the global tendency for English to be the dominant language on the net. The internet is, to a large extent, a reality driven by American culture. Even Europeans acknowledge the dominant role that the U.S. plays. Tim Berners Lee, a Swiss educated at Oxford, is today credited with creation of the World Wide Web. He made many of his discoveries in the shadows of the Swiss Alps. Yet even he realized early the commercial dominance of the U.S. and eventually migrated to the U.S.

I remember talking with a Swedish legislator at Wharton. As the recipient of a Fulbright scholarship, he was traveling around the U.S. and other nations to research technological innovation. Smiling just a little bit, he gave me the following analogy. He noted that he had visited the Silicon Valley; Austin, Texas; the Research Triangle in North Carolina; and then Europe and Japan. He said, "What I discovered was a change in the values culture as you moved east. In Silicon Valley, if you had started a company and failed, you bragged about it. It was a red badge of courage, a badge of honor as it were. By the time you got to Austin or the Research Triangle, you didn't brag about it, but it wasn't anything to hide from people. Traveling farther east, by the time you got to Europe, you didn't tell your family about it. And in Japan, if you didn't commit suicide, you were extremely embarrassed about the failure in which you were involved." Now with apologies to the Japanese, who I think are victims of exaggeration in his story, the story nonetheless expresses accurately the flamboyant technological values that made the internet possible.

Reasonable people understand that the internet is a technological platform, not a form of American imperialism, says Gerhardt Schumayer, who heads the United States arm of a big German company, Siemens. But the internet is a rapid, disruptive technology that is unsettling institutions, companies and unions. In Europe, people's backs are against the wall.

### **Surveying the Impact of Net Value Drivers on Issues of the Value**

If, then, drivers of new values are inherent in the internet, we must next ask what specific issues are being driven? The chart below describes a set of sample issues, arrayed in terms of their respective drivers. The chart indicates that reach, a significant driver on the net, raises privacy issues because the internet allows information to reach people in ways never before imagined. For instance, reach creates privacy concerns, as we saw earlier, around the sale of deeply private facts such as bank account numbers. Another privacy issue is that of opt-in versus opt-out policies when authorizing use of private information. Should you have to check a box to permit use of your private information, or is failing to remove a check already sufficient permission? The former, more restrictive policy is now law in Europe, but not in the United States. The chart also notes that "reach" generates persistent problems with offensive commerce, not only in the area of pornography, but also in the sale of controversial memorabilia. For example, Yahoo's Nazi memorabilia site was recently shut down by the French government.

Replication drives obvious problems in such areas as the downloading of music. There is no better divider of the generations today than how one stands on the issue of MP3s. I argue with my 17-year-old but, as you will see in a moment, I am going to bet that my teenager's view of values become better accepted in the real world rather than my own. Or, consider issues of patent information. Technical patent information relevant to a variety of products can be posted on the web. Some people argue, for instance, that making pharmaceutical formulae available to Third World countries that cannot afford expensive drugs, i.e., AIDS drugs and so on, is a clear societal advantage. But, then again, such postings can cause the weakening and eventual distraction of intellectual property rights. When that occurs, we have the phenomenon we saw earlier, i.e., called the "first-copy" phenomenon. When the first copy is enormously expensive and the following ones costless, some people end up paying essentially nothing, while others pay a great deal. For some, this raises issues of fairness. Similarly, the chart indicates how issues of anonymity can drive behavior such as fake stock tips. Recently, a 14-year-old boy was apprehended for manipulating the stock market on the internet by spreading false information.

Anonymity, another net value driver, can generate concerns about harm to minors, freedom of communication, and free speech. As you know, some nations such as Singapore have tried to prohibit access to certain parts of the internet. Critics would argue that there is a fundamental right to free speech on the web. But can free speech go too far? Consider how, using internal corporate web-access, you can bring your boss down with an anonymous note about his or her activities.

Lastly, the chart reflects how language lock effects not only Microsoft founder Bill Gates's near monopoly on the "operating system of the universe" for personal computers, but also cultural hegemony, the Americanization of the web, and issues of standardized architecture and the network effect, which gives some network proprietors great advantages in terms of commerce and business.

The chart reflects only some of the issues spawned by net value drivers. It is not an exhaustive list.

