

Software & Internet Law

Too Much Speech or Not Enough?
Anonymity, Defamation, Liability

1

Anonymity

- “any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox”
- Anonymously?
 - Many online forums don't verify identity
 - But, your ISP often knows who you are (billing, connection records)

2

How does law react?

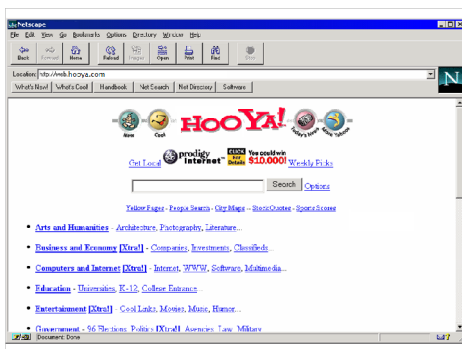
- Protect speech?
- Protect those victimized by speech?
- What's the ISP's role?
 - Should the ISP be made liable for speech it enables?
 - Should it be forced to identify speakers?

3

Defamation

- a *publication* to one other than the person defamed of
- a *false statement of fact*;
- that is understood as
 - being of and concerning the plaintiff; and
 - tending to harm the reputation of plaintiff.

4



HooYa! (1995)

- The year is 1995. You are counsel to HooYa!, a startup web directory company that wants to turn its website into a “destination” by adding news and entertainment content – sports and celebrity gossip, for example – and bulletin boards or forums where users can discuss the issues of the day. HooYa! comes to you to ask for help structuring the portal.
- Still a small company, HooYa! doesn't want to hire its own writers, but it might be able to ask a few employees to review or edit syndicated articles before posting them to the site, in order to keep the site “family friendly.” How do you advise the company to proceed?

6

47 USC § 230 (“CDA 230,” 1996)

Protection for private blocking and screening of offensive material

(a) Findings. The Congress finds the following:

(1) The rapidly developing array of internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens....

(c)(1) Treatment of publisher or speaker. No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

7

(e) Effect on other laws

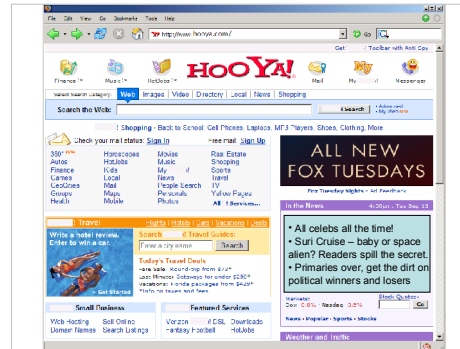
- (1) **No effect on criminal law** Nothing in this section shall be construed to impair the enforcement of section 225 or 2251 of this title, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, or any other Federal criminal statute.
- (2) **No effect on intellectual property law** Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.
- (3) **State law** Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.
- (4) **No effect on communications privacy law** Nothing in this section shall be construed to limit the application of the Electronic Communications Privacy Act of 1986 or any of the amendments made by such Act, or any similar State law.

8

Is the 'Net different?

- Less natural scarcity
- Different kinds of filtering
- Costs of publication much lower
- Still developing, regulation could change its direction
- Speech requires intermediaries
- Self-help is easier
 - Verification of a message's truthfulness
 - Response to an untrue message
- Scale
 - costs of responding to notices could be too great; don't offer a heckler's veto

