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CLOSING REMARKS

SERIAL KILLINGS OF COMMUNICATIONS; DUMBING-DOWN OF INFORMATION ANALYSIS: THE INTERNET AND ITS LARGER IMPACT

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There are two observations I would like to suggest at the end of this fascinating day of ideas. One has to do with communication and the other with information.

Communication on the Internet is a form that I suggest creates a kind of detachment that, in turn, has two consequences. It is hard to identify a community that will define any consensus as to appropriate behavior,¹ and even if a consensus is identified, the issue of enforcement is far from trivial.² I believe these considerations will have a profound effect on the evolution of the Internet and potentially on life outside the Internet, assuming the Internet is a space.

As to information in the context of the Internet, it is located principally by word searches, unless of course a specific address is known. Therefore, to locate the information that is available, we will increasingly depend on less analytic techniques than we have

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¹ See *ACLU v. Reno*, 929 F. Supp. 824, 864 (E.D. Pa. 1996) (Buckwalter, J., concurring) (recognizing appropriate behavioral standards "ebb and flow" with various community standards); Robert Cannon, *The Legislative History of Senator Exon's Communications Decency Act: Regulating Barbarians on the Information Superhighway*, 49 FED. COMM. L.J. 51, 80 (1996) (acknowledging on-line communications may offend community standards only in particular jurisdictions); Marc S. Friedman & Kenneth R. Buys, *Infojacking: Crimes on the Information Superhighway*, 12 No. 10 COMPUTER LAW, 1, 7 (1996) (noting that selection of appropriate standard is problematic and varies by community).

² See Debra D. Burke, *Cybersmut and the First Amendment: A Call for a New Obscenity Standard*, 9 HARV. J.L. & TECH. 87, 91 (1996) (noting that no central regulating authority exists for cyberspace); Xan Raskin & Jeannie Schaldach-Paiva, *Computer Crimes*, 33 AM. CRM. L. REV. 541, 573 n.91 (1996) (stating that opponents of Communications Decency Act of 1996 view enforcement of Internet activity as problematic due to its decentralized nature).

used in the past. I believe that this, too, can have a profound effect on life outside the Internet.

Turning first to communication, what I want to emphasize is that we met in one place today in order to effect this exchange of ideas. In contrast, while the Internet is an extraordinarily powerful research tool and may well be extraordinarily effective in supporting business — I hope it is — pure communication over the Internet would have been far less effective than our meeting today.

I suggest that the reason for this difference is that the Internet is a fundamentally different method of communication than is face-to-face, or even telephonic, communication. In fact, the Internet emphasizes detachment because the communications are serial.³ The Internet impedes both the creation of community norms and their enforcement, because Internet communications can so easily be anonymous,⁴ a word that we have heard a lot today,⁵ or at least pseudonymous.

First, I will explain how the Internet communications are serial and why that leads to detachment. Next, I will address the issue of anonymity and why that characteristic further impedes the creation of anything approaching community.⁶ Finally, I will consider how these characteristics may affect the world outside the Internet.

Internet communications are not contemporaneous speech. They are not like either face-to-face speech or like telephonic speech. On the Internet, first one person communicates and then, only when that person has finished can the other person respond. This impediment may seem unimportant, but the next time you

³ See, e.g., Thomas W. Temple, *Marching Bandwidth: Advancing Information Exchange at Stability's Expense*, 6 J. CONTEMP. LEGAL ISSUES 409, 409 (1995) (explaining that cyber communications require transmitting information and then awaiting reply); cf. William W. Burrington, *American Civil Liberties Union v. Janet Reno in FALSE ADVERTISING AND THE LAW: COPING WITH TODAY'S CHALLENGES*, at 369 (PLI Corp. L. Practice Course Handbook Series No. 954, 1996) (noting that "Internet Relay Chat" offers near simultaneous communication).

⁴ See Anne Wells Branscomb, *Anonymity, Autonomy, and Accountability: Challenges to the First Amendment in Cyberspace*, 104 YALE L.J. 1639, 1644 (1995) (discussing anonymous nature of Internet communications).

⁵ See, e.g., Shirley F. Sarna, *Advertising on the Internet: An Opportunity for Abuse?*, 11 ST. JOHN'S J. LEGAL COMMENT. 683, 687-88 (1996).

⁶ During the question and answer session following the first panel, Professor Lessig commented wryly that some people view the virtual community as more real than the external one. I do not see his statement as incompatible with mine. See Lawrence Lessig, *Intellectual Property and Code*, 11 ST. JOHN'S J. LEGAL COMMENT. 635 (1996).

have a direct conversation, or better yet, the next time you are on the telephone, think about how often one person interrupts the other. Think about how important and informative pauses can be; that subtlety, of course, is lost. We can also note in passing that because most communications on the Internet are written rather than oral, there is even less information than is available over the telephone. We do not have the benefit of nuance of tones.

