Women In The Web of Secondary Copyright Liability and Internet Filtering

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WOMEN IN THE WEB OF SECONDARY COPYRIGHT LIABILITY AND INTERNET FILTERING

by Ann Bartow

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I. INTRODUCTION

This Essay suggests possible explanations for why there is not very much legal scholarship devoted to gender issues on the Internet; and it asserts that there is a powerful need for Internet legal theorists and activists to pay substantially more attention to the gender-based differences in communicative style and substance that have been imported from real space to cyberspace. Information portals, such as libraries and web logs, are “gendered” in ways that may not be facially apparent. Women are creating and experiencing social solidarity online in ways that male scholars and commentators do not seem to either recognize or deem important. Internet specific content restrictions for the purposes of “protecting copyrights” and “protecting children” jeopardize online

* Assistant Professor of Law, University of South Carolina School of Law. The author thanks the editors of the Northern Kentucky Law Review, and Professors Davida Isaacs and Ken Katkin, for inviting her contribution to this Symposium. This essay is dedicated to Casey Bartow-McKenney.
freedoms for women in diverse ways, and sometimes for different reasons than they do for men. Disparities in the ways women and men use, experience and communicate over the Internet need to be recognized, studied, and accommodated by those who would theorize cyberspace law and advocate directions for its evolution.

II. WORLD WIDE WOMEN

The content layer of the uncensored Internet is a special place for alienated or marginalized populations, because it provides an infrastructure of communication that supports new forms of social solidarity. The Internet facilitates the formation of virtual communities which are accessible to non-mobile populations anywhere there are networked computers and electricity. It also enables the collection and distribution of local information to geographically-based as well as interest-connected communities.

The Internet has had a very positive effect on global communications between women's organizations, and has the potential to increase the numbers and visibility of feminists around the world, if the cultural attributes of feminism can be successfully imported into cyberspace.

Fully flourishing informal virtual communities require liberal linking and copying capabilities, and community-based norms with respect to the degree of acceptable information propertization and control. These communities have a tremendous stake in copyright laws and practices that needs to be considered more openly in information policy debates. Because copyright-related policing of the Internet facilitates monitoring and filtering for content censorship purposes, and vice versa, the two are inextricably linked in cyberspace. Decisions that are made about the structure and functioning of the Internet, particularly the World Wide Web, will profoundly affect women. However,

1 Yochai Benkler, From Consumers to Users: Shifting the Deeper Structures of Regulation Towards Sustainable Commons and User Access, 52 FED. COMM. L.J. 561, 568 (2000).
4 Anupam Chander, Whose Republic?, 69 U. CHI. L. REV. 1479, 1481 (2002) ("Cyberspace may also support the project of modern cosmopolitans by bringing people all over the world into daily contact with one another.").
neither women's groups nor women as individuals are likely to have significant participatory roles in Internet governance, nor, if the past is any guide, are the people who formulate cyberspace policies likely to account for differences between women and men as they use and experience online communications.

The late Sam Kinison found comedy in the chronic famines experienced by places like Ethiopia, and the subsequent recurring relief efforts raised and publicized in response, and he humorously posed one stark question to starvation victims: "Can't you people just move to where the food is?"\(^7\) Economist Amartya Sen has, with decidedly less hilarity, argued that famines can result from political rather than agricultural failures.\(^8\) Famine, he has asserted, is a consequence of the distribution of income within a political subdivision, and the allocation of entitlements to food.\(^9\) The actual food supply is certainly not irrelevant, but a nation experiencing a famine can have adequate food within its borders that is inequitably distributed.\(^10\) Countries that lack an effective press or mass media lack information about where the food is, how it got there, and what efforts, if any, are being made to redistribute it.\(^11\) That the press can have a profound impact on the well-being of a nation was explained quite powerfully by economist Peter Griffiths, who described how a man named Steven Lombard prevented a famine in Tanzania in part by leaking information about the impending disaster to the BBB World Service, which in turn informed the Tanzanian people.\(^12\) This focused public scrutiny upon Tanzanian politicians,

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\(^9\) Id.

\(^10\) Id.


\(^12\) See generally PETER GRIFFITHS, *THE ECONOMISTS TALE – A CONSULTANT ENCOUNTERS HUNGER AND THE WORLD BANK* (2004) (illustrating the political corruption resulting from a secret ban imposed by the World Bank on governmental imports or food subsidies and the consequences of one man's fight to expose this corruption).
who otherwise stood too reap enormous personal profits by controlling the dispersal of emergency famine aid.  

Even in developed countries with large media entities, smaller political subdivisions may lack home grown information sources. Local governments may not be subject to much in the way of investigative media scrutiny, and local news can be underreported. A community press can be a very powerful tool for community advancement, and the Internet can be tremendously useful to publications with small circulations, supplementing or even substituting for expensive ink, paper, and delivery in the physical world. Web logs (or "blogs") can supplement community newspapers to make local information more accessible, to the extent the Internet is available, but only if pertinent technologies remain unfettered and are profitable to maintain and develop. A community press, or list-serv, or web log, cannot realize its distributive or democratic potential if it is forced to comply with a regime of high-barrier intellectual property protections, nor if it asserts such protections for itself.

The Internet offers interconnection, a series of links with which one can move from one web page to another, seamlessly crossing the borders that cabin the computers and servers that created the pages and keep them available. A person could access the average daily rainfall of a small village in a nation half a world away almost instantly. This assumes, however, that someone has posted this information to a website somewhere. If the person posting the data collected it from a local weather report, and then reposted at her own site, potentially there is an intellectual property problem. The weather reporter cannot in most nations

13 Id.
14 See generally C. EDWIN BAKER, MEDIA, MARKET AND DEMOCRACY (2002) (arguing that free press and the will of the people cannot prevail absent government regulation); C. EDWIN BAKER, ADVERTISING AND A DEMOCRATIC PROCESS (1994) (arguing that the more newspapers depend financially on advertising, the more they favor the interests of advertisers over those of readers).
17 E.g., Boing Boing, Bloggers in SE Asia Cover Quake and Tsunami Disaster (Dec. 27, 2004), at http://www.boingboing.net/2004/12/27/bloggers_in_se_asia_.html. But see Elayne Riggs, On Getting Local Breaking News (Jan. 26, 2005), at http://elayneriggs.blogspot.com/2005/01/on-getting-local-breaking-news-our.html. ("Our modern telecommunications era can be a frustrating thing: I can find out what's happening in close to real time in so many spots in the world, you'd think I'd be able to find out with a couple mouse clicks or channel flips why there were helicopters circling around our area for hours.").
own the individual historical temperatures, but a compilation of them is likely to be protected as a database or by copyright. If the person posting the measurements actually ascertained them herself, no one else may have a claim to this data, but she herself may raise intellectual property rights challenges to later "downstream" users of her climatic information, linkers as well as posters. Such disputes, because the monetary stakes are small, are likely to be resolved short of litigation. They may, however be forcibly mediated by technological blocking or filtering undertaken by governments, or by business entities. In other words, online information flow about rainfall data could be dammed.

These observations appear on the surface to be gender neutral, with general applicability to anyone using or studying the Internet, and many cyberspace law scholars have largely declined to probe beneath this deceptive façade of online equality. The purpose of this Essay is twofold: to suggest possible explanations for why there isn't very much legal scholarship devoted to gender issues on the Internet; and to assert that there is a powerful need for Internet theorists and activists to pay substantially more attention to the differences between women and men that have been imported from real space to cyberspace. On the Internet it may be true that no one knows you are a dog, but as one commentator has asked, "[w]hat is wrong with being a dog?" Women should not have to hide their genders or feel pressured to conform to male mores or behaviors to take full advantage of cyberspace.

21 See generally Henry V. Barry, Information Property and the Internet, 19 HASTINGS COMM. & ENT. L.J. 619, 623 (Spring 1997) (arguing that states will be able to protect facts compiled on the Internet, which will include things such as satellite weather images and even sports scores); cf. Robert P. King, "Fed's Weather Info Coul Go Dark," Palm Beach Post, 4.21.05 “http://www.palmbeachpost.com/news/content/news/epaper/2005/04/21/m1a_wx_0421.html (A Senate bill, introduced last week by Sen. Rick Santorum, R-Pa., would prohibit federal meteorologists from competing with companies such as AccuWeather and The Weather Channel, which offer their own forecasts through paid services and free ad-supported Web sites.)

22 Id. at 629.


A. No One Goes to Public Libraries Any More Because They Are Too Crowded.\(^{25}\)

In *Bowling Alone*, author Robert Putnam expressed concern about what he termed "single stranded interactions," in cyberspace, which he worried could lead to focused virtual homogeneity in online communities, and the "cyberbalkanization"\(^{26}\) of an Internet in which informal contacts and communications were restricted to people who shared precise interests.\(^{27}\) Putnam


\(^{26}\) *Webster's New International Dictionary* 166 (3d ed. 1964).


The Internet is about communication, and communication is central to community, not just etymologically but substantively. You don't get community without communication. The Internet certainly provides an opportunity to build what I would call social capital -- connections among people and, possibly, a deeper sense of reciprocity and trust. That's the fundamental case for cyberoptimism. I think, however, there are four important obstacles to the Internet's becoming a way of solving the problem of the decline of community. The first, and the one that is most widely discussed, is the digital divide. Insofar as access to the Internet is class biased or racially biased or biased in terms of education, it tends to exacerbate the decline of bridging social capital. In a certain sense, it's easy to fix. It's just money. It's money for computers and hand-holding and so on. That problem ought to be the top item on the list because it's the one we do know how to solve. The second obstacle is bigger, and that's the difference between face-to-face and text-based communication. It's pretty clear that there's a lot that cannot be communicated with words alone. Talking face-to-face is quite important, particularly with respect to issues of trust. Enabling face-to-face communication is fundamentally a bandwidth problem, and it won't be fixed quickly or easily. The third hurdle is one that is even higher, and it goes under the heading of cyberbalkanization. It's intrinsic to the attractiveness of the Internet in that it enables us to connect with people who have exactly our interests and to not futz around with people who don't. So it's not BMW owners, but red-BMW owners, and if you want to talk about your blue BMW, you risk being flamed for being off topic. By contrast, in a bowling league, you're almost never flamed for being off topic; you can talk about whatever you want. The ability to confine our communications to people who share our exact interests has a powerful potential for decreasing connections on more broadly shared interests. And that is not a technological problem. It goes to the core of what's attractive about the Internet and therefore is even harder to fix. Finally, and I think most fundamentally, the jury is still out on whether the Internet will come to be a really nifty telephone or a really nifty television. By
is somewhat vague about the definition of "precise interests" in this context, but one can deduce it is far narrower than simply a shared gender. Though he did an admirable job of discussing differences between women and men with respect to real space social connectedness in this book, he did not address them specifically within the cyberspace realm.

In Republic.com, Cass Sunstein suggested that it was possible and even likely that without government intervention socially undesirable cyberbalkanized communication patterns would come to dominate Internet discourse. This, Sunstein avowed, could lead to group polarization, increased extremism, and deleterious cascades of false information. He argued that the Internet might threaten democracy if it allowed people to isolate themselves within groups that shared their political views, and thus cut themselves off from any information that might challenge their beliefs. It relied in part on a belief in the possibility of "perfect filtering." Perfect filtering, Sunstein asserted, undercuts the formation of a pool of shared information and experiences that is crucial to the common understandings and social cohesiveness necessary for true deliberative democracy.

While Sunstein never made the overt assumption that simply being female constitutes membership with a group, he did seem to assume that feminism is some kind of unitary special interest. Writing in a later article that, with respect to the Internet, like-minded groups of people "will end up thinking the same thing that they thought before—but in more extreme form," he specifically asserted that, "[a] group of moderately profeminist women will become more strongly profeminist after discussion."

Sunstein declined to contemplate in any significant way the possibility that differences between the ways women and men interact and communicate in real

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that I mean, Will it come to be primarily a means of communication and interchange or primarily a means of passive entertainment?

Id. at 177.

Id. at 177-78.

See generally Putnam, supra note 27 (discussing social connectedness with regard to the workplace and informal settings).

See generally Cass Sunstein, Republic.com (2001) (discussing the general trend towards the balkanization of cyberspace [i.e., viewers reading only sites and posting by socially and politically like-minded individuals] and recommending increased government regulation to promote the existence of government sponsored and mandated public media fora to foster the free exchange of ideas).

Id.

Id.

Id.

Id.

Id.

Id.

space might be replicated in cyberspace. Some social science research suggests that women are more socially engaged than men are in real space. They attend religious services, volunteer in communities, and participate in social organizations at far higher rates than males. That large numbers of women might form cohesive groups around shared interests and concerns, such as contraception, pregnancy, childbirth, or breast cancer, for examples, that form and function very differently from male dominated Internet assemblages is something he either did not consider, or did not consider important.

Dan Hunter passionately disagreed with Sunstein, but not because of his failure to substantively address gender issues. In his review of Republic.com, entitled Phillipic.com, Hunter challenged virtually every contention made by Sunstein in Republic.com, and with quite a bit of spirit and vinegar, being faithful to his chosen title and rendering forth unto the discourse a true “speech of violent denunciation.” Hunter particularly derogated the possibilities that the “perfect filtering” of the sort predicted by Sunstein was either

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38 SUNSTEIN, supra note 31.
39 See generally Louise Mailloux et al., Motivation at the Margins: Gender Issues in the Canadian Sector (Mar. 31, 2002), at http://www.vsiisbc.ca/eng/knowledge/motivation_margins/index.cfm (discussing the results of a research brief to outline some of the challenges women volunteers and paid staff in the voluntary and community sector face; to identify both gaps in research and indications of progress toward gender equality to advance in that direction; and to make recommendations on how to move toward gender equity in the voluntary sector).
40 Salman Haq, A Lamentable Step Backward (Nov. 2003), at http://www.ultravires.ca/nov03/editorial_gq.html. “Women continue to predominate in associations related to traditional female roles, such as religious groups and social welfare organizations.” Id.

