

ETHICS AND THE INTERNET

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In this article I deal with *ethics* and the Internet rather than *morality* and the Internet.¹ I understand *ethics* to be principles regulating cooperative benefits and burdens. *Morality* includes principles justified by religious or cultural beliefs which are usually shared only by groups with restricted membership. I will first outline ethical principles applying to individuals, then societies, then global social and economic ethical principles. This ethical preliminary is necessary because I believe the principles necessary for dealing with the ethical problems of the Internet are largely based on individual and social principles, although they differ in some important respects.

ETHICAL PRINCIPLES

The basis of ethics as cooperative principles is the realization that rules limiting individual self-interest can often produce greater cooperative benefits.² Making and keeping agreements are a major part of ethics so

¹ This article belongs to *applied ethics* rather than philosophy.

² The payoff matrix called the *Prisoner's Dilemma* applies in most situations in which there is an ethical principle providing cooperative benefits, and the choice is to observe that principle or not to observe and act on self-interest instead. The payoffs reflect that one can

conceived. But ethical principles allowing us cooperative benefits involve more than keeping agreements. The principle of benevolence—to give aid to others in need—holds without any agreement. We simply assume that human beings recognize each other as fellow human beings and give aid because in so doing they expect that they will receive aid when they are in trouble.

By contrast, morality has a large arbitrary element because of its basis in beliefs that are explicitly not shared by all, such as religious beliefs. The principle that one ought to kill one's daughter if she marries an infidel can hardly be based on anticipated cooperative benefits. It is a membership rule for a religious sect. Failure to appreciate the distinction between ethical principles that insure cooperative benefits and moral principles that reflect mainly arbitrary religious or cultural beliefs may be responsible for the attractiveness of relativism, the belief that ethical beliefs are true only for specific groups.³

Three levels of ethical principles are: individual, social, and global. Social principles apply within a society, a group whose members share cooperative benefits and burdens with each other. Global or transnational principles apply to concerns which cannot be handled by dividing them up between societies. Internet ethical issues involve principles at all three

always do better from a selfish or self-interested point of view if everyone else obeys the (cooperative ethical) principle but you do not. If everyone acts selfishly (that is, disobeys), the cooperative principle with its cooperative benefits is no longer available, which means everyone is *collectively* worse off than if everyone obeyed. Therefore, the only way we can have ethical principles is if we treat principles which are cooperatively rational as of higher priority than considerations of self-interest (Schultz 2010, Chapter 4).

³ My distinction between ethics and morals is based on a distinction drawn by the philosopher John Rawls in developing his theory of justice. Rawls distinguishes principles of justice regulating cooperative behavior and comprehensive doctrines which are not allowed to affect the (cooperative) social contract (Rawls 1999). For further discussion, see Schultz (2010, Chapter 4).

levels. In my discussion of Internet ethical cases, I will be applying definite ethical standards at all three levels.

Some plausible candidates for standards for individual ethical behavior are these:

- *Intuitionism*: there are no overall standards, just a variety of principles we feel are correct by intuition.
- *Utilitarianism*: the right thing to do is what produces the greatest good for the greatest number.
- *Universal principle*: act on principles that could be willed to be universal law.

Intuitionism is actually not a standard. It says that there is no good explanation of right and wrong, but we nevertheless have strong intuitive feelings about what is right and wrong. For the intuitionist, these feelings need no justification. The Ten Commandments, taken by themselves, are an intuitionist theory. The major difficulty with intuitionism is that when different principles of right action conflict, we have no principled way of resolving the conflict.

Utilitarianism can be stated: act so as to produce the greatest amount of good for the greatest number. Utilitarianism has much plausibility. For how could it possibly be wrong to do the action that produces the greatest good? How could it possibly be right to do an action which produces less good when you could have done better? Although a plausible idea, utilitarianism suffers from two major difficulties. One is that if we consider actions in isolation from one another, it is easy for a utilitarian to break promises or fail to fulfill contracts when more good would be produced in that case. The trouble then is that institutions which allow cooperative benefits, to live and work together, would disintegrate. Important goods are not available unless we consider ourselves bound to follow certain non-utilitarian rules.

Utilitarianism can, however, achieve these goods if it is modified to apply to rules rather than individual acts. Then one is still bound by social rules governing the institutions of keeping agreements and fulfilling contracts even though more good might be done in the individual case by breaking the social rule. One takes actions not because the individual actions produce the greatest amount of good, but because the right action is to follow social rules which produce the greatest amount of good. This theory is called *rule utilitarianism*.

But how do we tell which rules these are? The second major difficulty is that summing goodness over individuals in any precise way has been proved to be impossible. So the notion of the greatest good for the greatest number can only serve as a metaphor. It simply can't be made precise (Arrow 1951).⁴

Universal principle ethics is one major alternative to utilitarianism. Universal principle ethics insists that rightness is not just some sum of goodness. The philosopher Immanuel Kant (1785) developed universal principle ethics, founded on his *Categorical Imperative*: act on principles that could be willed to be universal law. For example, making an agreement you have no intention of keeping could not be willed to be universal law because then no one would make or accept agreements. The biblical Golden Rule, "do unto others as you would have them do unto you," is a similar but less formal version of the Categorical Imperative.

As with intuitionism, universal principle ethics has little guidance for what to do when principles for right actions conflict. Some account is needed

⁴ Kenneth Arrow won the Nobel Prize in 1972 by proving in his "general possibility theorem" that a consistent and minimally just amalgamation of individual preferences is impossible. Such an amalgamation is called a "social choice." Utilitarianism as a usable theory would need to make such impossible social choices. Arrow's proof uses fairly abstract mathematics (theory of partial orderings) and is not accessible to non-mathematicians. For a brief (but still technical) account, see www.encyclopedia.thefreedictionary.com/Arrow's+theorem.

of ethical social rules, especially on how they fit together into a system without conflicts. The 20th century philosopher John Rawls expanded a suggestion by Kant on how to make this into a comprehensive theory of justice (Kant 1785, 74; Rawls 1999a). Rawls's theory has had wide influence and is used extensively by lawyers, jurists, and politicians.

At the individual level, utilitarianism and universal principle ethics often yield the same results. When they conflict, I shall favor universal principle ethics.