Next, we need to ask the hard questions: Who is right about the issues that NVDs generate? And, for which matters do we need ethical principles to guide us? In attempting to answer these questions, let us first consider an analogous issue, namely, software piracy. It is well known that the rate of software piracy varies enormously around the world. The ratio of pirated legitimately purchased software in the United Kingdom is about one-half of one percent while in Italy it is about eight percent, which is pretty high. In Thailand, estimates are that this figure rises to 97 percent, to 80 percent in Spain. As much as 40 percent of all software in use around the world may have been illegally copied, even in the United States. And yet, some dispute even the assertion that developers of intellectual property, especially if it is possible for that property to be used in a poor country, should have the absolute right to it. It is worth noting, as Lester Thurow did in his Harvard Business Review piece not long ago (Thurow, 1997), that the Judeo-Christian tradition possesses a notion of a God that creates and owns what he creates, but that this conception is not really a part of Buddhism or Confucianism. It has been argued that the notion of intellectual property as a shared cultural phenomena, in its genesis at least, is more of a reality in places like China than it is in Detroit or Boston. So do we necessarily believe that there is one

marker or standard for intellectual property around the world? Lester Thurow suggests that some societies may want information to be available where other societies don't. For example, some nations see it in their best interest to educate the young and so justify placing some types of knowledge, such as educational technologies, in the public domain. Egalitarian democracies, ones that emphasize equality of persons, may want life saving technologies to be available to everyone, not just the rich (Thurow, 1997).

### **Moral free space applies to net values**

This raises fascinating questions about how we manage the evolution of the web. In particular, should we adopt monolithic standards? Is it possible that many rights exist? Here, I want to draw on theory presented in a book that my colleague, Thomas Dunfee, and I wrote recently, *The Ties That Bind* (Donaldson & Dunfee, 1999). We articulate there a view that allows for what we call "moral free space," that is, rational maneuvering room in terms of what we count as right or wrong. It is a notion that applies directly to the net. Consider one of the puzzles that prompted my colleague and I to use the social contracts approach with its concept of moral free space. Moral norms governing socio-economic interactions in business vary enormously. If you visit Japan, you may be expected to offer a gift to somebody that, if presented in Boston, would be considered a bribe. Yet, the gift would not be viewed as a bribe at all in Japan. As such, most non-Japanese companies have made exceptions to their ordinary gift giving policies. So too, moral preferences relative to economic institutions and transaction environments shift significantly. Even in my lifetime, I have watched the notion of a fixed price change in terms of its ethics. It used to be that if you gave one customer one price, another a different price, you suffered moral censure. But we have a more market-relative interpretation of fair price today than we did then.

Finally, my colleague and I note that using abstract universal concepts of ethics to solve specific ethical dilemmas is notoriously difficult. I don't know how many of you have had a traditional ethics course. I taught philosophy for 10 years before I switched to a business school. I can tell you that trying to apply Kant to the issue of sensitivity analysis on highly leveraged derivatives instruments and investment banking is a Herculean task. If you are very careful and persistent, you can make progress, but it is tough sledding. Making the connection between very abstract ideals and specific issues requires huge expenditures of intellectual energy. The challenge is compounded by the fact that strongly bounded rationality exists in artifactual institutions. In other words, people make corporations and they could make them differently. When we create the SEC, we could make it differently. We develop our own rules for insider trading and we could, and many countries do, adopt different regulations. A corporation is an additional example of this reality. It has changed dramatically over history. It isn't a static concept and has been flexible to an extreme degree. A corporation is not unlike a game where its ethics are contoured to meet the rules. Think of it as analogous to any pick-up basketball game where people come from time to time to play. On some courts, the rule is that two captains pick the teams. In another setting, everyone who shoots and makes a basket first gets to play first. In yet another scheme, whoever shows up first gets to play first.

Can we say that one of these approaches to pickup basketball selection is right or wrong? What is right or wrong there depends partly on what is agreed to by the parties involved. The same thing is true regarding the internet. There is not just one set of values with a claim to legitimacy.