During the September 2001-September 2002 reference period, women volunteered at a higher rate (31.1 percent) than did men (23.8 percent), a relationship that held across age groups, education levels, and other major demographic characteristics. The gap between the volunteer rates of men and women tended to be greater among groups with relatively high rates, such as whites and the more highly educated.

Id.
44 Id.
46 SUNSTEIN, supra note 31.
48 Id. at 612.
49 Id. at 613-71.
technologically possible, or premised upon a realistic model of human behavior.\textsuperscript{50}

In the context of rejecting and criticizing Sunstein's generalizations about the ways that humans typically behave, Hunter in part presented himself as the best evidence of errors in Sunstein's analysis.\textsuperscript{51} Hunter described how his tastes in literature have changed over the years, and how he doesn't always like the books that his friends suggest, or that Amazon.com recommends to him.\textsuperscript{52} To over-generalize fairly broadly, Sunstein offered an expansive theoretical critique of the Internet as a tool for societal engagement, and Hunter determined that because Sunstein's predictive behavioral assumptions did not apply to his friends or him, Sunstein must be, as Hunter put it in an early draft of his screed,\textsuperscript{53} "wrong!!" and "wrong again!!\textsuperscript{54}

Anupam Chander also expressed concerns about the broad applicability of Sunstein's analysis, but in a very different context (and significantly less pugnaciously), writing: "The problem with Sunstein's claim is that the shared experiences of the republic he seeks to maintain are principally those by and for the majority. The shared experiences he champions tend to be assimilationist rather than multicultural. They elide the experiences and concerns of minority groups."\textsuperscript{55} While he allowed that Sunstein was generally correct about the social benefits of robust civic debate and exposure to diverse viewpoints,\textsuperscript{56} he questioned whether an unregulated Internet could possibly do a worse job of fostering deliberative democracy than other forms of mass communication.\textsuperscript{57} He compellingly illustrated the point by describing the homogenous terrain of prime time television, in which:

The poor and working class are almost invisible; Latinos are rare and Latinas are rarer; Asian-American families do not exist; immigrants appear occasionally, but only to drive cabs. A comprehensive study by a children's advocacy group concludes that a youth watching primetime television would most likely see a "world overwhelmingly populated by able-bodied, single, heterosexual, white, male adults under 40." When minority groups are depicted in the media, they are generally stereotyped, with Asian women, for example, cast as "China dolls" or

\textsuperscript{50} Id. at 611-14, 618, 625-27.
\textsuperscript{51} Id. at 627-31.
\textsuperscript{52} Id. at 627.
\textsuperscript{54} Dan Hunter, Phillipic.com, 90 CAL. L. REV. 611, 629-30 (2002).
\textsuperscript{55} Anupam Chander, Whose Republic?, 69 U. CHI. L. REV. 1479, 1480 (Summer 2002).
\textsuperscript{56} Id. at 1481, 1484-85.
\textsuperscript{57} Id. at 1485-86.
“dragon ladies” and Asian men denied any positive sexuality. Latinos are commonly depicted as “criminals, buffoons, Latin lovers, or law enforcers.”

The Internet, he argued, actually empowers minority groups ignored or misrepresented in the mainstream information commons, by providing a communication tool through which likeminded individuals could discover each other, and potentially form cognizable, coherent communities fragmented by geography but unified by common interests or goals. The Internet has the potential to provoke a global cosmopolitanism that is the polar opposite of the insularity predicted by Sunstein, “in which common humanity takes precedence over national attachments.”

Chander expressed concern that the people most likely to be marginalized by pre-existing media mechanisms might be most likely to fall on the wrong side of the “digital divide” and lack physical access to the Internet. The Internet, he asserted, is a primary tool of citizenship that can enhance or even revolutionize citizenship if it is made more widely available. What he did not elaborate upon, however, was the importance of how the Internet as a “tool of citizenship” might be fabricated, operated or calibrated along gender lines, and these are critical considerations.

Hunter is most likely correct that Sunstein overestimates the effectiveness and pervasiveness of consumer driven information self-selection, and Chander is probably right to assume that government intervention into the architecture of Internet access would maintain the marginalized status of minorities endemic in other mainstream communicative media. Neither Chander nor Hunter addressed in much detail their visions of the likely evolution of the Internet in the absence of Sunsteinian interventionism.

Michael Froomkin has written that, among other requirements, “to achieve a Habermasian practical discourse, participants must come as close as possible to

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58 Id.
59 Id. at 1488-89.
60 Id. at 1495.
62 Id. at 1500.
63 Id.
64 See Hunter, supra note 47, at 654-58 (“First, in arguing against consumer empowerment and in favor of a reduction in choice . . . Sunstein seeks to protect us against ourselves. Reared on rugged individualism and the invocation of personal liberties, an American audience is unlikely to appreciate this paternalism.”).
66 See generally Hunter, supra note 64 (addressing how the recent theories on how the Internet may bring an end to democracy are not based on fact); Chander, supra note 55, at 1481 (“Cyberspace helps give members of minority groups a fuller sense of citizenship--a right to a practice of citizenship that better reflects who they are.”).
an ideal in which . . . all voices in any way relevant get a hearing." A practical discourse is defined as "a procedure for testing the validity of norms that are being proposed and hypothetically considered for adoption," and is central to "Habermas's vision of the collective formation of legitimate rules." Froomkin asserted that, "[H]is theory inevitably requires a fairly strong understanding of the community in which the discourse will take place." To the extent that the Internet is a giant electronic discourse, however, as Froomkin observed, it is a discourse that has been dominated by English speaking males. Few of these men seem to have the requisite strong understanding of the women in the community, at least as evidenced by the scholarship they produce.

The intersection of copyright laws and the technologies of cyberspace have generated a lot of legal friction and commentary. The substance of deliberations about the future of intellectual property controls and other content restrictions online may seem, on the surface, gender neutral. However, this is usually because no one has introduced the gendered implications of particular policies or practices into a given discussion, not because the issues do not exist.

In one real space academic debate over the future of nonprofit libraries in the wake of the Digital Millennium Copyright Act, several speakers suggested that once copyrighted works could be legally and technologically "secured," real space libraries would no longer be necessary because the collective printed wisdom of the universe would be accessible via the Internet. When it was pointed out that the number of library patrons and library visits had been increasing during the same interval that legal and technological copyright protections had been strengthened, the reply came, in slightly more sophisticated jargon, that no one went to libraries anymore because they were too crowded, filled with people seeking a communal public place in which to casually read and socialize, rather than to perform important text based research. Digital libraries would allow the people who counted, those for

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68 Id. at 772.
69 Id. at 773.
70 Id.
71 Id. at 805.
72 Id. at 805-06.
76 By "real space debate," I am referring to an open air discussion, i.e. people talking and debating, so no written record exists.
78 This reply came during the "real space debate." See supra note 76.
whom important information was intended, to access it from home,\textsuperscript{79} and avoid the teeming masses of library-frequenting riff raff.\textsuperscript{80} This, it was asserted, would improve information flow.\textsuperscript{81}

It was clear that the participants in the debate felt that important copyright questions needed to be framed solely around library uses of social significance, which did not include taking advantage of the library’s air conditioning and comfortable chairs, checking e-mail without charge, or hosting a Harry Potter fan club.\textsuperscript{82} They viewed copyright controls as facilitators of information consumption, and libraries as vessels that were accorded special regulatory status that was becoming anachronistic and unnecessary in the digital age.\textsuperscript{83}

Unlike, say, French or German, English is not a language in which inanimate objects must be assigned genders, and yet often they are anyway. Ships\textsuperscript{84} and cars\textsuperscript{85} and airplanes\textsuperscript{86} are often referred to with feminine pronouns, because they are, for some reason, socially viewed as female in form or function.\textsuperscript{87} This seems

\begin{flushright}
Gender neutrality: Avoid gender-specific terms and titles such as chairman, foreman, mankind; instead, use chair, supervisor, humanity. Use the same standards for men and women when deciding whether to include specific mention of personal appearance or marital and family situation. Don’t refer to cars, boats, aircraft or other inanimate objects as feminine.
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\textsuperscript{79} E.g., Bonita Wilson, \textit{About D-Lib Magazine} (2005), at http://www.dlib.org/about.html.
\textsuperscript{80} Id.
\textsuperscript{81} This assertion came during the “real space debate.” \textit{See supra} note 76.
\textsuperscript{82} \textit{See supra} note 76.
\textsuperscript{83} Id.
\textsuperscript{84} E.g., Bill Schanen, \textit{There “She” Goes-is it a Boat or a Farm Implement?} (June 2002), at http://www.sailnet.com/sailing/02/june02.htm (discussing language differences).
\textsuperscript{87} \textit{Cf.} UCANR Cooperative Extension: Agricultural Experiment Station, at http://ucanr.org/internal/internalstories/styleguide.shtml (last visited Feb. 27, 2005).

And this friend is male. Most computer users talk to their computers and give them nicknames, as other people do boats, cars, airplanes (for example, Enola Gay), and even guns (Big Bertha). But where the nicknames for cars, boats, airplanes, and guns are usually female, nicknames for computers are invariably
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particularly anachronistic when a ship habitually referred to as “she” has as its official name something along the lines of the “U.S.S. Abraham Lincoln.” Our very planet is often referred to as “Mother Earth.”

Media outlets are feminized as well. The nickname of the British Broadcasting Corporation (BBC) is “Auntie Beeb.” The New York Times is often referred to as “The Gray Lady.”

Real space libraries are a feminine construct as well, community living rooms stocked with books and magazines and administered by a librarian, often female, who will help you find information and materials you need, but gently discipline you if you are loud or unruly. Library patrons are usually referred to as “visitors,” which can complicate interactions between library professionals and the public. By way of example, one librarian euphemistically cataloged patrons from her former library whom, she declared, she would not miss after changing jobs. The list included characters denominated “Creepy Prison Guard Guy,” “Sourpuss Newspaper Lady,” “Expressionless Video Vampire,” “Guy [She] Picked Out of A Line-up” (a.k.a. Mr. Weiner – the reader is invited to guess how he earned these appellations), “Guy Who Always Says ‘You’re Pretty - What’s Your Name?,’” and “Asked-[Her]-Out-While-On-Jury-Duty-And-Doesn’t-Understand-No-Means-No Man.”

To facilitate access to information, male. In an American study, subjects “made a total of 358 pronoun references, variously referring to the computer as ‘it,’ ‘he,’ ‘you,’ ‘they,’ (and even ‘Fred’)–[but] never as ‘she.’”


Id.


Id.
librarians are friendly and helpful, but obviously, this can be mistaken for sexual interest or availability. One academic, arguably in need of a figurative and perhaps literal cold shower, wrote that "libraries are the sexiest places, and librarians the sexiest people, on earth," and observed:

For people who are really interested in finding out about things and engaging ideas, the excitement of libraries is sensual and visceral as well as cerebral. Emerson, the greatest of all op-ed writers, and the most quotable of all the Victorian sages, says that "A man's library is a kind of harem". And if he dared to say it, I dare to quote it, even without the sort of prudent gender modification that might spare me a few emails. (Somehow "A person's library is a kind of singles' bar" just doesn't cut it.) Emerson is not what you would call a lubricious writer, but he knew what excitement was and where to find the action.

Efforts to digitalize books and efficiently fulfill distributive functions via the Internet will lead to a more linear, masculine, and arguably less sexually charged library experience, because the transactions occur online. Online, librarians can choose to be genderless by using pseudonyms and otherwise declining to disclose their sex. The evolution of online libraries will further relegate the feminized real space library to that of downscale hospitality suite,

Here is a list of patrons from my former library whom I shall not miss: Creepy Prison Guard Guy, Angry Mean Lady, Whose Eyes Pointed in Different Directions, Sourpuss Newspaper Lady, Google Guy (A condescending telephone patron whose tagline was, "Yeah, uh, you have a browser open?"), Full Moon Garbage Bag Guy, The Grandchild Smacker, Expressionless Video Vampire, 5-A-Day Criss-Cross Lady, Guy I Picked Out of a Lineup (aka "Mr. Wiener" - guess how he earned that moniker), Prison Girlfriend Man (or, Guy Who Always Says "You're Pretty - What's Your Name?"), and the patron I shall miss least of all: Asked-Me-Out-While-On-Jury-Duty-And-Doesn't-Understand-No-Means-No Man.

Id. 96


Id. 97

Helga Dittmar, Karen Long & Rosie Meek, Buying on the Internet: Gender Differences in On-Line and Conventional Buying Motivations (March 2004), at http://www.findarticles.com/p/articles/mi_m2294/is_5-6_50/ai_n6079160. The computer environment is seen as "masculine," which can lead women to feel disempowered and possibly excluded, whereas men feel at home online.

See generally Ann Bartow, Electrifying Copyright Norms and Making Cyberspace More Like a Book, 48 VILLANOVA L. REV. 13 (2003) (arguing that if analog copyright use norms are not electrified for Internet usage, individuals will lose some access to informational works and be deprived of familiar ways of using copyrighted works).
welcoming lowly library patrons without suitable Internet access, the majority of whom are female, and those who are seeking free access to books, social contact, a children's story hour, a comfortable chair in a climate controlled environment, a public restroom, or the company of females.