Internet ethical issues involve principles at all three levels: individual, social, and global

At the level of a society, rule utilitarianism is widely used as a theory of justice, especially by economists dealing with public policy. Rawls's alternative is a theory which bases principles of justice on a social contract (Rawls 1999a). Rule utilitarianism allows very uneven distributions of value, justifying the suffering of the less advantaged by greater overall advantage. By contrast, according to a social-contract view, the well-being of everyone, including the worst-off, is taken into account.

From the point of view of the social contract, another serious objection to utilitarianism is that it does not care directly about freedom. Parties to a social contract would instead insist that each individual has basic liberties which are not to be compromised or traded off for other benefits. This is Rawls's social contract's first principle of justice, *Greatest Equal Liberty*:

Society is to be arranged so that all members have the greatest equal liberty possible for all, including fair equality of opportunity.

Besides the basic freedoms such as freedom of speech, assembly, religion, and so on, it includes equality of opportunity. Thus society's rules are not biased against anyone and allow all to pursue their interests and realize their abilities.⁵ Freedom is to be limited only for the sake of another freedom (Rawls 1999a).

Rawls's second principle of justice is the *Difference Principle*:

Economic inequalities in society are justified insofar as they make members of the least-advantaged social class better off⁶ than if there were no inequality.

The social contract basis for the Difference Principle is straightforward: if you are entering a society with no knowledge of your specific place in that society, the Difference Principle guarantees that you will be no worse off than you need be.

At the level of society, Rawls's two principles of justice are a plausible alternative to utilitarianism. They are the ethical principles I will employ at this level.

At the global or transnational level, there are serious problems with simply extending ethical principles of justice obtaining in societies. Global concerns are those which clearly are not the responsibility of one society or another. They are of two types: Concerns about relations *between* societies, and globalized—mainly economic—concerns. For this reason, at

⁵ Rawls includes fair equality of opportunity under the second principle, although he himself includes it with the freedoms of the first principle when discussing how to apply the Difference Principle. See Rawls (1999a, 82).

⁶ "Better off" is to be measured against enabling values affected by the social structure reflecting an individual's life prospects. Rawls cites authority, income, and wealth as those enabling values (Rawls 1999a, 78).

this level, two social contracts are required: an International Social Contract, and a Global-Economy Social Contract. The International Social Contract is based on Rawls's *Law of Peoples* (1999) and requires minimalist democracies⁷ to refrain from intervening in each other's affairs and to assist each other when in need. The Global-Economy Social Contract has close analogues to Rawls's Principles of Justice, but there are important differences in their derivation and application. One important feature of the Global-Economy Social Contract is that it is agreed to by *individuals* sharing benefits and burdens in the global economy. Therefore the Global Greatest-Equal-Freedom Principle applies to individuals, not corporations, states, or any other global institution. Similarly, the Global Difference Principle applies only to participants in the global economy and its application must respect domestic justice (Schultz 2010).

Schultz's *Information Technology and the Ethics of Globalization* (2010) contains a very extensive discussion of these global principles, their justification, and their superiority to competing accounts (Schultz 2010: Sections II and III). One point from that discussion is important in considering Internet ethical problems. Most utilitarians and some social-contract theorists grant no ethical legitimacy to any group of people other than all of humanity. This sounds noble but I believe it leads to unacceptable ethical conclusions. The global-economy social contract I favor is between people sharing benefits and burdens in the global

⁷ The term "minimalist democracy" is borrowed from Singer (2004, 101). I follow Singer in regarding this as the appropriate standard for participation in an international society. A minimalist democracy is one that has been ruling for a long time with the apparent acquiescence of its people, without severe restrictions on civil liberties, and without using repression to maintain its power. Thus the Syrian government in 2011 would blatantly not qualify because it is killing its own civilian population to stay in power. Rawls requires the much stronger condition that for membership a society must be "nearly just." This stronger condition has the undesirable consequence that a very large number of nations are unnecessarily excluded from participation in an international social contract. See Schultz (2010, Chapter 7) for further discussion.

economy. The alternative cosmopolitan-utilitarian view *requires* redistribution to people with no connection to each other. Instead, I believe the correct ethical principle is an analogue of the individual principle of benevolence: To help other societies (or other economies) in need when the cost to one's own society would not be too great.⁸

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INDIVIDUAL ETHICAL PROBLEMS OF THE INTERNET

I will consider two individual Internet ethical problems: the use of the Internet to meet sexual partners and the use of the Internet for what has been stigmatized as "piracy," that is, the individual copying of digital content for personal rather than commercial use. Both issues also have social dimensions. So I will discuss both individual and social aspects of these issues. Discussion of purely social issues will follow.

Meeting and communicating with people through the Internet, especially through such social media as Facebook and Twitter, has become common. It is not immediately clear that the Internet has introduced any new ethical issues in the areas of dating and sex. Finding sex partners through the Internet has also become relatively common, although this practice

⁸ This kind of consideration occurs frequently at the individual level in connection with what Kant called *wide duties* such as giving to others. We can't be required to give to *everyone* in need or to give *everything* we have because that would turn us into needy people ourselves. Similar considerations apply at the level of society.

has both benefits and drawbacks. One benefit is that people in small towns and rural locations suddenly have the same availability of sexual partners as those in densely populated big cities. One drawback is that the actual person may be different from what he or she presents himself or herself to be on the Internet. Sometimes the actual person may be thoroughly bad and may be using the Internet for exploitation or even to harm or kill. Sometimes the actual person may be a total fiction set up to entrap an unsuspecting pedophile.⁹ But all of these effects could be consequences of phone conversations or (to some extent) meetings in bars or restaurants. However, unlike phones, bars, or restaurants, Internet media are able to access databases of sexual predators and filter them out. Recently Match.com settled a lawsuit by agreeing to screen all members. Clearly it is ethical for Internet media to screen their members when possible to eliminate possible harm to other members. Other Internet media companies apparently agree, for Match.com's screening is expected to become an industry standard (Williams 2011).

The psychological effects of Internet-mediated relationships may take some time to be assessed accurately. When Internet-mediated relationships actually *replace* face-to-face relationships, there could be a problem. People do become addicted to sexually charged websites and Internet pornography. But if the description of "addicted" is correct, then this is not an ethical problem but rather a personal problem, a psychological illness, for which some form of treatment is necessary.