So what is the effect of this new technology on communication? The closest I can find to a lab experiment is amateur radio, that is to say, the world of ham operators. I have chosen ham radio because, as is the case on Internet, communication by ham radio is serial. If you listen to a conversation on ham radio, either between two people, or by analogy to a chat room, on a repeater where a number of ham operators can easily join in, each person completes the conversation before the other can start. Let me emphasize that these people are talking, except for those few who specialize in Morse code. Ham operators have the full benefit of voice when they communicate by radio. The major limitation is the serial nature of the communication.

Nevertheless, the ham operators must feel too much detachment. Among these people who speak to each other regularly over the radio, and therefore have more points of contact than over the Internet, many feel the need to meet regularly in person through clubs, often as frequently as once a month.

As far as I know, there are no regular club meetings to alleviate in a similar way the detachment created by serial communication on the Internet. This detachment can lead to behavior that is different from behavior outside. For example, to the casual visitor, many home pages display an absolutely tasteless self-involvement and arrogance: behavior that I believe would not be tolerated outside. The difference is further accentuated by the potential anonymity of communications on the Internet.⁷

We have all read that more people watch pornographic movies since they have become available on videos, because of the relative anonymity of the home as compared to movie houses.⁸ And we

⁷ See Branscomb, *supra* note 4, at 1644 (discussing anonymity of Internet communications); see also *ACLU v. Reno*, 929 F. Supp. 824, 849 (E.D. Pa. 1996) (recognizing importance of anonymity to Internet users).

⁸ See Jim Sullivan, *More Hustler Than Hero in Real Man*, BOSTON GLOBE, Jan. 10, 1997, at C1 (noting videocassette contributed to increased accessibility and use of pornographic

have all read and heard quite a bit today about the greater privacy of the Internet that has created a greater access to pornography.⁹ In fact, according to what we have just heard, this trend is one of the reasons why there is a safe harbor under the Communications Decency Act¹⁰ that requires the use of credit cards and identification to eliminate this anonymity.¹¹

My intention is not to debate the merits or demerits of pornography. Rather, I am pointing out that increased anonymity results in different behavior. The reason why the behavior is different is presumably because the anonymity eliminates certain external controls. It certainly eliminates shame as an external control.¹² In fact, the anonymity combined with detachment makes it difficult even to develop a consensus as to what should be a source of shame. Hence, the community issue.

This elusive standard, in part, may explain the graffiti-like home pages, since they can be pseudonymous. And, even if we come to a consensus as to behavior, enforcement is severely hampered by anonymity.¹³ Consider a fascinating type of communication over the Internet, where Internet users have been sharing information about publicly held corporations, something near and dear to my heart. Consider it especially in the context of the relatively detached nature of serial communications, and especially if these communications are largely anonymous. The opportunity for abuse through misrepresentation and manipulation is remark-

material); Eric Schlosser, *The Business of Pornography*, U.S. NEWS & WORLD REPORT, Feb. 10, 1997, at 4250 (examining America's increased consumption of sexually explicit materials in relation to video rental market).

⁹ See Richard S. Murphy, *Property Rights in Personal Information: An Economic Defense of Privacy*, 84 GEO. L.J. 2381, 2397 (1996) (stating privacy protections increase use of pornography on worldwide web); see also Anne Wells Branscomb, *Internet Babylon? Does the Carnegie Mellon Study of Pornography on the Information Superhighway Reveal a Threat to the Stability of Society?*, 83 GEO. L.J. 1935, 1942 (1995) (acknowledging anonymity of cyber environment has contributed to successful marketing of pornography).

¹⁰ 47 U.S.C. § 223a-h (1996).

¹¹ See Bruce Rich, *Fundamental First Amendment Issues in Relation to On-Line Liability*, 11 ST. JOHN'S J. LEGAL COMMENT. 665, 669 (1996) (discussing safe harbor provisions).

¹² See Murphy, *supra* note 9, at 2397 (noting that fear of embarrassment or reproach in engaging in certain types of behavior is eliminated when communicating anonymously on Internet); see also Branscomb, *supra* note 4, at 1674 (arguing that permitting anonymity for purposes of removing personal accountability for abusive or inappropriate behavior should not be tolerated).

¹³ See Scott Sultzer, *Money Laundering: The Scope of the Problems and Attempts to Combat It*, 63 TENN. L. REV. 143, 195 (1995) (discussing "cyberbanking" and difficulty that anonymous nature of cyberspace poses for enforcement banking regulations).

able; those of you who are currently studying corporation law will recognize some Rule 10b-5 concepts.¹⁴

The SEC is now in the unenviable position of seeking to control such use of the Internet, but is finding itself constrained by the anonymity, or the relative anonymity, of the participants.¹⁵ Nevertheless, if anyone is to ride herd on securities sales over the Internet, the SEC is the obvious candidate: precisely because there is no particular consensus, any effort for enforcement must be from the outside.