B. Bleeping Mothers

Many women gather informally on the Internet much as they do in real space, and the Internet can be used to facilitate meaningful socialization. Web logs, for example, allow the selective disclosure of deeply personal information. Linguist Deborah Tannen has explained that jokes signify different things for men and women: Men joke to get status, while women joke to connect with others. If men think women have lower status than they do, they will not find women funny, but other women will. A few examples of bawdy, humorous blogging culled from the Internet follow, excerpted from web logs that purport to be written by women. No effort has been made to verify the truth of the represented gender. First:

As much as I wish I was a waif-like dainty pregnant lady, well, I'm not. And I blame that on my ass. (By the way, this post will


In my opinion, libraries have been doing exactly what they were supposed to -- meeting the needs of their primary patrons. More likely to be working in the home and to have lower incomes, women predominate as public library patrons. It only replicates stereotypes to say that "men want auto repair" and "women want knitting;" a better question would be, are information needs being met within the community? The answer probably includes -- for men with greater resources -- many alternatives other than the library. Women may not have those alternatives.


101 E.g., Rob Walker, Middle Age? Bring It On (Jan. 30, 2005), at http://www.nytimes.com/2005/01/30/magazine/30CONSUMED.html. Many informal gatherings of women are adjuncts of at least marginally formal organizations, such as book clubs, bunco groups, children's play groups, and the Red Hat Society. Id.

102 See, e.g., http://www.momsclub.org/; David Hochman, Mommy (And Me), N.Y. TIMES, Jan 30, 2005, Section 9, at 1.


104 DEBORAH TANNEN, YOU JUST DON'T UNDERSTAND: MAN AND WOMEN IN CONVERSATION (Ballentine 1991).
make record-breaking use of the word Ass. Make yourself comfortable.) During pregnancy, my ass spreads out. In fact, this morning I had to loosen my maternity jeans—not because of my growing baby, but because of the spreading of my ass.

Me: “My ass is spreading. It won’t stop spreading. Sideways and up and down. Nonstop spreading for this ass of mine!”

Jeff: “I have no idea how to respond.”

A few nights ago, as I sat on the couch and knitted, I suddenly heard an operator asking me to hang up and try again. You guessed it. My ass had spread over the phone and was trying to make a call.105

The blogger initially displayed a bit of playful self consciousness about her use of the word “ass” but did not retreat from it.106 She warned the reader about this, and also that she was not a “dainty pregnant lady,” literally or figuratively it turns out.107 In a similar voice, when contemplating the completion of an online informational “baby album” questionnaire, one new mother noted:

Third [question]: “The method of childbirth they chose was:”

You know, I’m thinking that’s directed toward your crunchier moms who relish one more opportunity to brag about their homebirths. I get no joy from filling in, “With as many painkillers as humanly possible.” I did, however, get great joy from the painkillers themselves – I’m just not sentimental about it.108

No cursing was involved in this posting, but it contains some humor-tempered hostility toward the idealized practice of natural childbirth, and can be read as an endorsement of drug use, which also runs counter to the mainstream cultural narrative about the wholesomeness and selflessness of the maternal instinct.109

Another woman revealed deeply personal physical details via her web log, writing:

You’ve heard about my boobs. You’ve heard about poo and pee and spit up and all of the glamorous things that are Motherhood.

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106 Id.

107 Id.


109 Id.
You even heard a little about some critch itching. But you haven’t heard about THIS critch itching. WHAT IN ALL CREATION IS GOING ON DOWN THERE? My nether parts are so angry. Is it the PH change from getting my period back? Is it a yeast infection gone mad? I am in A G O N Y. And of course, it’s Saturday. My beautiful, beloved gynecologist who has lovely pink pills called Diflucan is out golfing or trying on women’s clothing. I don’t know, whatever he’s doing, he is far, far away from his office.\textsuperscript{10}

One might not guess that a person who refers to a health affliction as “critch itching” was a medical professional. However, extensive perusal of her web log reveals that prior to becoming a “stay-at-home mom,” she worked as a nurse,\textsuperscript{11} which might explain how she knew the name of the pill for which she so desperately sought a prescription.\textsuperscript{12}

Many bloggers refrain from talking specifically about their jobs, resulting in transparently opaque postings such as this: “For those interested in such things, our new undisclosed occupation requires us to interact with our employer’s customers, which means that we sometimes get emails like this: ‘I just want to say that your company suck.’ Sadly, being required to be somewhat polite prevents us from replying with gems such as: ‘So do your English.”’\textsuperscript{13}

Another woman at home with a baby of recent origin wrote about her travails with infant colic, and the equipment she employed to try to moderate her baby’s crying, noting:

On the advice of a commenter, and because I’m willing to try just about any solution that costs less than $40, I went out and got a NoJo BabySling. Oh, how I hate that fucking sling. It’s supposed to be SO WONDERFUL for the baby that on top of feeling thoroughly frustrated by my inability to get the damn thing on and him in it at all, much less without hurting my back and shoulder, I also end up feeling guilty that I’m denying my child this incredible developmental experience. The only factor mitigating that guilt is that Austen so obviously hates the sling, too. Of course, the knowledge that I’m causing his frantic


\textsuperscript{11} Jessica Verymom, \textit{The Dish on Very Mom} (June 6, 2004), at http://www.verymom.com/archives/2004/06/06/the-dish-on-very-mom/.


\textsuperscript{13} Sadly No, \textit{An Email We Never Sent . . .} (Jan. 26, 2005), at http://www.sadlyno.com/archives/2005_01.html.
screaming by trying to wedge him into the freakish contraption brings on an even bigger tidal wave of guilt and insecurity, not to mention a flop sweat.

The “instructional” video that came with the sling (which, like the chapter devoted to babywearing in Dr. Sears’ Baby Book, is more promotional than instructional) says that with a little patience, babywearing will become easy and enjoyable. I already suspected that I was too impatient to be a parent, but thanks, Dr. Sears and NoJo for making me feel too stupid for the job on top of it. Honestly, I’m trying, but I don’t know how many more chances I can give this fucking piece of crap before I toss it into the fucking fireplace.  

Her blogged, posted criticisms are quite specific, and they name names and invoke trademarks. In addition, she makes liberal use of the work “fuck” in a speech context that I would argue is every bit as political in nature as the Cohen v. California jacket commentary about the draft.

Another blogger humorously wrote about her own perceived deficiencies as a parent, especially in comparison to how she envisioned the parental performances of others:

I am the worst mother ever and here is why.

You know how people go on about how sweet a new baby smells, how satiny-smooth their pink cheeks are, how adorable their clean little outfits are? Not my baby.

Right now Charlie is tucked snugly into his co-sleeper, wearing a damp sleeper with spit-up on its feet, lying under a blanket stained with vitamin drops, on a sheet that’s splattered with coffee stains. (Mine, not his. He’s more careful with his sippy cup than his clumsy and bleary-eyed mom. And, no, I did not spill it in his bed while he was in it, so if you were picking up the phone to dial child protective services you can hang it right back up, yo.)

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115 Id.  
Still another female web log author, this one with a toddler, reported the apparently profound angst she felt about deviating from the normative dietary behaviors of “good” mothers, observing:

Nora and I were at the dining room table, eating grapes. I was slicing the grapes in half for her, as per the current mandate. Actually, “mandate” is putting it lightly: most baby books go on and on about THE DANGERS OF UNSLICED GRAPES until you are scared to have a bunch of grapes in the same room as your child, because one could come loose, roll across the table under its own power, leap into your baby’s esophagus, and CHOKING WILL UNDOUBTEDLY ENSUE. I cannot find any information about when a kid can safely handle a DEADLY WHOLE GRAPE, but from the general terrified tone of baby books and websites I would guess at around age seventeen.

I wanted some grapes for myself, and I made the error of simply picking one off the stalk and putting it in my mouth, you know, as humans do. Nora immediately wanted to eat a grape “that way,” as she put it, and she repeated Nora eat grapes! That! Way! Like! Mommy! Nora do it! until I said fine, handed her a whole grape, and resisted the urge to kiss her goodbye and tell her I’d see her in heaven. She chomped up the grape just fine, asked for more, and handled those as well, and while I am still not completely comfortable with bucking the toddler-grape-slicing establishment, she is whole and healthy and unchoked. And now I have learned my lesson, which is to slice the fucking grapes in the kitchen, ahead of time and out of her sight. Cleaning up after our grapefest, I told LT, “I feel like we’ve cheated Death.”

Posting this account of her at least temporary rejection of the seemingly consensus based “safety norms” of modern parenting was a deeply subversive act, and the tone as well as the content of the narrative reflect her potent awareness of this. She arguably invited readers to challenge common wisdom, but tempered the challenge with her expressions of remorse and expectation of engaging in normatively compliant behavior in the future. In doing so she more subtly semaphored the same sentiment that the prior web log entry made

119 Id.
120 Id.
explicit: “if you were picking up the phone to dial child protective services you can hang it right back up . . . .” 121

A final example confronts romanticized views of the sacrosanct purity and innocence of young children:

Imagine, if you are able: Scott comes home; Henry and I are listening to music, as is our way at times (those times being when we are not making Playdoh pancakes or weeping into our fists).
Scott: What are you listening to, sport?
Henry: It’s a song about fucking.
Scott looks at me.
Me: That’s not what he’s saying! He’s obviously saying something else!
Henry (delighted): It’s about fucking! FUCKING!
Me: I know he’s saying something else! I just can’t identify what it is!
I waited for him to lie his dinosaur on top of Spider-Man and say, “Like that! Fucking!” But fortunately for me and sadly for this blog, no.
Now before I endure another onslaught of scandalized emails: PEOPLE. He was not saying that. He speaks in the charming but often baffling language of toddler-ese, where f’s become s’s and “puppies” becomes something obscene. He was probably saying “It’s a song I enjoy very fucking much.” Like that! You see!122

None of these web log entries seem linearly directed toward any particular goal oriented objective. This is not academic or intellectual discourse, but rather is one of humorous, self-deprecating personal revelation. It is a raucous, informal meta-commentary that would likely be perceived as lacking the weighty seriousness of purpose Sunstein would have wired into discursive Internet portals, or that Chander would explicitly deem a “democratic tool of citizenship.” Nor are the representative entries likely the sort of unfiltered exchanges Hunter typically shares with his Phillipic.com-referenced friends (though that assumption could certainly be mistaken, and sexist as well).123 These web log entries employ vulgar language to bawdily discuss pregnancy, childbirth and motherhood, topics generally sanitized and sanctified by top down, intermediated communicative media. Something about motherhood seems to inspire these web loggers to generously pepper their postings with

121 Id.
thoughts and words that others might deem as scandalous, offensive or even immoral. Consequently, the referenced web logs, and many more just like them, are probably filtered or blocked wherever blocking or filtering software is employed.124

As it happens, thanks in large part to the Children’s Internet Protection Act (CIPA),125 one place other social-solidarity-seeking mothers are unlikely to be able to access these web logs is at their local public libraries.126 As written, CIPA requires only that covered libraries block or filter “Internet access to visual depictions that are; (I) obscene; (II) child pornography; or (III) harmful to minors . . . .”127 In theory, “the blocking or filtering technology need not affect text, whatever the content, and setting a browser to ‘text only’ would satisfy this requirement.”128 In reality, however, blocking and filtering software uses automated text-based content analysis to determine which websites are likely to


There are three kinds of filters that can be used to restrict Internet access. Content on the world wide web is posted on websites that have addresses called URLs (uniform resource locators). Each posting (whether of one or more “pages”) usually has its own specific URL. The content of any URL, meanwhile, can change dramatically from day to day. Internet filters may be characterized as either blacklists, “whitelists,” or word-rule blocking. Blacklists block access to a specific list of “inappropriate” URLs, as compiled by individuals who evaluate them based on a specific standard. They leave access open to all else. Whitelists - also known as “go lists” - only permit access to a selected list of “appropriate” URLs, blocking entry to all else. Word-rule filters block URLs that fit some rule, such as those for websites that display the letter combinations “sex,” “breast,” or “xxx.” They leave all other URLs unblocked. The Word-rule filters may also sort URLs based on a website’s self-ratings according to the industry’s “PICS” standard or based on “fuzzy logic.” These three methods might be used separately or in combination. For example, a software vendor could design a filter to block out URLs according to a word-rule standard, but provide an automatic override that unblocked any URLs that were on a specific whitelist.

Id. at 1120; see also CIPA Questions and Answers (July 16, 2003), at http://www.ala.org/ala/washoff/WOissues/civilliberties/cipaweb/adviceresources/CIPAQA.pdf. Under the plain language of the statute, libraries must have safety policies that include the operation of blocking or filtering technology “with respect to any . . . computers with Internet access that protects against [even theoretical] access through such computers to visual depictions that are . . . obscene,” etc. Id. The statute requires that libraries receiving E-rate discounts or LSTA or ESEA funds for computers or Internet access adopt a policy for minors and adults that includes blocking or filtering technology, even if minors are unlikely to use their computers. Id.