One enabling feature of the Internet for finding partners which does make a difference for ethics at the social level is lack of censorship on the Internet. In part this is because of inherent Internet design features—no

⁹ An MSNBC show does this extensively. Although I believe sexually exploiting children is very wrong, I also believe entrapment is also very wrong. The show has produced a number of broken lives and at least one suicide. Who knows whether the people they catch would have gone after kids without the Internet posting?

one has to go through a central computer to get onto the Internet, and thus effective monitoring is difficult. Most recently in the area of political freedom in the Arab Spring of 2011, the Internet has been a powerful force in resuscitating the freedoms of the First Principle of Justice. These freedoms are important constituents of what are called human rights: privacy, freedom of speech, and freedom of association are enhanced by the ability to communicate freely with others at any location with a computer or such devices as smartphones having similar functionality. It is also important to keep these freedoms in mind when restrictions on the Internet freedom are proposed or implemented. In this connection, the important case of Wikileaks will be discussed later.

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COPYRIGHT AND PIRACY

Issues of copyright and piracy are also individual ethical issues with significant social-ethical dimensions. People can make digital copies at will, and these copies can be available to anyone on the Internet. The ethical question is whether this is merely an extension of friends swapping copies (perfectly ethical) or whether it is an illegal (and unethical) violation of copyright. An entirely new method of sharing copies requires a rethinking of ethical principles. I will begin by considering the ethical basis for copyright in property rights and ownership from the point of view of Rawls's principles of justice. Then I will apply these results to issues involving digital copying.

The original stated purpose of copyright is to give the artist or creator of intellectual property the exclusive right to reproduce it, but not just for the

artist or creator to be able to reap suitable rewards for his creation. Ultimately the existence of this right is to stimulate creativity. United States Supreme Court Justice Sandra Day O'Connor writes (Lewis 2001: 1):

The primary objective of copyright is not to reward the labor of authors, but "to promote the Progress of Science and useful Arts." To this end, copyright assures authors the right to their original expression, but encourages others to build freely upon the ideas and information conveyed by a work.

The original intent of copyright has clearly been distorted in recent years as corporations holding copyrights use their influence in Congress to extend the copyright period almost indefinitely. The Digital Millennium Copyright Act of 1998 criminalizes for the first time "unauthorized access" to works that are published and sold. The original copyright period of 14 years is now 70 years for individuals and 95 years from publication and 120 years from creation for corporations! (Lewis 2001). The benefit from the extended copyright is enhanced corporate profits, and the extended time frame assures that any connection to stimulating creativity is very limited. Indeed the 120-year extension can only benefit immortal corporations rather than mortal individuals. Nonetheless, the ethical question is about the justice of this situation. If contribution to corporate profits is a sufficient justification for having and enforcing a copyright, then recent prosecution of consumers for making digital copies is ethically in order. If, however, there is not a basis in the principles of justice for these restrictions on individuals, then there is an ethical basis for changing the legal environment, either through the courts or legislatures. However, the fact that a law is unjust does not give an individual the right to break or ignore it. Rather, attempts should be made to change the law.

I follow Rawls in his account of property rights. According to Rawls, property rights have their place in a just society for two reasons: first,

because social assets tend to deteriorate unless an agent is named to take responsibility for maintaining them; second, because the right to personal property is a basic human right (Rawls 1999b: 8, 65). Personal property is a necessary material basis for full development as an individual in a just society and for self-respect (Rawls 2001: 114, 58–59). But Rawls explicitly notes that two wider conceptions of property rights are not fundamental: first, the right to private property in natural resources and means of production; second, the equal right to participate in control of socially-owned means of production and natural resources (Rawls 2001: 114).

The final element needed for this topic is the ethical role of corporations. A corporation is a legal entity capable of acting in some respects as an individual, mainly in terms of property rights, legal liability, and political rights. Theoretically corporations are created to serve the public benefit, and their trans-individual status allows them to function more efficiently, without constant shifting of property rights and responsibilities. ([http://legal-dictionary.thefreedictionary.com/ Corporation](http://legal-dictionary.thefreedictionary.com/Corporation)). A corporation, as a legal construct created for reasons of efficiency, clearly should not inherit all the rights of the individuals making it up.¹⁰ But it should inherit rights when denying them would deny the rights of the individuals making up the corporation. And in cases where the only justification for corporate rights is the efficient operation of the corporation itself, the principles of justice require us to consider the impact of the corporation on the rights of individuals outside the corporation.

¹⁰ The 2010 Supreme Court decision *Citizens United v. Federal Elections Commission* decided that corporations deserved the individual right of free speech, continuing a string of thoughtless Supreme Court decisions (Wikipedia 2010). As my student Rich Habgood observed, although corporations can buy and sell each other, and people can buy and sell corporations, corporations cannot buy and sell people, nor can people buy and sell each other. Therefore, corporations are not people and there is no reason to treat them as such.

Thus the claim that corporate holders of copyrights have the right to dispose of their intellectual property in any manner that they want—an “absolute” ownership right—is simply not supported by the principles of justice.¹¹ It would have to be shown that the individual’s right to free expression is enhanced by absolute ownership rights of intellectual property in general, or copyright extension in particular. Since the opposite of enhancing free expression actually seems to be the result, there is no such absolute ownership right.

I believe the Supreme Court Betamax decision of 1984 is the correct legal and ethical basis for this issue (FindLaw Legal News 1984). The court held that non-commercial home-use recording of material broadcast over the public airwaves was a fair use of copyrighted works and did not constitute copyright infringement. Further, makers of VCRs could not be held liable as contributory infringers even if the home use of a VCR was considered an infringing use.

Fast forward 20 years and we find music and movie companies hard at work demonizing, prosecuting, and persecuting individuals for making copies for their own use. In the year before August 2004, the recording industry sued just under 4,000 individuals for downloading copyrighted music. People sued are forced to settle for amounts in the thousands because legal expenses for specialized entertainment or copyright lawyers would cost even more. (Bridis 2004). The Motion Picture Association of America announced in November 2004 that it would begin employing the same tactics, suing downloaders for amounts of US\$30,000 to US\$150,000. The MPAA draws no distinction between downloading for personal use and downloading for resale (Hernandez 2004).

¹¹ Thus neither the Berne Convention nor many aspects of the Digital Millennium Copyright Act would be supported by the principles of justice.