9

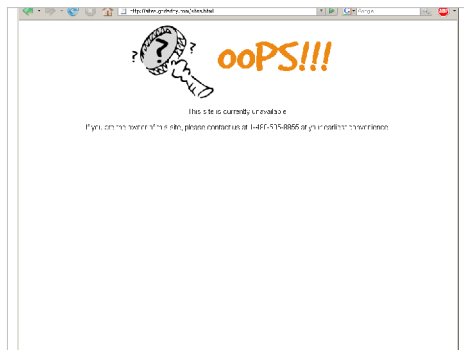
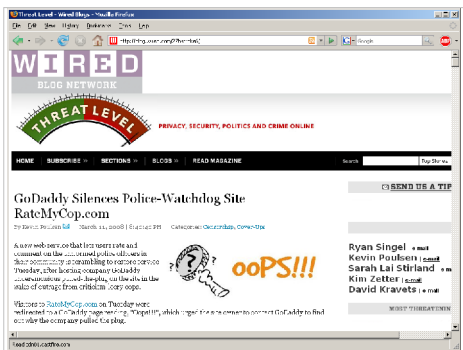
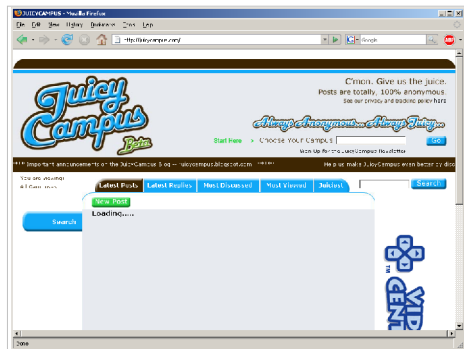
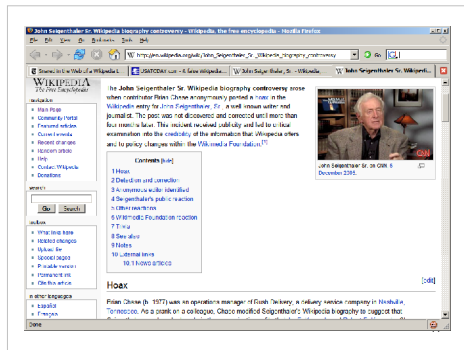
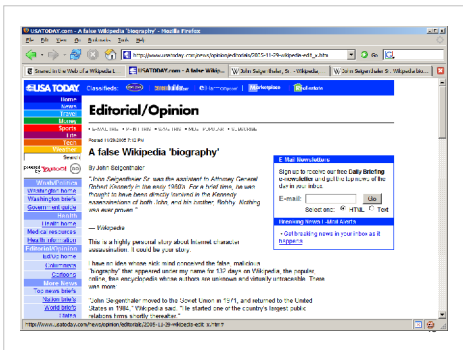


HooYa! (2006)

- Thanks to your earlier good advice, HooYa! has grown by leaps and bounds. After a successful IPO, the company now has the funds to pay editors and moderators and to add forums from Accounting to Zorro.
- Somebody posts to HooYa!'s Celebrities forum that “Tom Cruise’s baby is really an alien life form.” The thread is very popular with members, who add lots of speculation and comments. Spears’ agent says this is false and threatens to sue HooYa! if they don’t remove the posts and issue a correction immediately. How do you advise the company?
- What if a HooYa! employee posted the defamatory message?
- What if it was someone writing freelance for HooYa! ?

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Department Listings for Massachusetts

Top 10 Departments listed by Officer Count

Department Name	City
Boston Police Department	Boston
North Attleboro State Police	North Attleboro
Pittsfield Police Department	Pittsfield

Department Name	City
Greenfield Police Department	Greenfield
Quincy Police Department	Quincy
Crown Point Police Department	Crown Point
Ware Police Department	Ware
Haverhill City Police Department	Haverhill

Tor: anonymity online

There are three pieces of fire that you need to know about:

1. Tor does not protect you if you do not use it correctly. Read our [list of warnings](#) and make sure to follow [instructions for using Tor](#) carefully.
2. Even if you do configure and use Tor correctly, there are still [quite a few attacks that can compromise Tor](#). At this time, we do not have a way to protect you from these attacks.
3. No one can identify you online, even if you use Tor, unless you do something that reveals your identity. The content of this document is not intended to be used as a guide to using Tor.

For security, Tor uses a user base grows and as more people volunteer to [run relays](#). It isn't necessary to be set up as a relay, but it is a good idea to [run a relay](#) on your own computer.