In general, communities need a moral fabric that supports efficiency and pre-existing values. So it may be that a Christian community needs to fill in the moral free space surrounding commercial transactions differently than a Muslim community. The question we raise in our book concerns a social contract operating in a state of nature. Given their awareness of the strongly bounded nature of moral rationality and economic affairs, what are the general principles that contractors would choose to govern economic morality? We presumed that contractors choose behind a veil of ignorance, unaware of their final position in the economic communities that will be formed in accordance with the principles of their contract. What we concluded is that groups of rational people, when establishing rules for the internet or anything else, would want substantial moral free space to fill in their own conception of what is good. They would also want to have the right of voice and exit inside the economic communities themselves. In essence, all participants should have the right to speak up about things, and to leave if one did not agree to the community norms. To be obligatory, we believe that rational contractors would insist that community norms be compatible with hypernorms - fundamental, transnational principles that can be accepted by everybody everywhere.

And, finally, there would be rules when different community norms conflicted - as a way of arbitrating those disputes. What we call "Hypernorms" but which also might be called "core" or "transcultural" values are extremely important in this view. They translate basic moral values into practice. Local community and religious norms relevant to economic life become ethically legitimate only when they are consistent with hypernorms. They determine the boundaries of community moral free space and they express again principles so basic they are used to sit in judgment of more fundamental norms<sup>1</sup>.

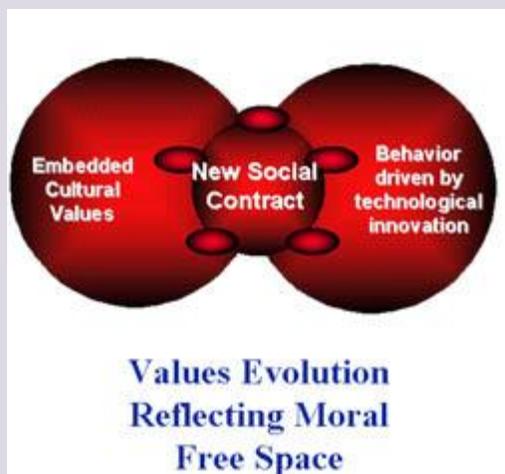
### **Hypernorms limit moral free space**

Are hypernorms idealistic nonsense? Is there anything that unites people all around the world that can be used to sit in judgment on business behavior? Most of us believe, for example, that it was wrong for Prime Minister Tanaka in Japan to accept a \$13 million gift from the president of Lockheed Aircraft Company in the 1970's when Lockheed wanted to land a lucrative aircraft sale to Japan. But suppose a company executive in Japan today accepts a very nice gift from a corporate customer, something that would be considered too expensive in this country and regarded as a bribe, is that flatly unacceptable? Most people in Japan don't tolerate large gifts that compromise judgment (interestingly enough, Prime Minister Tanaka was put in jail for his involvement in bribery), but they do find larger, routine gifts acceptable in business than do most U.S. businesspersons. There doesn't appear to be a set of principles written in heaven, at least principles expressible in any natural language, that provides an uncontroversial set of standards.

John Rawls's notion of "overlapping consensus" about ethical behavior around the world is helpful here. Take global industry standards, for instance, such as those found in prominent non-governmental organizations like the International Labor Organization or Transparency International. Or consider those supported by regional government organizations such as the European Community or the Organization of American States. The protocols endorsed by these organizations are referred to as global ethical standards by the international media. Often following the precepts of major religions, these standards are also articulated by global business organizations such as the International Chambers of Commerce of the Caux Round Table.

Despite the difficulty of articulating a noncontroversial set of hypernorms, it is far from nonsense to speak of them.

Assuming, then, that these twin notions of moral free space and hypernorms are accurate, implications follow for the net. Specifically, as a new social contract emerges on the web, there is a core set of values that remains the same. And yet, while there are core privacy standards we want to maintain throughout the world, there also should be room for moral free space for a number of economic communities. Diagrams presented earlier showed how a new social contract can arise under the impetus of technological revolution. This agreement, in turn, constitutes a compromise between the behaviors driven by technological innovation and pre-existing social values. But in that diagram, the unfolding social contract was pictured as a single entity. However, moral free space means that evolution on the net may well be a more complex, multi-configured social contract.