The behavior of record and movie companies seems clearly legal but unethical. Those making and reselling copies of music and movies are correctly called pirates, and it is both legal and ethical for record and movie companies to pursue these people. But the spectacle of huge companies harassing their own customers in an apparently mistaken drive to increase profits is not heartening.¹² Even worse, these companies are clearly set on stamping out digital copying wherever it may arise. Movie studios have expressed concerns about TiVo to go, which allows users to transfer movies recorded on TiVo to other devices (Wong 2004). On the other hand, a California district court held in 2003 that the file-swapping service Grokster is not liable if its software is used to make illegal copies. Although this court decision parallels the 1984 Supreme Court Betamax decision, the United States Supreme Court reversed it and held in 2004 that Grokster was indeed liable for any copyright infringement. As a result, Grokster went out of business in 2005. Digital copying helps greatly in disseminating intellectual property and in this respect furthers intellectual progress. Further, non-commercial possession of digital copies by individuals seems to be an important part of their right to personal property.¹³ Of course it has to be acknowledged that digital copying makes it more difficult for record and movie companies to collect revenues in the same ways they have been doing. But perhaps it would be better for them to expend their resources on researching ways to profitability in a world including relatively free digital copying, than on trying to stamp it out. It is likely that any measures which are effective in making the world safe for a traditional revenue model for movies and music will also include measures which clearly violate the Greatest Equal Liberty principle of justice.

¹² Goodman (2008) reports that the music industry's decision to go after non-commercial copiers is considered its worst mistake, and probably responsible for its tailspin in profits since closing down Napster. Blender magazine suggests that the industry should have instead figured out how to make money from downloading.

¹³ Commercial software is licensed rather than sold to prevent software users from having the rights of ownership—in particular, the right to resell the software.

So what should the individual ethical response be? The laws and policies which allow record and movie companies to prosecute, harass, and stigmatize private individuals for making copies for their own personal use are unjust. That does not mean that it is OK to make digital copies at will. Rather, attempts should be made to change the laws and policies. If these attempts are unsuccessful, then some form of civil disobedience may be justified. But for civil disobedience to be justified, one's actions have to be very clearly set up to demonstrate a point about justice.¹⁴ For example, in the present case, if someone decided to download music as an act of civil disobedience, he or she would first have to notify the record companies that he or she was going to do so. Then, when sued, he or she would have to willingly pay the penalty. Somehow I don't think many people would want to do this. Of course, downloading music or movies and trying not to get caught has nothing to do with civil disobedience.

INTERNET SOCIAL-ETHICAL ISSUES

I have already discussed the role of the Internet in helping to fulfill Rawls's Greatest Equal Liberty Principle, his first principle of justice. The second principle of justice, the Difference Principle, is important for discussions of what is called the Digital Divide: the use (or lack of use) of the Internet by the least-advantaged. There are two questions to consider: first, how does the use of the Internet by the least-advantaged affect their life prospects? Second, how does the use of the Internet by other sectors of the economy contribute to the life prospects of the least-advantaged?

There has always been a gap between those people and communities who can make effective use of information technology and the Internet and those who cannot. One concern is that the more-advantaged are getting

¹⁴ See Rawls (1999a, section 55 "Civil Disobedience").

the benefits of their own use of the Internet added to their previous advantages, whereas the least-advantaged are not using the Internet and are therefore falling farther behind the more-advantaged. One of the premises in this argument is that the use of the Internet leads to increases in personal productivity.

Attempts to mitigate this problem are framed in terms of increasing the skills to use the technology rather than directly in terms of improvement of life prospects. From the point of view of justice, the assumption that increased Internet skills will improve a person's ability to reap the fruits of the economy, while reasonable, needs to be confirmed by more research. It could very well be that some improvements in Internet-related skills are much more effective in improving the prospects of the less well-off than other possible improvements. In any case, justice requires us to try to find out.

As of 2000, the United States Department of Commerce found that White (46.1%) and Asian American & Pacific Islander (56.8%) households continued to have Internet access at levels more than double those of Black (23.5%) and Hispanic (23.6%) households. They also found that 86.3% of households earning US\$75,000 and over per year had Internet access compared to 12.7% of households earning less than US\$15,000 per year (Dept. of Commerce 2000). A 2004 update by the Kaiser Family Foundation found that lower-income and minority youth were still much less likely to use computers or the Internet. In 2004, 92% of households earning US\$75,000 and over had computers at home compared to 45% of households earning less than US\$20,000. Internet access was available at home to 80% of whites compared to 67% of Hispanics and 61% of African-Americans (Kaiser Family Foundation 2004).

So, while there has been an improvement, there is still no question that attempting to improve the Internet skills of those who lack them will also

end up targeting the less well-off. The question remains, though, about how improvement in Internet skills improves the prospects of the less-advantaged. Fair equality of opportunity by itself may justify efforts to lessen the Digital Divide. Insofar as it is difficult or impossible even to apply for higher-status jobs without email capability, justice would require making this capability available even to the least-advantaged.¹⁵

How does the use of the Internet by the least-advantaged affect their life prospects? How does the use of the Internet by other sectors of the economy contribute to the life prospects of the least-advantaged?

When we apply the Difference Principle and consider the Internet usage of the least-advantaged, we need to consider both the impact of their own usage as well as the indirect effects of increased productivity on their prospects. Even the less well-off benefit from efficiency brought about by the Internet even if they themselves do not use it. But from the point of view of the principles of justice, increased Internet skills for the less-advantaged are not valuable just for their own sake. Increased skills must contribute either to the first principle of justice by implementing fair equality of opportunity, or to the second principle of justice by improving the prospects of the least-advantaged. Although it is very likely that increased Internet skills for the less-advantaged work to fulfill both principles, ethics and justice require us to maintain the proper focus in this area.

¹⁵ The Community Voice Mail project discussed by Taglang 2001 would be a step in this direction. In Community Voice Mail (CVM), a CVM Director distributes the voicemail boxes to hundreds of agencies across a community; the agencies in turn provide [homeless] clients with personalized, 7-digit phone numbers that can be accessed from any touch-tone phone, 24 hours a day.

SALES TAX ON WEB-BASED TRANSACTIONS

A current issue of Internet ethical policy is this: should sales tax (in the United States) be collected on web-based transactions? If so, where and by whose rules? If not, isn't this an unfair advantage for e-businesses? This problem involves the ability of Internet-based companies to transcend traditional jurisdictions and is thus a smaller-scale precursor of the global ethical problems discussed in the following sections.

