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FACULTY OF JURIDICAL SCIENCES

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RAMA UNIVERSITY

Lecture-6

LECTURE 6: Freedom of expression on the internet: global value

UNESCO recognizes that the Internet holds enormous potential for development. It provides an unprecedented volume of resources for information and knowledge that opens up new opportunities and challenges for expression and participation. The principle of freedom of expression and human rights must apply not only to traditional media but also to the Internet and all types of emerging media platforms, which will contribute to development, democracy and dialogue.
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UNESCO assumes its responsibility of promoting freedom of expression on Internet and related right such as privacy and has integrated it to its regular program. The Organization explores the changing legal and regulatory framework of Internet and provides member states with policy recommendations aiming to foster a conducive environment to freedom of expression and privacy on the Internet.

Following UNESCO 38th General Conference Resolution "CONNECTing the Dots: Options for Future Action" , the Organization therefore stands for the approach of Internet Universality, which is based on the R.O.A.M principles of Human-rights, Openness, Accessibility and Multistakeholder participation. These principles are essential to ensure an open, transparent and inclusive Internet worldwide.

In order to trigger a discussion on a wide range of issues related to Internet freedom at global, regional and national levels, UNESCO has organized a series of workshops in past WSIS Forum and Internet Governance Forum meetings since 2006. UNESCO is also publishing a Series on Internet Freedom that seeks to capture the complex dynamics of Internet Governance in a wide range of issues including privacy, hate speech, encryption, digital safety and journalism sources.
UNESCO is now developing Internet Universality indicators to help governments and other stakeholders to assess their own national Internet environments and to promote the values associated with Internet Universality.

Background

Before plunging into the details of the proliferating controversies over freedom of expression on the Internet, you need some background information on two topics. The first and more obvious is the Free-Speech Clause of the First Amendment to the United States Constitution. The relevance and authority of the First Amendment should not be exaggerated; as several observers have remarked, "on the Internet, the First Amendment is just a local ordinance." However, free-expression controversies that arise in the United States inevitably implicate the Constitution. And the arguments deployed in the course of American First-Amendment fights often inform or infect the handling of free-expression controversies in other countries. The upshot: First-Amendment jurisprudence is worth studying.

Unfortunately, that jurisprudence is large and arcane. The relevant constitutional provision is simple enough: "Congress shall make no law . . . abridging the freedom of speech, or of the press . . .." But the case law that, over the course of the twentieth century, has been built upon this foundation is complex. An extremely abbreviated outline of the principal doctrines would go as follows:

- If a law gives no clear notice of the kind of speech it prohibits, it's "void for vagueness."

- If a law burdens substantially more speech than is necessary to advance a compelling government interest, it's unconstitutionally "overbroad."
- A government may not force a person to endorse any symbol, slogan, or pledge.
- Governmental restrictions on the "time, place, and manner" in which speech is permitted are constitutional if and only if:
    - they are "content neutral," both on their face and as applied;
    - they leave substantial other opportunities for speech to take place; and
    - they "narrowly serve a significant state interest."
- On state-owned property that does not constitute a "public forum," government may restrict speech in any way that is reasonable in light of the nature and purpose of the property in question.
- Content-based governmental restrictions on speech are unconstitutional unless they advance a "compelling state interest." To this principle, there are six exceptions:

    1. Speech that is likely to lead to imminent lawless action may be prohibited.
    2. "Fighting words" -- i.e., words so insulting that people are likely to fight back -- may be prohibited.
    3. Obscenity -- i.e., erotic expression, grossly or patently offensive to an average person, that lacks serious artistic or social value -- may be prohibited.
    4. Child pornography may be banned whether or not it is legally obscene and whether or not it has serious artistic or social value, because it induces people to engage in lewd displays, and the creation of it threatens the welfare of children.
    5. Defamatory statements may be prohibited. (In other words, the making of such statements may constitutionally give rise to civil liability.) However, if the target of the defamation is a "public figure," she must prove that the defendant acted with "malice." If the target is not a "public figure" but the statement involved a matter of "public concern," the plaintiff must prove that the defendant acted with negligence concerning its falsity.
    6. Commercial Speech may be banned only if it is misleading, pertains to illegal products, or directly advances a substantial state interest with a degree of suppression no greater than is reasonably necessary.

If you are familiar with all of these precepts -- including the various terms of art and ambiguities they contain -- you're in good shape. If not, you should read some more about the First Amendment. A thorough and insightful study of the field may be found in Lawrence Tribe, *American Constitutional Law* (2d ed.), chapter 12. Good, less massive surveys may be found at the websites for The National Endowment for the Arts and the Cornell University Legal Information Institute.

The second of the two kinds of background you might find helpful is a brief introduction to the current debate among academics over the character and desirability of what has come to be called "cyberdemocracy." Until a few years ago, many observers thought that the Internet offered a potential cure to the related diseases that have afflicted most representative democracies in the late twentieth century: voter apathy; the narrowing of the range of political debate caused in part by the inertia of a system of political parties; the growing power of the media, which in turn seems to reduce discussion of complex issues to a battle of "sound bites"; and the increasing influence of private corporations and other sources of wealth. All of these conditions might be ameliorated, it was suggested, by the ease with which ordinary citizens could obtain information and then cheaply make their views known to one another through the Internet.

A good example of this perspective is a recent article by Bernard Bell, where he suggests that "[t]he Internet has, in many ways, moved society closer to the ideal Justice Brennan set forth so eloquently

in New York Times v. Sullivan. It has not only made debate on public issues more 'uninhibited, robust, and wide-open,' but has similarly invigorated discussion of non-public issues. By the same token, the Internet has empowered smaller entities and even individuals, enabling them to widely disseminate their messages and, indeed, reach audiences as broad as those of established media organizations."

Recently, however, this rosy view has come under attack. The Internet, skeptics claim, is not a giant "town hall." The kinds of information flows and discussions it seems to foster are, in some ways, disturbing. One source of trouble is that the Internet encourages like-minded persons (often geographically dispersed) to cluster together in bulletin boards and other virtual clubs. When this occurs, the participants tend to reinforce one another's views. The resultant "group polarization" can be ugly. More broadly, the Internet seems at least potentially corrosive of something we have long taken for granted in the United States: a shared political culture. When most people read the same newspaper or watch the same network television news broadcast each day, they are forced at least to glance at stories they might fight troubling and become aware of persons and groups who hold views sharply different from their own. The Internet makes it easy for people to avoid such engagement -- by enabling people to select their sources of information and their conversational partners. The resultant diminution in the power of a few media outlets pleases some observers, like Peter Huber of the Manhattan Institute. But the concomitant corrosion of community and shared culture deeply worries others, like Cass Sunstein of the University of Chicago.

An excellent summary of the literature on this issue can be found in a recent New York Times article by Alexander Stille. If you are interested in digging further into these issues, we recommend the following books:

- Cass Sunstein, *Republic.com* (Princeton Univ. Press 2001)
- Peter Huber, *Law and Disorder in Cyberspace: Abolish the F.C.C. and Let Common Law Rule the Telecosm* (Oxford Univ. Press 1997)
- Andrew Shapiro, *The Control Revolution* (Public Affairs 2000)

To test some of these competing accounts of the character and potential of discourse on the Internet, we suggest you visit - or, better yet, participate in - some of the sites at which Internet discourse occurs. Here's a sampler:

SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.			
2.			
3.			
4.			
5.			

Answers: 1-(),2-(), 3-(),4-(),5-()