127 Id.

contain objectionable visual images, and that should therefore be blocked.\textsuperscript{129} As a result, over-blocking is a substantial and persistent problem.\textsuperscript{130} In addition, portions of the CIPA focus on the topics that must be addressed in an “Internet safety policy” other than in Internet filtering per se.\textsuperscript{131} Under CIPA, libraries and schools must “adopt and implement” policies that address, among other things, “access by minors to inappropriate material on the Internet and World Wide Web.”\textsuperscript{132} The definition of “inappropriate material” is specifically left to local determination under N-CIPA Sec. 1732(2), which reads:

Local Determination of Content – A determination regarding what matter is inappropriate for minors shall be made by the school board, local educational agency, library, or other authority responsible for making the determination. No agency or instrumentality of the United States Government may –

(A) establish criteria for making such determination;
(B) review agency determination made by the certifying school, school board, local educational agency, library, or other authority; or
(C) consider the criteria employed by the certifying school, school board, educational agency, library, or other authority in the administration of subsection (h)(1)(B).\textsuperscript{133}

It seems bizarrely ironic that library Internet filters aimed at protecting children would have the effect of filtering the web logs written by mothers. This is just one example of the ways in which cyberspace laws and policies may


\textsuperscript{133} \textit{Id.}

\textsuperscript{Id.}
impact women in unexpected and under-analyzed ways. Consider also the amount of de facto "self censorship" that occurs when women voluntarily use filtering software on their home computers. Their children may be "protected" from the web logs referenced and quoted above, but these women have foreclosed their abilities to access and participate in online web log communities, often without recognizing that they have done this, or realizing what they are missing.

C. On "Getting It"

One of the section headings in Phillipic.com is entitled, "What Cass Doesn’t Get." Hunter explained in a footnote that he chose this title because, "[t]here is now a convention within debates on cyberspace regulation that any attack by a liberal on a libertarian, or vice versa, will be entitled 'What X Doesn’t Get.’" He stated that:

This can be traced back to a debate between the liberal Lawrence Lessig and the libertarian Declan McCullagh, where Lessig entitled a chapter of his book, ‘What Declan Doesn’t Get.’ So, when libertarian David Post sought to criticize Lessig, his article was called, ‘What Larry Doesn’t Get.’

He further observed: “It seems that the convention now extends to any criticism within cyberlaw, even those where a liberal criticizes a liberal,” pointing to an article by Marc Rotenberg entitled: Fair Information Practices and the Architecture of Privacy: (What Larry Doesn’t Get).


\[135\] Id. at 654 n.184.
\[136\] Id.
\[137\] Id.
\[138\] Id.
\[139\] Id.
\[140\] Id.
\[141\] Dan Hunter, supra note 47, at 654 n.184.
and David Post penned Law and Borders—The Rise of Law in Cyberspace.¹⁴³  
Jack Goldsmith took issue with aspects of this article in Against Cyberanarchy,¹⁴⁴ to which David Post responded in the otherwise seemingly redundantly titled Against 'Against Cyberanarchy.'¹⁴⁵  
In his book Code and Other Laws of Cyberspace,¹⁴⁶ Lessig indeed titled Chapter 17 of the tome “What Declan Doesn’t Get,”¹⁴⁷ in reference to Wired News writer Declan McCullagh.¹⁴⁸ In riposte, as Hunter observed, David Post titled a review of the work, What Larry Doesn’t Get: Code, Law and Liberty in Cyberspace,¹⁴⁹ and, as noted above, Marc Rotenberg penned, Fair Information Practices and the Architecture of Privacy: (What Larry Doesn’t Get).¹⁵⁰  
Rotenberg appended a “good sportsmanship” footnote which stated: “In offering this title, I am following the convention that is appropriate for this genre. Responses in the spirit of ‘What Marc Doesn’t Get’ are welcome and should be sent to rotenberg@epic.org.”¹⁵¹ In addition to these law review articles, the online publication ReadMe published an interview with McCullagh entitled “What Larry Doesn’t Get,”¹⁵² that provided Declan a direct platform for getting or not getting it, and imputing same to others.¹⁵³  
Well, there is something this author gets, but almost wishes she didn’t, which is that the tone of the discourse is one reason for the relative lack of women publicly involved in this particular debate.¹⁵⁴ If the article you are reading was intended for a less formal, different sort of publication, the author  
¹⁴⁵ David Post, Against 'Against Cyberanarchy', 17 BERKELEY TECH. L.J. 1365, 1365 (2002).  
¹⁴⁷ Id. See also Lawrence Lessig, Entry Archive (Jan. 27, 2004), at http://www.lessig.org/blog/archives/001696.shtml.  
¹⁵¹ Id.  
¹⁵² Id.  
¹⁵⁴ This is not to suggest for even a moment that there aren’t women writing in this area; simply that they are not overtly accusing other academics of “not getting it” or the like in this particular set of scholarly exchanges. Explicitly feminist critiques of cyberspace law, however, are difficult to locate. See Linda Mulcahy, Feminist Perspectives on Law: Project Description, at http://www.rdg.ac.uk/law/femlegalnet/ (last visited Mar. 23, 2005). The Feminist Legal Network website has as its stated aim “to identify key publications for use by those academics and students interested in studying law from a feminist perspective.” Id. It lists these publications for many areas of the law, but neither cyberspace law or intellectual property law are among them. Id.
might wonder in more colloquial language why certain cyberspace law scholars didn’t simply line up, drop their trousers, and with unambiguous finality resolve their fundamental interpretative differences with a yardstick.\footnote{Perhaps a simple ruler would be adequate. The author makes no assumptions about this and harbors no interest in conducting empirical research on the matter.}

After I began teaching Cyberspace Law as a regular part of a law school curriculum, with an astounding degree of hubris even by law professor standards, I felt sure I had something interesting to contribute to the existing literature on a variety of topics. Yet every time I thought about writing legal scholarship on a cyberspace law topic, I wondered what my tenure prospects might be if someone prominent in the field who disagreed with my perspectives titled a negative response to my writings, “What Ann Doesn’t Get,” and whether I’d even be able to get my sorry self out of bed the morning after such a publication appeared. While I’ve long recognized that I cannot confidently generalize my own thoughts and experiences to those of others in the legal academy, I imagine I am not the only female law professor who reacted this way. Most women I know enjoy rigorous intellectual challenges, but we would just as soon avoid pointless duels to the death.

While in the parlance of the playground it might be fair to say “Larry started it,” so he also deserves some credit for recognizing and regretting the rhetorical dynamic he helped create.\footnote{Lawrence Lessig, Code and Other Laws of Cyberspace (2000), available at http://code-is-law.org/conclusion_excerpt.html (referring to chapter entitled “What Declan doesn’t get”).} In the context of an exhortation to have in the cyberspace law field “an ‘enterprise zone’ of free thought” that is “untaxed by ordinary politics” he wrote:

I have been guilty of the sin I condemn. The last chapter in my book - “What Declan Doesn’t Get.” is a wonderful example of this sin. My stupidity here is on many levels. Let’s take the most obvious first. How stupid must you be not to see that a chapter like that will just inspire a litany of responses of the form “What Larry Doesn’t Get.” My friends at Chicago would say controversy is great success, but of course I left my friends at Chicago, and would love to leave controversy as well. But a back-firing title is not the real problem. The real problem is the effect such rhetoric has - on debate, and on understanding. For its effect is to end thought. To push the anti-Declan button - to push the pro-/anti-libertarianism button - is simply to categorize the argument, to put it into a box, and to give readers an excuse not to read.\footnote{Lawrence Lessig, Cyberspace and Privacy: A New Legal Paradigm? Foreward, 52 STAN. L. REV. 987, 999 (2000).}
While I'd agree with his characterization of titling a book chapter "What [Distinctive and Easily-Recognizable-In-Context First Name] Doesn't Get" as a mistake, I'm less enthusiastic about the vision he expressed of the appropriate scope and tenor of cyberspace law dialectic, particularly his statement: "[O]ur debates in cyberspace are not debates about feminism."\(^{158}\) As a matter of observation that is inarguably correct, but he seemed to assert that as a normative matter, notions of equality raise substantially different questions in cyberspace than have been, or should be, addressed by feminism.\(^{159}\) I disagree. Both the theoretical construction of cyberspace and the actual architecture of the Internet need to account for gender issues, and for differences in the ways in which men and women communicate in real space and online.

Susan Herring's research into gender differences in computer mediated communications supports Deborah Tannen's theory of gendered communication styles.\(^{160}\) Herring observed that men use adversarial styles of communication, which employ strong assertions, sarcasm, and insults, and dominate online discussions. She concluded that: "[t]hese circumstances represent a type of censorship, and thus that an essential condition for democratic discourse is not met."\(^{161}\) Women have never been positioned to define or dictate significant aspects of the social or cultural orders,\(^{162}\) so male domination of cyberspace is not unexpected, but neither should it go unobserved or uninterrogated.\(^{163}\) In many disciplines, feminism in cyberspace has been a topic of research and commentary to a greater extent than it has in law. One of the reasons for this may be the chilling effect of the fierce tenor of the pioneering cyberspace law discourse.

Additionally, some sectors of the Internet are either inhospitable to women, or project an atmosphere that encourages the women present to keep very low profiles. Consider online gaming. Jack Balkin has written that: "massively

\(^{158}\) Id. at 1001.

\(^{159}\) Id.


\(^{162}\) Id.

multiplayer online games are evolving into something much more than mere entertainment. They are a remarkably important front in the evolution of cyberspace generally.\textsuperscript{164} If this is true, the absence or invisibility of women in these online games is important as well. Balkin's essay entitled "Virtual Liberty" discusses "some of the legal problems of virtual worlds, and, in particular, how to preserve free speech rights and deal with real world commodification,"\textsuperscript{165} and also "several different models of regulation of virtual worlds, including the model of consumer protection, the virtual world as company town, and virtual worlds as places of public accommodation."\textsuperscript{166} It is a fascinating and thought-provoking piece of work about what he describes as the "freedom to design, and freedom to play, in virtual worlds."\textsuperscript{167} However, Balkin either does not notice, or chooses not to discuss, any gendered aspects of these issues. The otherwise excellent article doesn't even use the words "woman," "women," or "female."\textsuperscript{168} Online games\textsuperscript{169} are susceptible to the same sorts of feminist critiques that have been directed toward the real space cultural and recreational activities that segregate the sexes or exclude women, such as most organized sports,\textsuperscript{170} fraternities and sororities,\textsuperscript{171} and other social organizations.\textsuperscript{172}

In discussing the use of avatars in "The Laws of the Virtual Worlds," Greg Lastowka and Dan Hunter noted: "[M]any [online gamers] take advantage of the opportunity to engage in ‘identity tourism,’” and observed:

The avatar masks, however, both conceal and embody real-world individuals who often use the ability to dissemble to achieve social objectives they consider important. In LambdaMOO, for


\textsuperscript{165} Id.


\textsuperscript{168} See generally id. (making no references to females).


\textsuperscript{171} See generally Journal of College and Character, \textit{Does Segregation in Campus Fraternities and Sororities Constitute Endorsement of Discrimination by Colleges and Universities?} (Sept. 11, 2001), at http://www.collegevalues.org/ethics.cfm?id=572&a=1 (noting that the University of Alabama is seeking to desegregate its campus fraternities and sororities).

\textsuperscript{172} See generally Inter-American Development Bank, \textit{About Social Exclusion} (Oct. 11, 2004), at http://www.iadb.org/sds/SOC/site_3094_e.htm (noting that social exclusion in Latin America and the Caribbean affects predominantly indigenous peoples, afro-descendants, women, the disabled, and those living with HIV/AIDS).
instance, some individuals fashion their avatar masks to project
standard stereotypes of sex appeal, perhaps attempting to
tantalize others into virtual relationships: 'Lirra is a short young
woman with long blonde hair, an impish grin and a curvaceous
figure. Her clear blue eyes sparkle as she looks back at you. She
is wearing a short red skirt, a white t-shirt, black fishnet
stockings, and black leather boots and jacket.' Of course, IRL,
who knows what Lirra’s controller looks like? ... Given the
chance to be anyone, who wouldn’t want to be sexually
attractive, powerful, and strangely mysterious?173

One might reasonably, given the context in which it is raised, view the
query, "Given the chance to be anyone, who wouldn’t want to be sexually
attractive, powerful, and strangely mysterious?" as rhetorical.174 Intentionally or
not, however, a few paragraphs later, Lastowka and Hunter answer their own
question, writing:

For some male players of EverQuest, however, the choice of
‘presenting female,’ as avatar gender-swapping is called, can be
a strategic decision. Female avatars often receive more favorable
treatment from other avatars, including free gifts and help from
male avatars. On the other hand, presenting female may also
lead to an eye-opening understanding of virtual sexual
harassment. For some female users, the challenge of dealing
with sexual harassment is reason enough to use male avatars.175

If all women participating in an online game chose to employ male avatars,
this might raise interesting legal as well as social science questions. Could a
game in which all players used avatars of a single sex be the basis for a real
space gender discrimination suit? And what would the legal implications be if
the rules of a publicly accessible game specifically excluded female avatars?
Lastowka and Hunter did not address these possibilities.176

(Jan. 2004).
174 Id.
175 Id. at 67. See also K.K. Campbell, Attack of the Cyber-Weenies, 1 WAVE 5, 5 (May 5, 1994), at
http://kumo.swcp.com/synth/text/cyberweenies.html (noting that the author, a male, after entering a
female name and biography on a chat page, was immediately hit on by many men).
(Jan. 2004).
In the absence of law, the norms of an online community prevail. What might the behavioral norms of an online gaming community be? One female gamer reported the following at her blog.  