Sales tax in the United States is collected by states, and each state sets its own percentage and its own list of what is taxable and what is not. The tax is collected on transactions done by businesses with a physical presence in that state. Two United States Supreme Court rulings (*National Bella Hess, Inc. v. Dept of Revenue of Illinois* in 1967 and *Quill Corp. v. North Dakota* in 1992) found that it would be an excessive burden for mail-order (and now, Internet-based) companies to comply with 7,600 state and local tax codes and thus an unconstitutional restriction on interstate commerce. Thus the Supreme Court's Sales Tax Locality Principle (Institute for Local Self-Reliance 2007):

Only firms with a physical presence in the jurisdiction are required to collect that jurisdiction's sales taxes.

Also, some "clicks-and-mortar" retailers contend that their e-commerce operations are distinct legal entities unrelated to their stores. Their Internet outlets therefore lack a physical presence and are not required to collect sales taxes. (Institute for Local Self-Reliance 2007) But many, including for example Nordstrom's, follow the Sales Tax Locality Principle (Nordstrom.com):

Orders shipped to AZ, CA, CO, CT, FL, GA, HI, IA, ID, IL, IN, KS, MD, MI, MN, MO, NC, NJ, NV, NY, OH, PA, RI, TX, UT, VA or WA

[states where Nordstrom's has physical facilities] will have all applicable local and state sales taxes added to your total order, and to your shipping charges where appropriate.

There is an attempt in Congress to change the situation. The proposed Federal Sales Tax Fairness and Simplification Bill would require all retailers to collect and remit sales taxes. Such a change would incur the previous Supreme Court objection unless sales tax codes were drastically streamlined, and this bill includes language to that effect (Institute for Local Self-Reliance 2007). Unfortunately, different state and local governments may still be able to tax different items and at different rates. The only change will be a uniform list of types of taxable items and procedures for publicizing change. It is hard to see how this would meet the Supreme Court's previous requirement of no excessive burden.

But the ethical question is one of justice. We have seen before that the Supreme Court does not always make just decisions. And so we can ask, is the practice of exempting businesses without a physical presence in the taxing jurisdiction, a just practice? And are the Supreme Court's grounds for exempting businesses correct from the point of view of justice, namely the burden caused by having to comply with a huge number of changing rules promulgated by a huge number of jurisdictions?

Let us assume that the sales tax itself is a reasonably just institution. For various reasons, it may be the only way certain jurisdictions can obtain funds for activities belonging to a just society (police protection, health care), even though the tax is correctly described as "regressive" in taking a significantly greater share from lower-income individuals. The more important consideration is that Internet business transactions simply do not take place at a few specific physical locations.

Mail-order (and phone-order) sales transactions still take place at particular physical locations. The selling organization has its operations at one place, and the customer is at another. But with the Internet, the various parts of a sales transaction can easily be scattered across not only many states but many countries. From the point of view of justice, the tax should be collected at the point where it supports the infrastructure needed for commercial transactions between seller and customer. And the seller should be responsible for knowing only the tax rules for the areas in which it does business (and therefore has some responsibility for contributing to the infrastructure needed for commerce). But it is different when the marketing is planned in San Francisco and executed on a server in New Jersey and the order information is taken from a customer in Iowa and processed by someone in Ireland and shipping is coordinated in Seattle for shipment from a warehouse in Colorado and payments are processed in the Bahamas and questions about the transaction handled in Bangalore. Where is the physical presence of such a company? The Supreme Court's Sales Tax Location Principle no longer seems to apply.

The consideration of justice underlying the location of the collection of sales tax is helping to support the infrastructure of the location where you do business. So it seems very wrongheaded to extend traditional sales tax collection to e-businesses. There would be some justice in having a separate national (or even international) tax to help support Internet infrastructure. But there is no requirement in a market economy to make life safe for bricks-and-mortar companies. Within a market economy, competition should decide. There is no requirement of justice, and indeed it would be a misuse of government power to use government redistributive power to make traditional businesses competitive. It would be just as inappropriate for the government to prevent airlines from charging less for e-tickets even though travel agents are put out of work. A certain amount of economic dislocation is part of the workings of a free

market, and a market economy is an important institution helping our society satisfy the principles of justice.¹⁶

Thus fair taxation is based on the location of the infrastructure supporting the operations of the taxed entity. The state of California currently has what they call a “use tax” on Internet transactions. This tax, the same amount as sales tax, is collected along with the state income tax. But how can this be a fair tax for a typical Dell Inspiron notebook ... codesigned in Austin, TX, and Taiwan, assembled in Malaysia with parts from the Philippines, Japan, Korea, Costa Rica, Mexico, Taiwan, Israel, or China? (Friedman 2005: 415–417) Calling this a “use tax” is California’s unjust attempt to get around the Supreme Court’s Sales Tax Locality Principle. California has no ethical basis for its use tax. At the very most, only that portion of the transaction requiring California infrastructure should be taxed.

Applying this line of reasoning in a global context, any institutions supplying the infrastructure for global commerce are entitled to payment by those using the infrastructure. However, the Internet is supported in a distributed manner. Not only is there no central computer, there is nothing that is not maintained either by commercial ISPs charging for services, or companies whose contribution to the Internet is a business expense, or nonprofits like universities which are funded in other ways. So with the present Internet architecture, there is no need for any additional support and hence no need for a transnational Internet sales tax.

¹⁶ See Schultz (2006, Chapter 5) for a discussion of the importance of a market economy in satisfying Rawls’ principles of justice.

The global ethical Internet issues that I will consider are Internet free speech, the regulation of websites with global presence, and the role of the Internet in facilitating globalization.

Because of the nature of the Internet, all websites have international presence, in the sense that they are visible in all areas where they are not blocked. But many websites have only local relevance. A list of restaurants in Beverly Hills, CA, United States is almost entirely of interest only to those who are located in that area. They may be trying to find a restaurant, or just in seeing what's around on Rodeo Drive. We can contrast these local websites with websites intended, not only to have an international audience, but to function transnationally.

To what extent do the laws and customs of a particular company apply to websites which are operating transnationally?