The following diagram entitled "Examples of issues spawned by NVDs #2" indicates how some issues on the net (those with bullets) may be dominated by hypernorm consideration, while others (those with dashes) may allow substantial moral free space. For instance, it is not clear that the United States should have the same privacy standards as Europe. Other issues may require considerable moral free space, as in the case of MP3s. Which isn't to say that the intellectual property rights of the people who create music are not to be respected on the net. But it may happen that we will respect them in a different way. Those property rights may be changed from the legal and moral status they possessed prior to the internet revolution, for some very good reasons. The publication of a book, however, may be treated differently, in accordance with more traditional standards of intellectual property protection.

It follows, then, that this and other issues may benefit from the application of hypernorms. As such, there may well be a fundamental right for book authors not to have their intellectual property disappear on the internet over night. It may be, no matter what country we are talking about, intellectual property rights should be preserved. Similarly, I believe that, whether it is in Singapore or anywhere, restriction of political free speech should constitute a hypernorm violation. There should be no moral free space on the matter of free expression.

I am less certain, however, about the mechanisms for distributing that speech. Even if the goal of Word for Windows were to eliminate all other word processing programs, it is not clear that transnational norms should prohibit such behavior. On the other hand, the sale of deeply private facts over the internet may invoke fundamental values with transcultural relevance that prohibit such behavior.

### **Government plays sensitive role in web regulations**

Does all this mean governments should create laws to instantiate hypernorms? I think not. In fact, most norm setting on the net should be on an inter-industry and consumer network basis. Tradeoffs abound. As you attempt to regulate behavior through law, you may manage to serve the public good even as individual freedoms are restricted. Ethics and moral persuasion, in contrast to government enforcement, is often more effective in managing human behavior. Much nonsense has been created by regulation precipitated by new technological phenomena. In 19th century Great Britain, the government passed the Locomotive Highway Act when the first automobiles began to appear on nationwide roadways. This legislation decreed that cars could only travel four miles per hour, except in cities where they were restricted to two miles per hour and had to be preceded by a man carrying a red flag to alert people down the road. That is nonsense on stilts. My sense is that similar nonsense will appear as the net evolves.

I want to conclude by suggesting that business should do much to fill in moral free space on the net and, indeed, to set hypernorm boundaries that manage and regulate net behavior. It would be a shame if world governments became the principal genesis of net norms. Ethics, not law, has proven time and time again to be a better arbiter of human behavior.

Many forms of economic activity constitute "communities." Citicorp would constitute a community. The Diner's Club Division, on its own, would constitute a community, as would the auditing department of the Diner's Club. Norms can arise, moral norms can develop, in all of these communities.

Donaldson, T., & Dunfee, T. 1999. *Ties that Bind: A Social Contracts Approach to Business Ethics*: Harvard University Business School Press. Shapiro, C., & Varian, H. R. 1999. *Information Rules: A Strategic Guide to the Network Economy*. Cambridge: Harvard Business School Press. Thurow, L. C. 1997. *Needed: A New System Of Intellectual Property Rights*. Harvard Business Review, September-October: 94-103. Useem, J. 2000. *New Ethics... or No Ethics?: Questionable behavior is Silicon Valley's next big thing*, Fortune, Vol. 141.

### **Questions**

#### **Question:**

I'm just curious, Tom, why do you apply moral free space to issuing fake stock tips. Isn't that something that should be banned?

#### **Thomas Donaldson:**

Well, I have some concerns. I don't like a 15-year-old sending out emails claiming that officers of a particular company have engaged in fraudulent activity and will resign tomorrow when there is not a shred of evidence that is true. But I am very worried about the restriction of speech that

might arise if we try to regulate that sort of activity too much. Now there are some instances where fraudulent disclosures have to be banned. But I would hesitate to have a broader norm impose some notion of truth on internet communications relating to stock market transactions. I think the backdrop of political free speech is important enough that we should go slowly on this issue. What would you like? I'd be interested in your view on this matter.

**Question:**

Well, I thought it was quite obvious that it should be a hypernorm, rather than moral free space, because it can be a criminal act to provide fake stock tips.

**Thomas Donaldson:**

I would probably include fake stock tips that run afoul of existing regulatory guidelines within hypernorms. But, in general, I wouldn't want to impose a broader mandate for truth, even when it comes to equity issues. I am concerned about the right of speech within that type of environment.

**Question:**

How do you determine the difference between hypernorms and locally embedded values? And how do they interact to form the foundation of a social contract especially if, at the beginning, there is disagreement between these principles?