A female player logged into her female character and was greeted by a male who told her she had a nice chest. She doesn’t say exactly what he says, but it offended her, so she told him to knock it off and that she was reporting him. He went on to scold her about how her doing that would ruin the game for everyone else, and that it was just good fun.

Now, granted, she over-reacted a little bit (she said she never wanted to play the character again because of the comment), but it wasn’t necessarily the original poster’s upset about the avatar having big tits that got me riled, either. It was the responses of other people in the community. Apparently, if you don’t just roll over and take it, you’re just a big stick in the mud. Oh, and didn’t they tell you that video games are a boy’s world, and you should just deal with it? Read on, my friend . . .

Sounds to me like you’re a touchy broad who has a weight problem and spends too much time at home.
- Mariousmoo

I’m a woman as well, get over it. Seeing as the game was created by men, as is evidenced by the female Night Elf avatar and her dance, just deal with it.
- Absalom

/ignore is there. Use it and stop making a big deal out of what some doofus said to your avatar ingame. Please try to act like an adult (even if you’re not one - it’s good practice.) and just forget that idiots like whoever was bugging you even exist. Yesterday in Darnassus somebody came up to one of my female alts and said “I’ll give you 10s to strip.” I did the /boggle emote, /ignored him and walked away. Simple as that.
- Usdachoice

In public, if a perfect stranger walks up, says some remark about your breasts and then walks away, there’s really nothing you can

\[177\] http://www.utopianhell.com/ (last visit Mar. 18, 2005).
do about it. He didn’t harm you and is not continuing to harass you so the cops will not do anything. So what he did is more like my example and nothing like yours... Get over it. People are jerks... grow a thicker skin.

- Rotaerc

you need some sex and quick...

- Darkseeker

Are you friends with the Kobe Bryant Accuser? Also, nice butt.

- Kressa

You fail life. What is it that ever single species in the known universe has in common? Reproduction in some way shape or form. If your a lonly overweight woman and you live off of twinkies and icecream and no one loves you is no reason to be all grumpy. Put down the Rocky Road and pick up an apple. Stop sititng around and feeling sorry for yourself and go out and move a little.

- Dozimbar

All women characters should never get any gear to wear, walk around in the nude, should be created as well endowed blondes, and do nothing but bounce around for everyone else because no women play online games. And every dwarf should get three broads cuz we be that good lassie! Have I ticked off the feminists yet? Play sims online.

- Jouphan

Jack Balkin has predicted “that both game designers and game players will repeatedly invoke freedom of speech and freedom of association as defenses against attempts by the state to regulate virtual worlds.”179 For this feminist, Balkin’s descriptions of disputes to come in the sphere of online games evoked images of the private dining clubs of Princeton, which women are now able to join,180 and golf clubs such as Augusta National, which they remain excluded

178 Id.

In 1969 the admittance of women into Princeton University caused some controversy in the Clubs, but many allowed women to join immediately. In the
from based on gender. When Princeton University began admitting female students, not all of its cultural amenities were open to women. Sally Frank sued the all male dining clubs of Princeton while she was still an undergraduate there. Her efforts lead to her being insulted, threatened, spat on, mooned, and showered with beer. “If looks could kill, I would not have survived my junior year,” she reported. Ms. Frank graduated in 1980, but did not completely succeed in opening up the clubs to women until over a decade later. In 1987, the Princeton administration began supporting the view that the dining clubs

During her junior year, Frank filed a legal complaint claiming that though the clubs said they were private, they were public accommodations that would be required to include females. Otherwise, they would be practicing gender discrimination. Cottage — which settled with Frank in 1986 — began to accept female members that year after paying her $20,000 in damages for legal fees. Ivy went coed in 1990 when the New Jersey Supreme Court ruled in Frank’s favor. Tiger Inn, however, held out and asked the U.S. Supreme Court to hear the case twice but was denied both times. The case was heard in the Federal Circuit Court, which upheld the New Jersey Supreme Court’s ruling. As a result, Tiger Inn held coed Bicker in the spring of 1991. Frank’s case officially concluded in June 1992.
should be co-ed, and in 1990, Frank was given an award for service to the University. A year later the last holdout dining club began allowing women to “bicker” for admission.

In contrast, consider Augusta National. Augusta National is an elite golf club in Augusta, Georgia that hosts the prestigious Masters Tournament each year. The club membership was all white until 1990, and remains all male. Efforts to make it possible for females to join have been described by an opponent as “exploitive,” with an allegation that the actions by a media-starved gang of women’s rights activists are not based upon the law, but on a politically correct crusade to force the private club into accepting women members out of so-called “moral obligation.”

According to one survey, “among the public, 60% of women and 55% of men agreed that Augusta National should accept women as members... among golfers, 63% of women and 41% of men say that Augusta National should accept women.” If there were equal numbers of male and female golfers, a small majority of all golfers (52%) would favor the acceptance of women by Augusta National, perhaps generating sufficient pro-equality momentum to effect change. However, the majority of golfers are male, so the prevailing view among golfers (unlike the public generally) favors continued...
gender segregation. In consequence, the internal norms of the golfing community as currently constituted are not likely to result in Augusta National admitting female members. At the 2004 Masters Tournament, it was reported that “men hawked “Hootie hats” . . . to celebrate William “Hootie” Johnson’s victory over Martha Burk’s tenacious campaign to open the prestigious Augusta National Golf Club to women.”

Within the context of online gaming, substantive norm shifts concerning the sexism female players encounter may also be precluded by the inadequate numerical presence of women in the games in which there is the most gender-linked hostility. To the extent there is sexist abuse, it will drive a number of women gamers away (at least the ones who identify themselves as female), and the remaining female participants, if few in number, may find it difficult to mount effective opposition to the objectionable practices. The forms that effective opposition could take would depend upon the rules and norms of any given online game, if no real world legal relief is available.

D. Censorship, Copyrights, and a Culture of Commodification

1. Filtering Women World Wide

Laws and technologies that regulate distribution of content on basis of copyright will regulate content on other bases as well. The same controls that “protect” copyrights from unauthorized access or use will be used to “protect” people from information that is deemed harmful or illicit by any entity in a position from which to censor it. These are, on the surface, gender-neutral observations with equal consequences for all similarly situated Internet users. However, men and women are not necessarily similarly situated in cyberspace. One feminist scholar trenchantly observed:


Id.

Charles Ramirez, Online Games Attract More Woman, DETROIT NEWS (Dec. 21, 2003), at http://www.detnews.com/2003/technology/0312/21/b02-14334.htm (stating only 38% of “gamers” are female).

Severine Dusollier et al., Copyright and the Access to Information in the Digital Environment, A Study Prepared for the Third UNESCO Congress on Ethical, Legal and Societal Challenges of Cyberspace, Paris (Jul. 17, 2000), at http://www.droit.fundp.ac.be/Testes/studyUNESCO.pdf (“Copyright is expanding, not only as regards to the items protected, but also as regards to the areas of protection.”).
The majority of the world's women (and men) have no access to the Internet, have no money to buy things on the Internet or anywhere else, have no telephones, let alone modems, and don't get surveys emailed to them, faxed to them, or snail mailed to them. One of the most striking things I took back from an international conference I attended in 1998 on "women's information services," is that the only technology that can reliably reach the majority of women in the world today is the radio, and the conference platform called for more informational radio programming for poor women.\footnote{Phyllis Holman, \textit{Cyberjanes and Cyberjitters: Myths and Realities of Gender Differences and the Net}, Weishard WAAL Spring Conference Talk (Apr. 12, 2000), at http://www.library.wisc.edu/libraries/WomensStudies/Talks/waaltalk.htm.}

One important and productive venue of research about women and cyberspace would obviously be targeted at ways to provide many more of them with Internet access. To simply aim these efforts at "people" may fail to account for the special needs, conditions, and restrictions upon females in any given culture. For those for whom cyberspace entrée is available, women and men on the privileged side of the digital divide experience the Internet differently.\footnote{R.C. Sherman et al., \textit{The Internet Gender Gap Among College Students: Forgotten but not Gone?}, 3(5) \textit{CyberPsychology & Behavior} 885, 894 (2000).} As a result, the legal and technological environments of cyberspace are inherently gendered.\footnote{Id.} As one commentator observed, "[t]echnology is part of our culture;
and, of course, our culture, which is male dominated, has developed technologies 
that reinforce male supremacy.\footnote{Ruth Hubbard, \textit{Machina Ex Dea: Feminist Perspectives on Technology} vii (1983).}

Realistically, women are not likely to have much input into or control over 
the future of legal regulation of information across the Internet. Instead, as we 
do in every society in which we lack political power proportionate to our 
numbers, we will learn to function as best we can to meet our own needs within 
whatever cyber-constraints are imposed by the people in power, who will mostly 
be men.\footnote{Get the Facts: Woman in Elected Office, at http://www.voter-unlead.org/facts/women_electedoffice.cfm (last visited Mar. 23, 2005) (stating that there are only eight women governors, a decrease from the record nine women governors who served before the 2004 election; Washington is the first state to have a woman governor and two women senators all serving simultaneously; and five states, New Hampshire, Delaware, Iowa, Mississippi, and Vermont, have never sent a woman to Congress).} Some blocking and filtering will be rooted in copyright “protections,” 
while other restrictions will constitute substantive censorship of content more 
straightforwardly. It is largely men who will decide whether and how filters that 
block content will be “deployed,” a word with appropriate militaristic 
connotations.

In the United States, male judges have historically treated information about 
issues directly pertaining to sexuality and martial status as “unsuitable” for 
women.\footnote{See Virginia Drachman, \textit{Sisters in Law: Women Lawyers in Modern American History} 169-214 (1998) (stating the few women that became lawyers were not permitted to practice law in the courtroom but instead were generally given administrative type duties or office duties such as drafting wills).} In 1875, for example, the Supreme Court of Wisconsin denied the 
petition of women to practice before it, stating: “It would be shocking to man’s 
reverence for womanhood and faith in woman . . . that woman should be 
permitted to mix professionally in all the nastiness which finds its way into 
courts of justice.”\footnote{In re Goodell, 39 Wis. 232, 245 (1875).} The court then listed a string of subjects arising in court that 
were expressly deemed wholly unfit for the attention of women, including rape, 
pregnancy, prostitution, abortion, and divorce.\footnote{Id.} From 1873 through the 1930s

\begin{itemize}
\item It would be revolting to all female sense of the innocence and sanctity of their 
sex, shocking to man’s reverence for womanhood and faith in woman, on 
which hinge all the better affections and humanities of life, that woman should 
be permitted to mix professionally in all the nastiness of the world which finds 
its way into courts of justice; all the unclean issues, all the collateral questions 
of sodomy, incest, rape, seduction, fornication, adultery, pregnancy, bastardy, 
legitimacy, prostitution, lascivious cohabitation, abortion, infanticide, obscene 
publications, libel and slander of sex, impotence, divorce: all the nameless 
catalogue of indecencies, \textit{la chronique scandaleuse} of all the vices and all the 
infirmities of all society, with which the profession has to deal, and which go 
towards filling judicial reports which must be read for accurate knowledge of 
the law.
\end{itemize}
the "Comstock Law" and similar state statutes were employed to prevent the dissemination of information about birth control, venereal diseases and other subjects related to female reproductive health and well being.\textsuperscript{209}

The same sorts of topics continue to be censored today around the world,\textsuperscript{210} sometimes with the articulated goal of protecting children,\textsuperscript{211} other times as a means of promoting some construction of "decency."\textsuperscript{212} Still, even in widely filtered Internet space,\textsuperscript{213} a lot more information for and about women is generally available. Yet evidence of the female presence on the Internet is often presented through gendered narratives, as it is in real space. For example, Yahoo publishes a "Buzz Log" that chronicles trends in online searching, providing substantive information about Internet information-seeking. One entry reported in pertinent part:

Searches on "prom" were up 47% over the past week, and unsurprisingly, girls 13-17 account for the majority of angst-filled searches on the social event of their year, with 58% of queries coming from this relatively tiny demographic niche. But searches on the generic "prom" pale in comparison to the desperate search for the perfect dress. Girls nationwide are looking to make a fashion statement, and they'll search far and wide to find the right gown for a formal evening out.\textsuperscript{214}

\textit{Id.}


\textsuperscript{211} E.g., Children's Internet Protection Act ("CIPA") and Neighborhood Internet Protection Act (NCIPA), available at http://www.ala.org/ala/washoff/WOiessives/civilliberties/washcipa/legislationb/legislation.htm (last visited Mar. 23, 2005) (reporting that the Act places restrictions on the use of funding that is available through the Library Services and Technology Act, Title III of the Elementary and Secondary Education Act, and on the Universal Service discount program known as the E-rate and that these restrictions take the form of requirements for Internet safety policies and technology which blocks or filters certain material from being accessed through the Internet).

\textsuperscript{212} E.g., Nadine Strossen, Reader's Companion to U.S. Woman's History, Censorship, available at http://college.hmco.com/history/readerscomp/women/htm/w_h004900_censorship.htm (reporting that most recently, as part of the Communications Decency Act (CDA) passed in February 1996, Congress extended the Comstock Law into cyberspace, criminalizing on-line communications about abortion).

\textsuperscript{213} See, e.g., Bennett Haselton, What is Stealth Blocking? (Mar. 21, 2004), at http://www.peacefire.org/stealth/ (reporting that "stealth blocking" refers to the practice of Internet service providers that do not advertise that their Internet service is "filtered," but block their users from reaching certain Web sites).