Ethical issues are raised in two types of cases: first, some websites are located in other countries in order to circumvent the laws of countries where the website will be viewed. For a period of time, music websites offering free downloads functioned in countries where their activity was not forbidden. The Napster and Grokster free services were effectively terminated by court decisions in the United States. Grokster's server was located outside the United States in the West Indies. Second, other websites are banned for political or ideological reasons from their country of origin and must relocate to continue to be available. The Great Firewall of China (the colloquial name of the project officially known as the Golden Shield) blocks content which might be threatening to the Chinese government, including sites such as Wikipedia and BBC News, and topics

such as freedom of speech, democracy, Tiananmen Square, and the Dalai Lama (Elgin 2006). In countries which have more respect for human rights such as most developed countries, requests to shut down sites are rarely honored, except for obscenity and commercial reasons.¹⁷ The case of Wikileaks, discussed below, is an important exception.

The globalized ethical issue raised by these two kinds of cases is clear: to what extent do the laws and customs of a particular country apply to websites which are operating transnationally? The fact that the music-downloading website Grokster was operating from a server in the Caribbean did not shield it from the United States court decision that shut it down. There is no global institution or policy to handle these issues. The International Court of Justice (ICJ) adjudicates disputes between states; and the separate International Criminal Court (ICC) tries individuals for crimes against humanity. But neither court is designed to handle essentially routine legal disputes which are difficult or impossible to locate in any national jurisdiction.

Around 2002, Yahoo provided the Chinese government with information about two pro-democracy journalists who were subsequently jailed and apparently tortured. The journalists later successfully sued Yahoo in the United States. Yahoo initially claimed that it was merely complying with Chinese law (Elias 2007). The obvious ethical issue is whether Yahoo should do this, whether the law of a country not recognizing basic human rights should be followed. The background question is whose law, if any, should be followed by a transnational company? Again, the fact that this is an Internet company makes the question a lot harder to answer. With outsourced manufacturing, the choice would be the country where operations take place. With Yahoo, it is not so clear, although Yahoo itself

¹⁷ Actually, the right of freedom of speech does not extend to the Internet in the United States. See Jesdanun (2008).

seemingly followed some such principle by selling its Chinese e-mail operation to a Chinese company.

At Yahoo's 2007 annual meetings, Yahoo shareholders voted overwhelmingly against a proposal for Yahoo to reject censorship (BBC News 2007). Obviously Yahoo, as a corporation, is bound by the vote of its shareholders. But ethically do the shareholders of transnational corporations have the last word?

One solution to global ethical problems is simply to extend the principles of justice for particular societies. The political theorist Charles Beitz thinks that "enough" background global social and political institutions exist to validate the application of domestic principles of justice within a global context (1979: 148–149). But how do these global institutions become vehicles for a Global Greatest-Equal-Freedom Principle or a Global Difference Principle?

Consider, for example, Yahoo's problem with Chinese law. If we just "go global" with the principles of justice, we would have to say that Chinese law is irrelevant; it conflicts with the principle of Greatest-Equal-Freedom, which is for Beitz a priority principle of global justice. Of course we know that it is a correct principle of justice, and if the Chinese don't accept it, that is their problem. "We" can require China not to censor the Internet or impose sanctions as executors of global justice. All social-contract theory is based on consent of those subject to the agreement. But instead, Beitz's global-social contract requires us to impose our own beliefs on others. And it is far from clear who is ethically justified in doing the imposition.

Cosmopolitan utilitarianism is utilitarianism extended to global scope. In cases like Yahoo in China, cosmopolitan utilitarianism would consider what policies would produce the greatest (average) value across the

globe. Obviously, we should consider average value rather than total overall value. Otherwise, the Chinese would always win because of their much greater numbers. Even with this clarification, it is open to question whether freedom of speech is more valuable than economic gain. Could China have achieved its breathtaking economic growth without restrictions of personal liberty? If China's restriction of personal liberty is justified on utilitarian grounds, then Yahoo was justified in turning over dissidents to the Chinese government to be tortured. Questions of transnational justice don't even arise for cosmopolitan utilitarianism. Additionally, Yahoo's stockholders may have had good utilitarian justification for voting against any prohibition of censorship. Letting each country enforce its own censorship laws on the Internet would likely produce more profits for Yahoo. And a utilitarian could argue that having corporations stick to their purpose of maximizing profits is the policy that will produce the best results for everyone, although this claim is almost certainly incorrect.

Looking at the case of Yahoo from the point of view of the two global social contracts, the ethical conclusion is that, without some transnational legal rules or policies in force, Yahoo has no good ethical alternative. Yahoo is stuck with obeying the law of one state (China) and getting punished (successfully sued) in another (the United States). The Global Network Initiative of October 2008, discussed below, may be an ethical solution.

The shareholder's vote against a ban on censorship is another ethical matter. Yahoo's shareholders have equal rights, but not the right to deny equal rights to participants in the global economy, including Internet users. Thus they do not have the right to prevent Yahoo from enforcing equal rights (that is, banning censorship). This follows from the global social contract principle of Greatest Equal Liberty. Yahoo therefore has the right to ignore the shareholder vote.

In early 2008, the whistle-blowing website Wikileaks, with its server in San Mateo, CA, was ordered to shut down because the Zurich bank Julius Baer Bank and Trust claimed that the site had posted stolen and confidential material. Interestingly enough, the exact location of the organization is unclear. It has spokespersons in Paris and posts material from Chinese dissidents. Wikileaks argued unsuccessfully initially in a United States court that United States courts did not have jurisdiction (Elias 2008). The argument later prevailed that shutting down an entire website constituted illegal “prior restraint” in United States Law, and that even removing the documents was unconstitutional (Kravets, 2008).

In 2009, in a highly publicized action, Wikileaks released a large number of classified documents of the United States government, many dealing with the wars in Iraq and Afghanistan. The result was an attempt by Sweden to arrest the founder of Wikileaks, Julian Assange, on apparently trumped-up sex charges. In the United States, the major credit card companies Visa and Mastercard refused to honor contributions to the defense of Wikileaks and its founder (Hosenball 2011). And Bradley Manning, Wikileaks’s US informer, is still imprisoned in very inhumane conditions with no hope of a hearing—a completely unconstitutional action. Manning is effectively a political prisoner. His political-prisoner status was approved by United States President, Barack Obama.¹⁸ There are two issues here: the United States’ failure to honor its own human rights safeguards on the treatment of prisoners, and the basis for Wikileaks’s claim for free-speech rights.