**Thomas Donaldson:**

First, you should understand that this is messy stuff. But, at the same time, it is so important that we're prepared to wallow around in it. That is to say that, since the web is a world wide phenomena, American web property owners have to decide how to sell products to Europeans and manage that information. Will it be done in respect to European or U.S. laws? So messy or not, we can't avoid asking these questions. Often, moral free space should triumph. While every country is probably going to want penalties against insider trading and fake stock tips, it is not clear to me that there must be the same configuration of those laws. Some laws may be looser, allowing false communication about a stock as long as it didn't fall afoul of other provisos. It is difficult to determine.

Are we at sea completely? Is it a morass of relativism that can never be made clear? I don't think so. Anybody who would make it easy for criminals to acquire vital

private information to take advantage of others is just wrong. If a country fails to have laws that protect people in that sense, then it, too, is just wrong.

**Question:**

I'm interested in your vision of language lock and how English is the dominant language on the internet. I was wondering if you have also looked at access issues to the web including those concerning income, as well as gender issues with representative faults of anonymity.

**Thomas Donaldson:**

That is a very important point. I wrote a version of this paper about 11 months ago and ripped it up, convinced that I didn't have much to say on those matters. But in that earlier version, I addressed access to the net as a distributive justice issue. There is no question that, the better off

you are financially, the more access you have to the net. This is not only true throughout our domestic economy, but also on a world wide basis. Third world countries have abysmal access and it is often very costly to be connected to the net. This is an enormously important issue. But I don't think it is a function of the net, per se. Considering that the same issue exists around access to pharmaceuticals, as well as other kinds of information and resources, I believe that those of us in the wealthier countries need to give a lot more to poorer nations than we currently do. Because our level of giving is abysmal, perhaps intellectual properties pertaining to pharmaceuticals should be shared to treat poverty stricken people in the third world who are victims of rampant diseases. But in terms of access issues to the web, I don't think they are, by themselves, exclusive to the internet.

**Question:**

You concluded by saying that perhaps the government shouldn't have complete control over making the laws. To what extent do you feel pop culture, or even any form of culture, should have an ethical impact upon future laws governing personal intellectual property?

**Thomas Donaldson:**

That's interesting. I don't normally put culture and pop culture in the same sentence, since I don't think of pop culture as a form of culture, per se. But there is no question that pop culture influences law and we have lots of legal theorists who believe prevailing opinion finds its way, one way or another, into the legal system. Pop culture is often an expression of the kinds of things that we hold deeply. For instance, there are certainly arguments for making music more available with fewer restrictions of intellectual property rights. Arguments that, as you know, speak to the ability of unknown bands, those that are not supported by big money interests, to have opportunities while claiming that the recording industry will not suffer because they can pick up money to do other things. We invited the head of Napster to speak at Wharton about four months ago and I don't think I've ever known such a schizophrenic guy. On the one hand, he reflects the Napster iconoclast, calling to bring the system down and make everything free and available. At the same time, however, he reflects the guy who just cut a big deal with Bertelsmann for pay for music. You just don't know which side of the schizophrenic personality was going to triumph.

**Question:**

I'm thinking about your comments relating to business defining the moral scope of the internet. Then also, your warnings about governments that allow businesses to obtain private information. In light of the Microsofts of the world, and the history of 20th century trusts that were dismantled by governments, do you really believe that government should have little or no role in defining the moral scope of the internet and cyberspace?

**Thomas Donaldson:**

I certainly don't subscribe to what some people have called the vampire view of government regulation on the net. This view maintains that with one bite by the government, regulatory wise, the whole game will be over. In other words, what was distinctive about the net will suddenly be lost. That is nonsense. We are going to have a lot of regulation of the net. But I am concerned that a lot of it is going to be pretty silly stuff because laws tend to lag behind the knowledge of industry people. One of the big problems of asbestos, for example, was that people inside the

industry knew about its danger long before regulation could catch up. Right now the net is the archetypal example of business moving at warp speed. It seems almost inevitable that, by the time government gets around to regulating this technology, it is probably going to be inefficient or outdated. In the meantime, we are facing social interests that are so important, including who has access to deeply private information, that we must try to make that attempt at regulation now. But I have no illusions about the need to adjust law to this evolving phenomenon.