What the account fails to explain is how the search engine distinguishes between “angst-filled” and “desperate” searches for prom dresses, and perfectly matter-of-fact prom dress pursuits, and how it digitally distills the profoundly heated fashion-statement-making desires of “girls nationwide” from the likely comparatively mundane search terms they enter.\(^{215}\)

Internet filtering offers those configuring the filters a chance to elevate the discourse to a level that “ladies and gentlemen” engage in.\(^{216}\) While filters may constrain the use of particular words, the ideas themselves can be still be expressed, though perhaps differently and more eloquently articulated. Describing the scatological or perverse in filtered cyberspace might require a sophisticated vocabulary and flexibility of syntax, while comprehending the scatological or perverse will require literacy and a good imagination.\(^{217}\) To avoid automated filters or blocking, one might, for example, discuss someone “experiencing a cranial-rectal inversion problem,” instead of saying he “has his head up his butt.” However erudite, though, the former expression lacks some of the earthly gestalt and immediate, almost universal recognizability of the latter.

To the extent men control the levers of content control, it is they who, for example, will determine the language with which the contents of diapers can be discussed in cyberspace. One can predict a filtered discourse in which “poop” is allowable but “shit” deemed offensive, although of course both describe the same essential substance. And then there is the indeterminate “turd,” a word not at all suited for polite discourse but lacking any powerful heuristic of vulgarity. Perhaps more creative online speakers intimately familiar with diapering would invoke tsunamis, or diapers of mass destruction, invoking cultural references as metaphors and confusing any applicable censoring software in the process, especially if the software was designed by people without firsthand diaper experience.

Filters and blockers are unlikely to be sophisticated enough to divine the intent of a speaker in using a particular word or phrase. My late maternal grandmother\(^{218}\) was very conversationally demure, and the phrase “Oh dumb it!” represented the closest thing to a string of expletives I ever heard her utter. Even

\(^{215}\) See \textit{Id.} On a personal note I want to thank Michele White for this observation. See also Greg R. Notess, \textit{The New Yahoo Search, ONLINE} (July/Aug. 2004), at http://www.infotoday.com/online/jul04/OnTheNet.shtml (explaining to some degree the actual workings of the Yahoo! search engine).


\(^{217}\) See Richard J. Peltz, \textit{Use the Filter You Were Born With: The Unconstitutionality of Mandatory Internet Filtering for the Adult Patrons of Public Libraries}, 77 WASH. L. REV. 397, 410 (2002). “Not only are they incapable of applying peculiarly human legal definitions in content analysis, they are too easily circumvented by intelligent, determined users and content providers.” \textit{Id.}

\(^{218}\) Catherine Rowell McIntosh (1908 - 1990).
a sentient e-mail or web log filterer therefore would have been rather surprised one day to read her description of a complicated and confusing family situation as “all balled up,” because within the male interpretive framework the word “balls” signify male gonads. What the writer would have been referencing, however, invoked her background in knitting and crocheting, wherein an intractably tangled skein of yarn is aptly and innocently described as “all balled up.”

In many contexts women and concepts or things associated with women are trivialized by linguistic distinctions. For example, while certain male undergarments are generally denominated “underwear,” the corollary clothing items for women are commonly referred to as “panties,” or “lingerie,” or “knickers.” How filters and blocking software will account for these differences, if at all, is not clear, and these sexist distinctions are likely to be unthinkingly reinforced.

Filters and website blocking techniques can be configured to affirmatively restrict the flow of information to reflect or stifle political viewpoints. For example, the advocacy group Peacefire created four web pages on free servers that contained anti-gay quotes copied from four conservative Web sites: Dr. Laura, Concerned Women for America, the Family Research Council and Focus on the Family. Then, using anonymous e-mail accounts, the group then sent the URLs of the Peacefire-created pages to companies that sell filtering software, recommending that they block the newly created pages as “hate speech.” After the companies had agreed to block the

219 In addition, consider this post from the Bitch Has Word blog: Quote of the Week:

“You going ballin’ today?” Spoken by one of my writing students to me yesterday, at the start of class. Now, it took me a minute to figure out that he was referring to my Knicks sweatshirt, and therefore basketballing, not my after-class sexual activities. But I swear, I was stunned for a minute.


Id.


229 Bennett Hazelton, Project Bait and Switch (May 21, 2002), at http://www.peacefire.org/BaitAndSwitch/ “Bait and Switch” is an experiment to find out whether small, personal home
webpages specially created by Peacefire, they were informed that all the quotes on those pages had been taken from the four conservative Web sites listed above. Peacefire recommended that they block those Web sites as well. However, according to Peacefire, the blocking companies did not block those Web sites, and did not respond to Peacefire's inquiries about this inconsistency.

Entities that do not want to bother with actual blocking software can use a psychological rather than technological approach. They may publicize a policy under which accessing particular types of content (e.g. copyrighted, or pornographic) will be punished, and further announce that all web traffic to websites containing objectionable material will be logged. Significant technological expenditures would be unnecessary, and users would not have to put up with the over and under inclusive limitations of blocking and filtering software, because people would proactively filter themselves. Those intuitively most likely to self-filter are people lacking the political power and financial resources with which to access and secure unfiltered cyberspace.

2. Copyright Controls

The Hollywood depiction of pirates is often romantic on film. Handsome, heroic swashbuckling pirates lay claim to beautiful, objectified women, shiny, precious jewels (that are sometimes used to decorate the beautiful, objectified women), and treasure chests brimming with gold doubloons. In reality, the Motion Picture Association of America has no such romantic illusions about “copyright piracy,” and casts it as an evil from which beautiful, shiny, objectified content must be protected. Copyright piracy is framed as the taking of intellectual property from rightful owners by violent means such as “ripping” and “burning.” Like the attractive women of the movies,
copyrighted materials are characterized as possessions that must be aggressively protected from pirates.

Under the guise of this "copyright protection," information can be censored or restricted. As a practical matter, it may be impossible to squelch technologies such as peer-to-peer file sharing. Ed Felten wrote "TinyP2P," a functional peer-to-peer file sharing application, in fifteen lines of code, "to illustrate the difficulty of regulating peer-to-peer applications," and noted that, "Peer-to-peer apps can be very simple, and any moderately skilled programmer can write one, so attempts to ban their creation would be fruitless." However, if use of a peer-to-peer file sharing program is illegal or perceived as such, risk-adverse people will forgo its use.

If digital rights management (DRM) worked, in the sense that it prevented unauthorized copying and distribution, content owners wouldn't need to restrict new technologies. As Cory Doctorow has pointed out, "DRM isn't protection from piracy. DRM is protection from competition." The Internet itself

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Jive Records has implemented the technology to prevent you from playing the 'Celebrity' CD on your PC. That also means no burning or ripping tracks so you can listen to 'Celebrity' on your portable MP3 player. The move is an example of a get-tough trend being adopted by record labels that say they are losing profits to digital music pirates.

Id. See generally, e.g., Neil Weinstock Netanel, Copyright and a Democratic Civil Society, 106 YALE L.J. 283, 347-52 (1996) (noting that copyright provides an incentive for authors and publishers to contribute to the store of knowledge, "[b]ut if drawn too broadly, it can also inhibit access and unduly burden transformative uses of existing works, thereby impeding public education"); Yochai Benkler, Free as the Air to Common Use: First Amendment Constraints on Enclosure of the Public Domain, 74 N.Y.U. L. REV. 354, 401-08 (1999) (arguing that the movement towards greater intellectual property protection poses a risk to the diversity of information and abridges the freedom of speech); Neil Weinstock Netanel, Locating Copyright Within the First Amendment Skein, 54 STAN. L. REV. 1, 27 (2001) (arguing that limitations to copyright do not adequately protect First Amendment values); C. Edwin Baker, First Amendment Limits on Copyright, 55 VAND. L. REV. 891, 938-39 (2002) (noting that copyright allows infringer's speech to be suppressed).


Id.
functions as a giant P2P platform. P2P programs like Napster are simply tailored mechanisms for using file sharing capabilities hardwired into the architecture of the Internet itself. In California, legislation has been introduced that would fine, or imprison for up to one year, any person who "sells, offers for sale, advertises, distributes, disseminates, provides, or otherwise makes available" software that allows users to connect to networks that can share files, unless that person takes "reasonable care" to ensure that the software is not used illegally. It defined P2P as follows:

"[P]eer-to-peer file sharing software" means software that once installed and launched, enables the user to connect his or her computer to a network of other computers on which the users of these computers have made available recording or audiovisual works for electronic dissemination to other users who are connected to the network. When a transaction is complete, the user has an identical copy of the file on his or her computer and may also then disseminate the file to other users connected to the network.

Ed Felten observed that this definition "clearly includes the web, and the Internet itself, so that any software that enabled a user to connect to the Internet would be covered." And note that it's not just the author or seller of the software who is at risk, but also any advertiser or distributor. Web links and web hosting are therefore potentially criminalized. Felten further opined:

The bill provides a safe harbor if the person takes 'reasonable care' to ensure that the software isn't used illegally. What does this mean? Standard law dictionaries define 'reasonable care' as the level of care that a 'reasonable person' would take under the

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242 See Bradley Mitchell, Introduction to Peer to Peer (P2P) Networks and Software, at http://compnetworking.about.com/od/p2pperrtopeer/a/p2introduction.htm (last visited Mar. 23, 2005). In peer-to-peer networks, computers will typically be situated physically near to each other and will run similar networking protocols and software. Id. Home computers, for example, are normally configured in P2P workgroups to allow sharing of files, printers and other resources. Id. Although one computer may act as the file server or FAX server at any given time, any home computer can normally handle those responsibilities on short notice, and that is the essence of peer-to-peer networking. Id.

243 Id.


245 Id.


247 Id.

248 Id.
circumstances, which isn’t very helpful . . . . I would argue that trying to build content blocking software into a general-purpose network app is a fruitless exercise which a reasonable person would not attempt. Presumably Mr. Murray’s backers would argue otherwise. This kind of uncertain situation is ripe for intimidation and selective prosecution.249

Yochai Benkler has suggested that strengthening intellectual property rights does not broadly advance the interests of all creators, but rather advantages large vertically integrated content providers while disadvantaging small scale firms and individual creators.250 Consider again the women’s personal web log entries reproduced and discussed above. Like almost all web loggers, the authors engaged in liberal amounts of linking, and made unauthorized fair uses of copyrighted works. Though no actual litigation that generated a judicial opinion has been ascertained, scrutiny of web log entries suggests clashes occur between those who would monetize the online fellowship of lonely women with small children, and mothers who resist such practices. For example, one curse-versant blogger noted:

I’ve been meaning to give you all an update on the MOMS Club® situation. The situation is: it appears to remain true that anyone can link anyone they feel like linking. Even if a large organization threatens you with legal action and says, they ‘will consult’ their attorneys if you do not comply with their demands. Then, they’ll change their story when you refuse to comply and will say something annoying like, ‘It’s unfortunate you won’t comply with my request. I’ll be turning this matter over to the president of the MOMS Club® and it will be up to her if legal action will be taken.’ Because, really, the truth is . . . the person who contacted you was just really pissed off you had the nerve to say unpleasant things about people she likes and she had nothing better to do but email you with empty threats. Also, she never turned anything over to the ‘President’ because the entire thing was a big fat ball of annoying bull shit! Weeeee!251

This level of courage in the face of potentially chilling threats is encouraging, but not every blogger can be as heartily fearless. Another wrote, with apparent angst and trepidation:

249 Id.
I'm trying to find something light hearted to post about, but even Jake announcing that his little brother's favorite food is *dog food* [which is totally true, by the way] to the entire library at story hour has ceased to re-awaken the funny ha ha banter I normally try to write. All I've got is funny not so ha ha & that's really not very fun to write.

Instead of enjoying the 4 day mini-holiday with my family in Utah this week, where I would actually be playing with my children instead of half parenting them from behind my laptop, I get to meet with my lawyer to discuss exciting things like patent laws, copyright infringement, and intellectual property theft! I get to fill out paper work and sign checks! All because people can't seem to abide by that good old rule of thumb, "Do unto others . . . ."252

As a cultural matter, many women may conceptualize copyright laws somewhat differently than men. There are activities in real space which, while open to participants of any gender, tend to be predominantly female pursuits both perceptually and in reality.253 These include quilting254 and other needlework,255 scrapbooking,256 fiction reading,257 and cooking.258

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253 See Mary Anne C. Case, *Disaggregating Gender from Sex and Sexual Orientation: The Effeminate Man in the Law and Feminist Jurisprudence*, 105 Yale L.J. 1, 33 (1995). “Numerous scholars have noted the following phenomenon in a variety of contexts: virtually all societies draw strong distinctions between things, behaviors, activities, and jobs gendered masculine and those gendered feminine.” *Id.*

I am an accomplished needleworker. As embarrassed as I have been to say it, there it is. Back in my days as a graduate student, I made the mistake of talking about attending needlework classes and was teased as a result. I was reminded of this when I reviewed The Subversive Stitch: Embroidery and the Making of the Feminine, a feminist analysis of the needle arts from the Middle Ages to the present. In Roszika Parker’s book, a feminist scholar interested in handwork reflects that she too soon learned never to tell people I embroider. (Annmarie
Quilting, to take up the first example, is not a good fit with intellectual property law. Quilting isn’t typically recognized as an art form because it is often the product of an indefinite group, such as a “Stitch and Bitch,” quilting club in which at each monthly meeting, the entire membership works on one member’s quilting project. Many quilts feature the repetitive use of traditional designs, or the designs are derived from natural objects. Although there are exceptions, quilts are ordinarily used quite mundanely on beds in private homes. They are not something to drop quotes from into conversation, or to display publicly as if they were paintings or works of sculptures. One is in fact well advised not to display a quilt publicly if, for example, a depiction of Mickey Mouse has somehow been incorporated into the design without the permission of the aggressively litigious Disney Company.