The two issues are connected, because the United States government, at least since 9/11, has decided that considerations of “national security”

¹⁸ Obama has continued the policies of his predecessor, G. W. Bush, in abrogating human rights provisions of the United States Constitution and persisting in wars with dubious ethical justification.

trump human rights concerns such as rights of prisoners and free speech. Two points here: first, if human rights aren't part of what is being defended in the name of national security, what is being defended? Claims that "freedom" is being defended become completely empty. Second, "national security" is historically a very tarnished justification for state action. National security was invariably the Nazis' justification for rounding up and executing Jews, Gypsies, homosexuals, etc. (Todorov 2001). It is not acknowledged in the United States that national security protects the holdings of the wealthy more than the freedom of the average citizen. Because of the widespread abuse of the term "national security" to justify ethically abhorrent actions, I believe it has no weight whatever in ethical justification. The Wikileaks documents concerned wars that are by any standards unethical and violations of international law. Hence Wikileaks was guilty of no more than embarrassing and exposing government officials who are in fact war criminals.

GLOBAL-ETHICAL INTERNET POLICIES

The Yahoo case raises the issue that different jurisdictions have very different laws concerning such human rights as freedom of speech. Indeed, it came as a shock to me to discover that in the United States, the right of freedom of speech does not apply on the Internet (Jesdanun 2008). Parties to the Global-Economy Social Contract would agree to a Global Principle of Greatest Equal Liberty. So how can this principle be enforced over the various national jurisdictions? Any jurisdiction (like China or the United States) that found it important to restrict human rights such as freedom of speech would probably not be willing to enter into an international treaty not to restrict speech or other rights. An international agreement to end tax shifting would be more-or-less in the cooperative self-interest of all nations. But an agreement on human rights impacts only individuals. It is actually not clear that a transnational

human rights authority would make things better, because an authority with enough power to override laws concerning rights within a country could easily become a global despot. The appropriate institution to improve the status of human rights under the Greatest-Equal-Freedom-Principle may be an institution like the civil society of NGOs, the Global Internet Freedom Consortium, or the Global Network Initiative.

The Global Internet Freedom Consortium is a group of nonprofit and for-profit companies dedicated to developing, implementing, and disseminating technology to allow free access to the Internet in spite of government restrictions. Google, Yahoo, and the other major transnational Internet and communications companies indicated their seriousness about Internet freedom by creating the Global Network Initiative in 2008. This initiative acknowledges that global Internet and communications companies are committed to respecting freedom of expression and privacy. These companies now agree to respect these rights even when confronted with countries which do not obey international standards. The initiative includes independent review of how well companies are implementing the principles of the initiative (Global Network Initiative 2008). Some NGOs are concerned that mandatory penalties are not included (Sarkar 2008). But independent compliance review is included and the importance of these companies acknowledging that principles of global justice take precedence over repressive national laws cannot be overstated (Global Network Initiative 2008).

The more general question is to what extent human rights (in the Greatest Equal-Liberty-Principle) should be enforced globally and through what institutions? Rep. Chris Smith, R-N. J., introduced a House bill in 2007 that would bar United States Internet companies from turning over personally identifiable information to governments that use it to suppress dissent. If the tech companies released information, they could face

criminal penalties. Both Google and Yahoo want the United States government and other countries to make Internet freedom a top priority. “We have asked the United States government to use its leverage—through trade relationships, bilateral and multilateral forums, and other diplomatic means—to create a global environment where Internet freedom is a priority and where people are no longer imprisoned for expressing their views online,” said Michael Samway, Yahoo’s vice president and general counsel (Sarkar 2008).

A related ethical question is whether companies should supply equipment enabling Internet censorship. Cisco Systems is accused of having modified equipment at China’s request, an allegation Cisco denied (Earnhardt 2006). Nokia Siemens has also been accused of supplying equipment to Iran to be used for censorship (Risen 2010). Microsoft came out firmly against these practices. In a proxy statement to the Securities and Exchange Commission, Microsoft stated “[Microsoft] will refrain from supplying government agencies in Internet-restricting countries with equipment or training designed to facilitate the censorship of Internet communications (MSFT Def 14A 2007).

The equipment issue and more cases of Internet censorship have increased interest in whether the Global Network Initiative should be supplemented by Rep. Chris Smith’s Global Online-Freedom Act, reintroduced in 2010. However, Rep. Smith’s supposedly global law is actually United States law. While it will undoubtedly help United States companies and companies with substantial United States presence and markets, as noted before, it will have little impact on repressive regimes (Risen 2010).

These developments will somewhat improve the situation for transnational actors. But in some countries, there are still internal problems of justice. Problems with China are well-documented, but other

countries are still far from Greatest Equal Liberty.¹⁹ Before the implementation of the Global Network Initiative, large companies such as Google took the position that local laws restrictive of freedom must be obeyed. In May 2008, Google announced that it gave police information about a user of its Orkut social-networking site in order to comply with Indian law. The police used the information (an IP address) to arrest a suspect for posting vulgar content about a top Indian political leader. Google's action clearly violated the Global Economy Greatest-Equal-Freedom Principle. In India apparently damaging the "modesty and reputation" of a person, especially a top political leader, is a criminal offense.²⁰ There could be good reasons for complying with local law which conflicts with the Greatest-Equal-Freedom Principle. It may be that failing to comply with local law would produce a greater restriction of freedom. For example, if failing to comply with local law resulted in the shutdown of a valuable social-networking site. But the principle that all local law goes, no matter how restrictive of freedom, is clearly wrong. At the very least, Google should have supplied the information under protest. Presumably they would have acted differently after subscribing to the principles of the Global Network Initiative.

Google's actions in Brazil were quite different. Google took action in Brazil to stop child pornography and hate crimes on a social-networking Website used there—but Google did not offer to provide user information to officials. In August 2007, Brazilian federal prosecutors said Google failed to comply with requests to provide information about users who allegedly spread child pornography and hate speech. Google eliminated these users from its groups but refused to release information about them to

¹⁹ Malaysia and South Korea are two recent examples.