Again, a quick contrast with ham operators. Although the communications are serial, they are emphatically not anonymous. Each ham operator must be identified for each communication. In the world of amateur radio, there is a very detailed consensus about what constitutes bad manners. Of course, enforcement is no problem at all, precisely because the initiator of each communication is identified: an operator who violates the conditions of a license truly may lose that license.¹⁶

The least that may be said is that the Internet will be hard to tame.¹⁷ The untouched question is, to what extent will mores born in a climate of relative detachment spill over to the world outside the Internet?

That query brings us to information. We seek information on the Internet primarily through some variant of a word search. How we search will ultimately determine how we think. This can be limiting.

¹⁴ See Securities and Exchange Commission [SEC], 16 C.F.R. § 240.10b5 (1996). Rule 10b-5. Employment of Manipulative and Deceptive Devices provides:

It shall be unlawful for any person . . .

(a) [t]o employ any device, scheme, or artifice to defraud,

(b) [t]o make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or

(c) [t]o engage in any act practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

Id.

¹⁵ See, e.g., Stephen G. Martin, *The Convergence of Securities Law and the Internet*, 71-JAN FLA. B.J. 46, 47-48 (1997) (discussing difficulties faced by SEC in effective regulation of "on-line securities activity").

¹⁶ See 47 C.F.R. § 97 (1989).

¹⁷ See Cannon, *supra* note 1, at 94 n.141 (acknowledging constitutional issues implicated in regulating cyberspace); Charles Nesson & David Margin, *The Day the Internet Met the First Amendment: Time and the Communications Decency Act*, 10 HARV. J. L. TECH. 113, 114 (1996) (discussing constitutional challenges to laws regulating Internet).

To assign such power to search techniques on the Internet may seem hyperbolic, but I believe that we as lawyers already have evidence of the limiting effects of relying on word searches. The model is, of course, the advent of widely available computer search techniques in the legal world. Before the prevalence of Lexis and Westlaw, when we, as lawyers, were presented with a problem, we would ask ourselves whether the problem was, for example, in contracts, in agency, or a bit of each. But it was clear that the analysis was based on fields of law. In order to allocate the factual problem to the correct field, we had to consider the problem as a whole. We had to consider the universe of options into which the problem might fit, and then we had to analogize like crazy.¹⁸

Again, I am not saying that analysis driven by 19th century Langdellian concepts¹⁹ is necessarily the best. What I am saying is that to analyze the same problem by doing a word search for "beneficiary" within five words of "third party" is a fundamentally different proposition.

To be fair, on the plus side word searches drive us to consider other disciplines, because we follow the words wherever they lead us. I suggest that computer word searches have been contributing substantially to the increasingly interdisciplinary nature of the law, both across the 19th century types of categories of law such as contract, agency, and, entirely outside the law, into economics, sociology, and beyond.²⁰

On the arguably less positive side, however, word search encourages an analysis that starts from the smallest possible concept. In contrast, analysis by categorization of ideas encourages

¹⁸ We saw this in the second panel, by the way. Everybody was using language of analogy. See, e.g., Marc Jacobson, *Prodigy: It May Be Many Things to Many People, But, It is not a Publisher for Purposes of Libel, and Other Opinions*, 11 ST. JOHN'S J. LEGAL COMMENT. 673, 675 (1996) (equating Prodigy with "town square" and noting legislature's apparent likening of Internet to television).

¹⁹ See Andrew M. Jacobs, *God Save This Postmodern Court: The Death of the Necessity and the Transformation of the Supreme Court's Overruling Rhetoric*, 63 U. CIN. L. REV. 1119, 1131 (1995) (asserting that Langdell deployed "all-encompassing, self-implementing categories that dictated the outcome of any particular dispute" thus adding scientific methodology to law); Gary Minda, Symposium, *One Hundred Years of Modern Legal Thought: From Langdell and Holmes to Posner and Schhlag*, 28 IND. L. REV. 353, 358-60 (1995) (discussing Langdell's beliefs that "law is a science," similar to biology and anatomy, and that law should be reduced to categorical scientific concepts, thus facilitating legal training and practice).

²⁰ See Mark J. Newman, *Shortcuts Help Justify Online Expense: Computer Assisted Research Can Both Reduce Cost and Improve Work Product*, N.Y. L.J., Feb. 16, 1993, at 4 (discussing how legalized computer research provides practitioners access to variety of legal sources and areas of law).

us to consider both the entire universe and the larger relationship among the parts of that universe. The larger vision is at risk. The dominance of word searches on the Internet will, I believe, spread throughout society the evolving tendency to analyze from the smallest concept.

In summary, the Internet is affecting all of us by changing both our method of gathering information and, more generally, the environment in which we communicate. We have in the Internet an extraordinarily powerful and pervasive means of communication that fosters detachment. With respect to information gathering, the Internet broadens our access to varied information, but it does so by techniques that dissuade us from contemplating the big picture. Consequently, these techniques limit our perspective. It is because the Internet fosters detachment that, despite the Internet's undeniable power, we must keep meeting like this. Thank you.