Turnbull, interview with the author, 1981; qtd in Parker, 214.) This sociology professor and I both experienced a hangover from Victorian times: things relegated to the ‘feminine sphere’ cannot easily be reconciled with professionalism. That is, even though femininity is no longer as associated with rigidly defined gender roles, embroidery is, and thus it is difficult to reconcile with ‘real work.’


See Shelley Wright, A Feminist Exploration of the Legal Protection of Art, 7 CANADIAN J. WOMEN & L. 59, 90-94, 96 (1994) (describing decisions denying protection to women’s sewing craft productions and noting the marginalization of women under the myth of an artist as a romantic hero); see also First paper assignment for college course by Finke, Paper # 1 Gender Norm Violation, at http://www2.kenyon.edu/Depts/WMNS/Courses/Syllabus/violation.htm (last visited Mar. 23, 2005) (stating in order to experience gender norms, students need to violate a gender norm and assess your own feelings and the reactions of others and write about it).


Id.

Id.

Charles S. Sara, Protect Your Corporate Intellectual Property Position, BIOTACTICS IN ACTION: ONLINE NEWSLETTER FOR BIOTECH MARKETING AND BUSINESS DEVELOPMENT, Vo. 1, Issue 6 (Nov.
Communal web logs offer a text-based cyberspace homology to quilting. Though most are contrived to allow authorship indicia for each individual posting, it is together that the postings form the useful whole. Individual web logs may in turn form intersecting web circles, an image that is evocative of a common quilting pattern. Blog rolls, “hot link” lists of other web logs that host sites recommend, often overlap and repeat as well, constructing informal web rings that interconnect to form an online community.

One recent study of the demographics of web loggers found that women are slightly more likely than males to create blogs. Another academic study of the demographics of blogging ascertained:

An initial consideration of the demographics of blog authors reveals an apparent paradox. Quantitative studies report as many (or more, depending on what one counts as a blog) female as male blog authors, and as many (or more) young people as adults, suggesting a diverse population of bloggers as regards gender and age representation. At the same time, as will be shown, contemporary discourses about weblogs, such as those propagated through the mainstream media, in scholarly communication, and in weblogs themselves, tend to disproportionately feature adult, male bloggers.

As Jessica Litman has observed, clothing and recipes do not generally receive copyright protection, and yet we do not go naked and hungry, nor do we typically observe or experience vacuums of creativity with respect to fashion, or food. Though both sewing and cooking can be social activities, generally they tend to be relatively individualized domestic pursuits. While the distribution of sewing patterns is somewhat commercial and monetized online, as it is in real space, the free sharing of recipes over the Internet is quite common. Some

266 Perseus Blog Survey, at http://www.perseus.com/blogsurvey/thebloggingiceberg.html #demographics (last visited Mar. 23, 2005). "Females are slightly more likely than males to create blogs, accounting for 56.0% of hosted blogs." Id.
268 JESSICA LITMAN, DIGITAL COPYRIGHT 105-06 (2001).
recipe sites feature corporate sponsorship and large amounts of advertising, while others contain exhaustive lists of foods in noncommercial formats, and appear to be public interest oriented in nature. Still others seem devised largely for the amusement of the authors and their friends, such as Knife-wielding Feminists, a "recipe spot for feminist foodies."

3. Commodification and Culture

Scholars such as Martha Woodmansee, Peter Jaszi and Rosemary Coombe have argued that the creativity incorporated into arts and crafts, or into inventive useful items, relies on the underlying works and teachings of others, often reflecting contributions distilled across cultures and nations. The "author principle" that predominates in the copyright and patent law of industrialized countries, however, pretends that some particular individual may take full credit for the whole. On a global basis this orientation privileges the claims of the intellectual property regimes of Western nations over those of non-Western cultures by withholding intellectual property status for folkloric works, or for cultivated (but not genetically modified) agriculture products. Propertization of cultural attributes via Western copyright and patent principles therefore effectively allows some individuals to usurp the rewards from the labor and intellectual creativity of others.


Id. at 152.
When an intellectual property framework is imposed, cultural information takes on the appearance of a natural resource. Consider an information-as-water metaphor.\textsuperscript{279} Essential to life, water derives strength from repetition and relentlessness in small amounts (picture the endless drops that form stalactites, or trickling streams that slowly carve canyons) and can be quickly destructive and wholly uncontrollable in large quantities.\textsuperscript{280} Water both creates and crosses borders, and can be dammed, diverted and polluted.\textsuperscript{281} While the sources of water can be indeterminate and the individual molecules identical and interchangeable, individual tributaries can be identified and credited.\textsuperscript{282} Moreover, water can be solid, liquid or gas depending upon the temperature of its environment.\textsuperscript{283}

Information, like water, can build or destroy seemingly solid institutions, and move without regard to geopolitical border constraints.\textsuperscript{284} It may be sourced, controlled, reconfigured, repackaged, contaminated, and also filtered. Inaccurate or pointless information can be disparagingly analogized to steam ("hot air"), and asserting stringent copyright controls over an informational work can


Physical resources are also subject to different rules depending on their nature. We have different sets of rights for air, minerals, land, and water. Water is a particularly interesting analogy to the electrical charges that are at issue in the Internet trespass cases, as both flow according to the laws of physics. As Blackstone put it, water "is a movable, wandering thing, and must of necessity continue common by the law of nature so that I can only have a temporary, transient, usufructuary property therein: wherefore, if a body of water runs out of my pond into another man's, I have no right to reclaim it." On one view, the Internet trespass cases are all about chasing down electronic "water" in order to reclaim it.


\textsuperscript{281} Id.
\textsuperscript{282} Id.
\textsuperscript{283} Id.

Efforts to control the flow of electronic information across physical borders – to map local regulation and physical boundaries onto Cyberspace are likely to prove futile, at least in countries that hope to participate in global commerce. Individual electrons can easily, and without any realistic prospect of detection, 'enter' any sovereign's territory. The volume of electronic communications crossing territorial boundaries is just too great in relation to the resources available to government authorities. United States Customs officials have generally given up.

\textsuperscript{Id.}
effectively put its distribution "on ice." Scarcities of both potable water\textsuperscript{285} and of useful information privilege those in control of distribution, and disadvantage those with limited or nonexistent financial or political power.

In several contexts information is commodified to an extent that one can fairly easily conceptualize it in an exploitive way, much as a nation's physical natural resources such as water (or oil, or minerals) can be appropriated. Consider the use of public domain folkloric stories as the basis for copyrighted movies. When someone creates a fresh adaptation of a folk tale, the only things protectable by copyright strictures are the altered and added parts.\textsuperscript{286} Everything that existed before the new version was made remains in the public domain, for all to use, assuming one can confidently discriminate between the two sets of components.\textsuperscript{287} Thus, folk tales cannot doctrinally be copyrighted out of general circulation.\textsuperscript{288} However, copyrights do compromise the iterative folklore process: stories morph and expand as they are told and retold, and as they filter through different cultures. The narrative evolutionary process comes to an abrupt halt if every time someone changes a folk story, the alterations are copyrighted, and thereby inaccessible to everyone else for the entire term of a copyright without a complicated authorization or licensing procedure and monetary exchange. Enforcing such an intellectual property right will not likely increase the quantity of existing "public domain" folklore, but will surely decrease the quantity of products that are derived from the extant folklore because of fears of infringing upon other derivative works.\textsuperscript{289}

"Useful" (as opposed to "creative") indigenous knowledge is also vulnerable to commodification. Pharmaceutical companies are known to use folk remedies and traditional healing practices as bases for researching medical treatments that they often patent.\textsuperscript{290} Iron ore might be mined from one country, turned into steel

\textsuperscript{285} http://www.solcomhouse.com/drought.htm (last visited Mar. 18, 2005) (noting that there will be a global water crises by 2025).

\textsuperscript{286} Paul Kuruk, Protecting Folklore Under Modern Intellectual Property Regimes: A Reappraisal of the Tensions Between Individual and Communal Rights in Africa and the United States, 48 AM. U. L. REV. 769, 821-22 (1999) (noting that folklore is protected by general copyright concepts of rights to derivative public domain works). \textit{See also} Paul J. Herald, Reviving the Rhetoric of the Public Interest: Choir Directors, Copy Machines, and New Arrangements of Public Domain Music, 46 DUKE L.J. 241, 248 (1996) (discussing how the derivative work protection "extends only to the material contributed by the author of such work, as distinguished from the preexisting material").

\textsuperscript{287} \textit{Id.}

\textsuperscript{288} \textit{Id.}

\textsuperscript{289} \textit{See, e.g.,} Ann Bartow, Copyrights and Creative Copying, 1 U. OF OTTAWA LAW AND TECH. J. 75, 77 (2004). "It seems highly probable that authors can be negatively affected by the spectre of copyright infringement suits in a manner that burdens and chills the creative process." \textit{Id.}

\textsuperscript{290} \textit{See, e.g.,} Anup Shah, Food Patents – Stealing Indigenous Knowledge (Sept. 26, 2002), at http://www.globalissues.org/EnvIssues/GEFood/FoodPatents.asp (discussing the fact that large companies are getting copyrights on food engineering that cultures have used for generations); TWM website (Oct. 25, 1994), \textit{at} http://twm.co.nz/Biopiracy.html (noting that bio-piracy cheats
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in a second nation, the steel into a toaster in a third, and then the toaster exported back to the very geopolitical entity in which the iron ore was extracted from the earth in the first place. Patentable information makes same sort of "round trip" as physical goods, potentially returning in "value added" form when, as would also be the case with the toaster, consumers in the "source" nation possess the interest and capital to make the requisite purchases.

The collection and use of personal financial and demographic data from domestic citizens, by extraterritorial marketers who will use it to compete with local businesses in the provision of goods and services, can also look like appropriation of natural resources, and lead to depletion of local economies. While certainly observable in real space, this sort of information-based commodification is particularly well facilitated by the Internet.291

Another sort of commodification also bears discussion. Human trafficking involves moving people from one place to another and placing them in conditions of forced labor such as prostitution, domestic servitude, unsafe agricultural labor, sweatshop labor, construction or restaurant work, and other forms of modern-day slavery.292 It is a global phenomenon that occurs within countries and across borders, regions, and continents.293

Human trafficking, whether of factory workers, domestic servants, brides-by-mail, or sex slaves, disproportionately involves women who have been developing counties and their indigenous peoples of $5.4 billion a year in land and knowledge royalties); Vandava Shira, The U.S. Patent System Legalizes Theft and Biopiracy (July 28, 1999), at http://www.organicconsumers.org/Patent/uspatsys.cfm; T.V. Padma, Digital Library to Protect Indigenous Knowledge, SCIENCE & DEVELOPMENT NETWORK (Jan. 10, 2005), at http://www.scidev.net/News/index.cfm?fuseaction=readNews&itemid=1840&language=1 (stating that South Asian countries will create a digital library of the region’s traditional knowledge and develop laws to prevent such knowledge being misappropriated through commercial patents); Report based on seminar held by the Quaker United Nations Office (Apr. 6-7, 2001) at http://www.geneva.quno.info/pdf/final_Jongny_3_report.pdf (making recommendations on how to strengthen the negotiating rights of indigenous peoples); Gerard Bodeker, Indigenous Medical Knowledge: The Law of Politics of Protection, Overheads presented at Oxford Intellectual Property Seminar at Oxford (Jan 25, 2000), at http://www.oiprc.ox.ac.uk/EJWP0300.pdf; Sarah Buchner, Protection of Traditional and Indigenous Knowledge, Tralac website (July 7, 2003), at http://www.tralac.org/scripts/content.php?id=416 (noting that “[t]he lack of a universally accepted definition of indigenous knowledge, together with a lack of defined parameters for the protection of such knowledge is one of the major obstacles to the protection and acknowledgement of this knowledge”).

291 Ann Bartow, Our Data, Ourselves: Privacy, Propertization and Gender, 34 U.S.F.H. REV. 633, 633 (2000). “Cyberspace has become fertile ground for the harvesting of consumer data, and consumers have very little ability to keep their personal information private, especially online.” Id.


293 Id.
rendered objects of commerce. Human trafficking and cross-border information flows are inextricably linked. Operation of a market in humans requires information exchanges between buyers and sellers, and analysts and policy experts assert that effectively addressing human trafficking will rely in large part on a variety of structured “information campaigns.”

A book by Tom Standage entitled The Victorian Internet provides a colorful history of the telegraph and the impact it had on global communications. The only chapter in which women figure prominently is Chapter 8, “Love Over the Wires.” After recounting the details of an “on line wedding” that enabled a woman to marry the man she loved rather than the man her father had chosen for her, Standage related several anecdotes of romantic relationships in which the telegraph played a role, after noting that “[w]omen were regarded as ‘admirable manipulators of instruments’ well suited to telegraphy (since it wasn’t too strenuous), and they could spend the quiet period reading or knitting.”

The current Internet is also utilized as a venue for romantic or erotic social interactions, ranging from “introduction” sites to pornography and cybersex.

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298 Id.