²⁰ John Ribeiro, the United States author of a piece approving of Google's action, made the incredible claim that damaging the "modesty and reputation" of a person is as bad as planning a terrorist attack! (Ribeiro 2008).

authorities, arguing it is bound by United States laws guaranteeing freedom of speech. The company also took other action against the offending content, and these actions apparently satisfied Brazilian authorities (Associated Press 2008). Comparing the two cases, it is interesting that Google claimed in the Indian case that it had to comply with local law, but in the Brazilian case that it had to comply with United States law. Google can now claim with more consistency that it has to comply with the principles of the Global Network Initiative. But one question is whether a government will find compliance with an intercompany agreement as compelling a reason for disobeying its laws as compliance with United States law.

Yahoo's CEO Jerry Yang expressed a view similar to Google's position in India. Yang claimed he was "a big believer in American values" but added: "As we operate around the world we don't have a heavy-handed American view." Some countries want major interventions in the Web and others prefer to leave the Web unfettered. So, said Yang, "We operate within these environments to the extent that the law has any clarity" (Bartz and Dobbyn 2008). Yang's comments betray an ethical blindness which is actually contradicted by Yahoo's own actions even before the Global Network Initiative. Ethically, free speech is not just a mere matter of national preference. That would be like saying some nations prefer to oppress their citizens and others don't, and we are going to be neutral about it. The fact that Yahoo established a fund to aid victims of human rights violations shows that they really don't believe jailing people for expressing their opinions on the Internet is just a matter of national preference. I believe Yahoo's true position should have been that they regrettably had to obey Chinese law to stay in business there, but that they hoped Chinese law would be changed to accord with the standards of global justice. Their endorsement of the Global Network Initiative may now make it possible for them to refuse to go along with Chinese standards.

I believe that these cases show that, with respect to Internet access, our intuitive judgments about global justice are in accord with the Global Economy Greatest-Equal-Freedom Principle. These cases illustrate the consequence that professional Internet companies like Google and Yahoo have a duty to uphold the Global Economy Greatest-Equal-Freedom Principle. Their creation and implementation of the Global Network Initiative is a major step in fulfilling this duty. Although the fact that the Initiative is a voluntary agreement without mandatory penalties raises some concern, it may be the best that can be done at the present time. As I observed before, there is no way that repressive regimes which currently believe they have the right to suppress speech and violate privacy will agree to international treaties—let alone United States laws—banning such behavior.

THE INTERNET'S ETHICAL RESPONSIBILITY FOR GLOBALIZATION

Exactly how much of an enabler of globalization has the Internet been? I think there is no question that globalization as we now experience it could not have taken place without the Internet. This is especially true of economic globalization. But was globalization, especially economic globalization, inevitable once the Internet came along? The New York Times columnist Thomas Friedman seems to believe this—he calls himself a “technological determinist” (Friedman 2005: 374). If globalization is an inevitable consequence of the Internet, then the Internet is ‘off the hook’ ethically, so to speak. The Internet is simply an enabler for a process beyond its or anyone’s control.

But technological determinism is a very naïve view as well as a dangerous one. There are really two distinct views possible within technological determinism. One view is that the development of technology, the appearance of technological advances, is determined. I will call this view

advance determinism. The second view is that, once a technological advance appears, its widest useful application is inevitable. I will call this view *application determinism*. Application determinism is the dangerous view. Friedman is an application determinist. There is no evidence one way or the other that he is an advance determinist.

The danger in application determinism comes from the accompanying claim that technology (including the Internet) is always an improvement. This claim ignores the fact that technology is a new order imposed on an older order and can easily have deleterious side effects which cannot be prevented by due diligence in development. The development of chlorofluorocarbons (CFCs) is an example of such side effects. CFCs were inert at surface levels but highly destructive of the ozone layer necessary for life on the planet. So application determinism is as false as the view that new technology is necessarily an improvement.

Advance determinism is not a particularly dangerous view, but it is also clearly false. Most technological advances were not predictable and appeared only as a result of chance factors. In this respect, technological advance is similar to the evolution of organic life forms. Important technological developments have arisen in very unlikely ways, and certainly not as the result of predefined rigid research programs. This is especially true of the Internet and World Wide Web. The Internet itself was originally a United States Defense Department project, and such vital characteristics as no central computer were required to make the system impervious to nuclear attack. The World Wide Web was developed by Swiss physicist Tim Berners-Lee as a method of exchanging scientific information including both text and graphics. The web browser—essential to widespread use of the Internet—was developed by graduate students at the University of Illinois (Kristula 2001). A useful peer-to-peer file-sharing application (Napster) was developed by an undergraduate at Boston University (Wikipedia 2008). So the Internet technology necessary

for globalization was no more inevitable than was the rise of mammals after the age of dinosaurs.

The Napster example also shows the falsity of application determinism. Music companies used the courts to shut down a free music-sharing service in 2001. Several years later, some commentators believe the poor showing of the music industry stemmed from their failure to find a way to make money from peer-to-peer technology rather than shutting it down. However, the Napster example still supports a version of application determinism. For Friedman, the force which drives application determinism is competition within a free-market economy. He notes “if you can do it [apply the technology], you must ..., otherwise your competitors will” (2005: 374). In the case of the music industry, they didn’t, and merely worked through the courts to extend their (monopoly) property rights. Thus people can fail to exploit technologies, but ultimately the market will destroy them. This brand of application determinism is probably correct. But obviously it depends on the market functioning as a free market, without monopolistic or oligarchic impediments. Free-market application determinism is thus more-or-less the claim that a properly-functioning market economy will deliver good economic results. This is not a dangerous claim and is correct.

We are left with the ethical question: who is responsible for technology’s being used properly and beneficially? We have seen that many globalized institutions could probably not exist were it not for the Internet. Yet it cannot be correct to hold the Internet responsible for every bad consequence of every Internet application. For one thing, not all consequences are predictable, even with the best due diligence. For another, no institution is ethically responsible for all consequences of its actions.

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>> Principles necessary for dealing with ethical problems of the Internet are largely based on individual and social principles. I outline the necessary individual, social, and global principles, based on Kant's Categorical Imperative and Rawls' social contract principles of justice. Using these principles, the individual ethical problems of sex on the internet and "piracy" are discussed. The social ethical problems discussed are the Digital Divide and sales tax on Internet transactions. The global ethical Internet issues considered are Internet free speech, the regulation of websites with global presence, and the role of the Internet in facilitating globalization.

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