**Question:**

I wonder how hypernorms can make sense of issues that occur within a cultural context. Now, some people would say that corporations are cultures of sorts. Within certain companies there is an indiscriminate monitoring of email and computer use. At the very least, there are two different views on this matter. Some people believe that corporations should only monitor email and use of company internet resources if there is good reason to do so. This would be the case if there is a complaint against an employee or there is reason to look at a staff member's email. Other companies simply monitor as a matter of course and feel that it is their right to do so. Would you see a hypernorm playing a role in debate about whether corporations have the ethical right to keep track of e-mail and computer usage?

**Thomas Donaldson:**

That is a very good question. I think my answer would be no. In fact, that is a very good example of where moral free space should triumph. I spoke at an event called the Fast 500 a few months back. This conference consists of the fastest growing 500 companies in the United States as identified by Deloitte and Touche. Most of them were dot.coms. Of course, since this list was created five months prior to this event, these were now the fastest shrinking 500 companies in the United States. At any rate, I had a conversation with one of the most net savvy CEOs there, a guy dressed all in black who looked like he was born in a Silicon Valley hospital. He told me that he didn't let anybody use the company email for anything. He said it was a violation of his property rights as both a stockholder and owner of the company. Now I'm not sure I would want to work for that kind of guy. If he operates his company in that way, people will flee to other firms. They would employ the right of exit.

Most of us understand what is important in a work relationship. If you make the standard too monolithic, you lose the opportunity to make a special case where you have a special need. Consider drug testing. I don't like it generally, but if it is the guy that runs the locomotive or who is at the controls of the plane that I have to ride in, a regular drug test makes a little more sense to me. Similarly, it may be wise to monitor people who are writing media pieces in order to ensure that they are not passing on stock tips. Over half of all companies today monitor what the staff do on computers by the way, for better or worse.

**Biography**

**Thomas Donaldson** is the Mark O. Winkelman Professor at the Wharton School of the University of Pennsylvania and Director of the Wharton Ethics Program.

He has written broadly in the area of business ethics, values, and leadership. Books that he has authored or edited include: *The Ties that Bind: A Social Contract Approach to Business Ethics*

(Harvard University Business School Press, 1999), co-authored with Thomas W Dunfee; Ethical Issues in Business, 6th Edition (Prentice-Hall Inc., 1999), co-edited with Patricia Werhane; Ethics in Business and Economics-2 Volume Set (Ashgate Publishing, 1998), co-edited with Thomas W. Dunfee; Ethics in International Business (Oxford University Press, 1989); and Corporations and Morality (Prentice-Hall Inc., 1982). His book, Ethics in International Business, was the winner of the 1998 SIM Academy of Management Best Book Award.

He is a founding member and past president of the Society for Business Ethics, and is a member of the editorial boards of a number of journals, including the Academy of Management Review, and Business Ethics Quarterly. He is a Senior Fellow of the Olsson Center for Ethics at the Darden School of the University of Virginia. His writings have appeared in publications such as The Academy of Management Review, The Harvard Business Review, Ethics, and Economics and Philosophy.

At Wharton he has received many teaching awards, including the Outstanding Teacher of the Year award in 1998 (the Class of 1984 MBA Teaching Award); the Excellence in Teaching Award in 1998, 1999, and 2000; and the Miller-Sherrerd MBA Teaching Award in 1997, 1998, and 2000. Prior to 1996 (from 1990 to 1996), he held the position of the John F. Connelly Professor of Business Ethics in the School of Business, Georgetown University. There he was voted Outstanding Teacher of the Year by MBA students and Distinguished Researcher of the Year by business school faculty members.

He has consulted and lectured at many corporations, including Walt Disney, Motorola, AT&T, JP Morgan, Johnson & Johnson, Texaco, EDS, Shell International, IBM, Axel Johnson, Inc., Western Mining Company-Australia, NYNEX, Pfizer, American Home Products, Axel Johnson, the AMA, the IMF, Bankers Trust, the United Nations, and the World Bank. He has appeared on CNN, and PBS, and NPR radio, and his remarks have been published in The New York Times, U.S. News & World Report, Fortune Magazine, The Financial Times, and Business Week.

*Presented by the Center for Business Ethics at Bentley College, through the generous support of the Office of Ethics and Business Practices, Sears, Roebuck and Co.*