299 Id. at 134.


For those who doubt that psychological immersion occurs in virtual worlds, the best riposte is virtual sexual activity, or “tinysex.” Tinysex is a popular activity in text-based social worlds like LambdaMOO, which has set aside an entire
once spent a very long plane trip seated next to a friendly and talkative but rather
dull woman who treated me to a droning monologue about her apartment,
including location, layout, rent, expected rent increases, furnishings, average
daily temperature, and her parents' medical situations, including their various
symptoms, diagnoses, surgeries, medications and future prognoses. It wasn't
until the flight was almost over and she suddenly disclosed the reason she was
traveling that the conversation became interesting: She was going to meet face to
face, for the first time, a man she had been "Internet dating" for five months,
after meeting him through a for-profit online dating service.

It was upon learning this that, for the first time, I actually affirmatively
solicited some information from her, asking if she had family or friends who
knew where she was going and when she was expected back, for safety purposes.
She assured me she had, and I watched with some fascination at the baggage
carousel as she introduced herself to a man who awkwardly hugged her and then
picked up her suitcase. Hopefully, he ultimately found her more interesting in
person than I had. Presumably after five months of exchanging e-mails, he
understood and accepted her conversational tendencies. While she herself did
not appear to have been "commoditized," it was a commercial vendor operating
over the Internet that initiated and facilitated the relationship.

At least one MMORPG\textsuperscript{301} (to use the seemingly favored acronym) has
overtly attempted to solicit female gainers, with the hope that the presence of
women would, in turn, lure male players, improving the financial prospects of
the game. Greg Lastowka and Dan Hunter have reported:

\begin{quote}
In the nonleveling genre, the major competitor to The Sims
Online is probably There.com's There, which is currently still in
beta testing. According to its promotional materials, There will
be "the first online getaway that gives you the freedom to play
suite of rooms for tinysexual encounters. In some MUDs, sexuality seems to
permeate the entire environment. One study has revealed that even among
players of EverQuest, which does not readily lend itself to sexual simulation,
nearly half of participants who are female in real life have had virtual romantic
relationships with EverQuest partners. Online relationships often have
significant real-life effects on those who engage in them. There are, by now,
numerous accounts of real-life marriages formed out of romantic encounters
that were initiated online. Equally prevalent are tales of real-life relationships
endangered or ruined by virtual betrayals. The most interesting cases have
involved male avatars falling in love with (or having a tinysexual encounter
with) a female avatar, only to discover that another male user controlled the
female avatar. Those who build intimate relationships with gender-swapped
avatars generally report feeling, at the very least, confused and disoriented at
the revelation. The propriety of avatar gender-swapping, therefore, is hotly
debated among virtual-world residents.
\end{quote}

\textit{Id. 301} Massive Multiplayer Online Role Playing Games, \textit{at} http://www.MMORPG.com.
and talk naturally while having fun and making friends.” There has video game elements (e.g., virtual paintball, hoverboarding, and dune-buggy racing), but it is targeted primarily to those interested in hanging out and chatting with friends. Some design features of its interface are explicitly reminiscent of chat rooms. Interestingly, There.com is being marketed primarily to women, with the belief that if the world builders can attract them, men will follow.\footnote{F. Gregory Lastowka & Dan Hunter, The Laws of the Virtual Worlds, 92 CALIF. L. REV. 1, 28 (Jan. 2004).}

The commodification of information affecting women, and the commodification of women themselves intersect in many ways that bear scrutiny as the law of cyberspace continues to develop.\footnote{See generally Ann Bartow, Our Data, Ourselves: Privacy, Propertization and Gender, 34 U.S.F. L. REV. 633 (2003) (discussing how commodification of information and woman intersects in many ways).}

D. Unfiltered Feminism and Democratic Discourse


When newspapers received their revenue primarily from their audience, their economic incentive was to provide the product that the audience most wanted. The diversity in the audiences meant that they could be best served by different, competing papers. Those were the days both of the partisan press and of most towns have competing daily newspapers. In 1880, Leadville, Colorado, a town of 15,000 people, could support six competing daily newspapers. However, when advertisers become the dominant source of revenue, the incentive became less in serving unique audiences and more in serving advertisers. From the advertisers point of view, audiences were not diverse (as long as they were potential purchasers). While previously a paper could profit most by selling a unique product to a particular audience, now it could profit most by a undifferentiated audience to advertisers. Partisanship, as trade journals in the
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the size of the readership would be correlated to interest levels rather than geographic accessibility. Some websites will attract an audience primarily comprised of friends, family, and other acquaintances. This may have unexpected consequences in terms of framing or cabining conversation, and provoking insightful self awareness. As one blogger wrote:

Lunch was lovely but I realized while we chatted, if someone I am talking to reads my website . . . we have very little to talk about because I only have about 5 stories to tell at any given time and I usually tell them on this website first. So conversation is seriously limited. But then on the way home from our lunch date I thought to myself, 'Why don’t you do more listening asshole?' Ha!

Web logs can also assist in the fomentation of political action. A Virginia lawmaker withdrew a bill he drafted from consideration by the Virginia Legislature that would have required women to report fetal deaths after he received more than 500 blistering e-mails from people concerned that the measure would punish women who have miscarriages. E-mail opposition to the bill was apparently generated largely by bloggers. According to one account:

late nineteenth century pointed out, runs the risk of alienating a large portion of the potential audience and inviting a competing paper to serve that alienated portion. “Objectivity” is the name of the journalistic style best designed to alienate no one even if objective journalism pleased most people less than the partisan papers had. Thus, objective journalism is the obvious solution for a paper that wanted to monopolize a diverse population in a given locale. Since objectivity decreased product differentiation, communities found less need for more than one paper. Thus, beginning late in the nineteenth century, as advertising began steadily to increase as a source of revenue, the number town’s with competitively owned and operated daily newspapers began a long decline, from 689 in 1910 to around two dozen now. Today, there are no leadvilles.


John Cosgrove H.R.B. 1677, Fetal Death, Report by Mother, Penalty, at http://leg1.state.va.us/cgi-bin/legp504.exe?ses=051&typ=bi&val=hb1677 (proposing to make mothers responsible to report when a fetal death occurs without medical attendance to the proper law-enforcement
Del. John A. Cosgrove, R-Chesapeake, was shaken by the speed and volume of the response as word of his bill traveled across the country via the Internet. "I've never been blogged before," he said.312 "The tone of the e-mails has been disgusting... [t]he response has been... 'you're a horrible person'... 'you ought to be crucified'... those were the nice ones."313

He may never have been "blogged" before but he has probably made inflammatory proposals previously, he just didn’t get the immediate feedback that web logs facilitated in conjunction with e-mail.

After the appearance of commentary on Fox News314 inquiring whether feminism has "gone too far" because, purportedly, men aren’t sure if they should open the door for women or not, several blogs315 gave people a forum for their reactions, which included multiple assertions that feminists needed to get laid and/or shave their moustaches. After Harvard President Lawrence Summers gave a lecture at which he made remarks about why women did not succeed in math and science careers in numbers comparable to men,316 the blogosphere discussed the matter extensively. Some bloggers pondered whether rigorous scientific research could support Summers’ claims,317 while others debated whether

agency within 12 hours of the delivery and violation of the section was to be punishable as a Class 1 misdemeanor.


312 Id.


314 Neil Cavuto, After You, FOX NEWS (Jan. 7, 2005), at http://www.foxnews.com/story/ 0,2933,1437177,00.html (beginning the article by asking women readers if a man opens a door for you, do you feel patronized?).


SUMMERS was more accurately described as an “asshole” or a “prick.”  

Michael Berube provided my favorite satiric blog entry on the topic, writing:

‘Traditionally, presidents of Harvard have been men,’ said Harvard geneticist Charles Kinbote, the study’s designer and principal investigator. ‘Now, after almost 400 years, we know why. To coin a phrase, it’s in the genes.’

According to Kinbote, the presidency of Harvard University requires a unique array of talents and dispositions which, statistically, only a small handful of women possess. For one thing, it has long been one of the president’s tasks to deny tenure to promising female scholars—personally, without stated cause, and after a department, a college, and a battery of external referees has approved her. My study shows that the X

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Summers is a prick. A complete, total and utter, unbelievable prick. The kind of guy who can make ‘Happy Birthday’ sound like ‘your mother’s a whore.’ Everyone who’s ever met him, even his friends, basically agrees with this. Summers; met him twice - he was a prick both times, and I have numerous secondhand descriptions of him as ‘a prick.’ Even Brad DeLong, who is one of his mates and has coauthored papers with him, agrees that he has a bad first impression.” This seems evidence against him being in essence a ‘prick.’ It’s funny that dsquared hears Summers described as a ‘prick’. At Harvard, it’s almost universally ‘asshole’. Often one doesn’t need to specify: ‘Did you hear what the asshole said?’ or ‘I had a meeting with the asshole. You wouldn’t believe what he said to...’ Which leads to the Crooked Timber-worthy question: is there an important difference between a prick and an asshole? Could we do an ordinary language analysis? To me, prick is more superficial; asshole is deeper (yeah, yeah, it’s intentional). A prick is above all annoying, but it’s often localized and a social defect; you can say, ‘yeah he’s a prick, but he’s really a good guy.’ Can you say that about an asshole? An asshole strikes me as a fundamental personality assessment. I’ve even heard Summers’ assholosity referred to, I’m not kidding, as a genetic inheritance. But we should not neglect environmental factors. It does seem that at this particular historical juncture economics is particularly productive of assholes. But then, his parents were both economists. The nature-nurture debate goes on . . . .

Id.

318 Id.
chromosome contains material that, in combination with another X chromosome, inhibits a person’s ability to do this.\footnote{Michelle Berube, Women Barred From Harvard Presidency by “Genetic Predisposition,” at \url{http://www.michaelberube.com/index.php/weblog/comments/550/} (last visited Mar. 26, 2005).}

These are just a few examples of varied feminist-oriented discourses enabled by the Internet, predominantly occurring within the United States. Recall that the plots of many movies and television shows in the 1960s, 1970s and even through much of the 1980s involved the smuggling of “important information” out of the Soviet Union, from behind the “Iron Curtain.” Sometimes the information was a microdot embedded with the plans for some new and nefarious weapon of mass destruction, but other times it was simply a collection of poems or essays critical of the totalitarian government in power, which sought to repress this “illegal” and “harmful” information.

Today there are efforts to prevent trafficking in “bad information” around the world. Saudi Arabia, a nation in which women do not have citizenship rights equal to those of men, engages in heavy Internet filtering.\footnote{Jonathon Zittrain & Benjamin Endelman, Documentation of Internet Filtering in Saudi Arabia (Sept. 12, 2002), at \url{http://cyber.law.harvard.edu/filtering/saudiarabia/}; OpenNet Initiative, Internet Filtering in Saudi Arabia in 2004, at \url{http://www.opennetinitiative.net/studies/saudi/} (last visited Mar. 26, 2005).} China aggressively filters the Internet within its borders as well.\footnote{Jonathon Zittrain & Benjamin Endelman, Empirical Analysis of Internet Filtering in China (Mar. 20, 2003), at \url{http://cyber.law.harvard.edu/filtering/china/}.} Whether particular types of information can be spirited through these filters will, like so many issues in cyberspace, be largely determined by men but will tremendously impact women.

The English-speaking Internet presence (which regrettably is all the author is familiar with) of women from other nations can be educational and inspiring. For example, the organization RAWA,\footnote{Revolutionary Association of the Women of Afghanistan (RAWA), at \url{http://pz.rawa.org/rawa/index.html} (last visited Mar. 23, 2005); Afghanistan Woman Under the Tyranny, at \url{http://pz.rawa.org/rawa/women.html} (last visited Mar. 26, 2005).} the Revolutionary Association of the Women of Afghanistan, was established in Kabul, Afghanistan, in 1977 by a group of female Afghan intellectuals as an independent political and social organization of Afghan women fighting for human rights and for social justice in Afghanistan. Among other activities, RAWA publishes several ink and paper magazines.\footnote{Revolutionary Association of the Women of Afghanistan (RAWA) featured publications, at \url{http://pz.rawa.org/rawa/payam.html} (last visited Mar. 26, 2005).} When it was formed, it opposed the Soviet occupation of Afghanistan, and when the Taliban took over, it opposed the anti-women policies
and practices of the Taliban. The organization continues to push for a more democratic and women-friendly society in Afghanistan.

Alternatively, the web log Baghdad Burning is the work of one individual, “Riverbend,” who blogs about her life as an Iraqi living in Baghdad, as the war affects her and her friend and family members. She discusses the deprivations, the fear, and the rumors she hears about the war and the actions of the U.S. military. One also learns unexpected things, such as the widespread availability and consumption of the drug Valium in Iraq since the United States invaded.

Websites and web logs devoted to feminism specifically, or women’s issues generally, or simply carrying women’s voices around the globe, are encouragingly numerous. Whether such Internet resources thrive or merely survive will depend on many variables, outside of the control of those who are most effected by them.

IV. CONCLUSION

When differences between women and men are ignored in real space, the consequences are generally unfavorable to women. When, for example, the results of medical studies that used only male subjects are generalized to women, women’s health and welfare suffers. In similar ways, women in cyberspace will be disadvantaged if they are not considered independently within the realm of cyberspace. Differences in the ways women and men use and communicate over the Internet need to be recognized, studied and accommodated by those who would theorize cyberspace law and advocate directions for its evolution. Affirmatively encouraging more women to actively participate in Internet-related fields could help facilitate this involvement. Doing nothing will further entrench

328 Id.
329 Id.
a status quo in which women are assumed to be men, or need to attempt to pass as men, or must aspire to be treated like men online, and are functionally powerless and invisible.