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Bryan Schwartz probes the question of censorship and computer bulletin boards

IN the information age, each new technology presents its special challenges to the legal order. Electronic bulletin boards are a case in point.

They often work like this: You call a central computer via the phone link (modem) of your own computer. Next, key in a password. Now you can rummage around the "public message area." Your fellow subscribers have left all sorts of musings. Some consist of words, others might be pictures or sounds. You can leave your own message and perhaps a comment on someone else's.

There might be a "private message area" too, where users can leave a note for only the fellow users of their choice.

Bulletin boards can be operated by huge corporations who demand fees from their millions of subscribers, or by amateurs with a home computer and a store-bought software package. Boards focus on different subjects.

The main topic may be moral philosophy or cosmology; it might also be politics or sex. Are there limits to what can be said?

Operators sometimes censor their own subscribers. IBM and Sears jointly run a consumer-oriented service called Prodigy. Subscribers can use it to buy from catalogues or exchange messages. In 1990, the operators of Prodigy used it to announce a fee increase. Some subscribers used Prodigy to complain about it. The operators in turn kicked several protesters off the system.

The example is disturbing. Still, governments should not rush to remove editorial discretion from the operators of private bulletin boards. Freedom of speech can include the right not to carry messages. A great civil-liberties case of the 1930s held that Alberta newspapers could not be forced to transmit statements from the Social Credit government. Exiles from Prodigy might have had reasonable alternatives: to switch to uncensored computer services and use them to criticize Prodigy, and to carry their protest to the media.

Operators sometimes censor out of a genuine fear of being sued for the sins of their users. Newspapers can be held liable for a defamatory letter to the editor. By contrast, telephone companies are usually not expected to police the content of calls. The phone model should be applied to bulletin boards. They can be a low-cost forum for wide and untrammelled public discussion. Operators trying to create such arenas should be encouraged, not intimidated.

Censorship could also come from government. The target may be messages perceived as obscene or discriminatory.

Lately, U.S. courts have tended to uphold freedom of political debate and personal expression, even if that means tolerating some messages that might wound feelings or promote bad attitudes. Our own Supreme Court has been more ready to accept "reasonable limits" on free speech. With computer messages, Canadian courts could and should find grounds for moving in a more libertarian direction.

IN the Donald Butler case, our Supreme Court rewrote and then upheld Canada's obscenity laws. The context was pornographic films. The court noted that their producers usually aim at profit, not self expression.

With computer bulletin boards, message-senders usually do not charge. On the contrary, they often pay to use the service.

In the case of John Ross Taylor, the court approved a ban against a "dial-a-bigot" phone service. Its messages were prerecorded. The technology did not allow rebuttal by the caller. A bulletin board can work much differently. A derogatory message may be followed by a barrage of retorts, from closely reasoned refutations to devastating ridicule.

In the James Keegstra case, the Supreme Court sustained Canada's general antihate law. The court noted that the law respected "personal privacy" specifically, it exempted "private conversations." Some computer messages are intended to be confidential and are addressed to a few specific readers. Such communications should have as much constitutional protection as personal chats, phone calls and letters.

So much for theory. In practice, any government attempts at regulation might be illusory. The volume of computer traffic may make public surveillance impractical. Messages may be untraceable, or arrive from beyond our borders and jurisdictions.

The Soviet state could not stamp out samizdat publishing, based on typewriters, offset printers and photocopiers. The shah of Iran could not keep out audio tapes from the ayatollah. Chinese authorities could not stop dissident students from sending phone, fax and computer messages to the outside world.

Democracies that are tempted to censor will likely fare no better.

Their citizens have guarantees of civil liberties and access to increasingly elusive technologies. In the information age, offensive messages must be answered by education, not coercion.

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