GOOD COMPUTING: A VIRTUE APPROACH TO COMPUTER ETHICS

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Chapter X: Free Speech & Biomatrix Case
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Based on writings in www.computingcases.org prepared by Chuck Huff and Bill Frey and class documents from FILO 3185 prepared by Bill Frey

Abstract

Biomatrix manufactures a medical product called Synvisc, a lubricant injected into the knee to take the place of natural lubricants that disappear with age. From April 1999 to August 2000, a series of messages (16,000 in all) highly critical of Biomatrix were posted on a Yahoo bulletin board. These messages, sent by three individuals operating under 23 pseudonyms, make a series of critical claims about Biomatrix officials, employees, financial status, and products. Biomatrix vigorously denied each of these claims. Yet the quality and quantity of this information may have had negative effects on the financial well being of the company. During the period in which the messages appeared in Yahoo, Biomatrix stock dropped from $35 per share to $21. In response, Biomatrix petitioned the court to subpoena Yahoo to reveal the identities of the persons sending the messages. Yahoo complied identifying Raymond Costanzo, Richard Costanzo, and Ephraim Morris as the authors of the messages. In a summary judgement, all three were found guilty of defamation.

Historical Narrative

Introduction

The Internet has changed how we communicate. It assembles audiences of thousands—even millions—with little or no cost. A few individuals were able to use it to inform the world of genocide in the former Yugoslavian republics. But the Internet also provides a vast audience of ready listeners to the speech of those with more questionable intentions. As we will see below, short selling is a business practice where investors profit from the decline in stock value. If the Internet could assemble audiences interested in information about the financial status of a company and insulate those who would provide negative and, perhaps, false information in this regard, then the Internet could prove most useful for short selling that company's stock. As we will see, although cyber speech is different from real world speech, it still brings about results that "spill out" into the real world. But, since cyberspace lacks the "clear structures of responsibility" present in the real world, assigning responsibility for these real world "spill-overs" becomes most difficult. (Lessig, 172).

The Biomatrix case raises several interesting ethical issues:

1. What is cyber smear and how should companies like Biomatrix respond when they become targets?
2. What is flaming? At what point, if ever, does flaming become defamation?
3. What is short selling? How can it be instrumented by cyber space? Is short selling an immoral practice or an acceptable convention among businesspersons?
4. What are the responsibilities (legal and moral) of Internet Service Providers (ISPs) for the information posted in the discussion forums they provide?
5. Do lawsuits that uncover the identities of individuals operating anonymously in cyber space violate free speech or privacy rights?
6. How responsible are users for examining carefully and critically the information they come across in cyber space? To what extent are they innocent victims of harms that result from false or slanderous information?

In the following narrative, we will …

1. look at Biomatrix and its products,
2. detail the techniques used by cyber slanderers to attack a corporation and its top officials,
3. view sample messages posted by individuals convicted of cyber smear,
4. discuss the financial impacts of cyber smear,
5. follow the legal trail that led to a summary judgment of defamation against three individuals, including two former Biomatrix employees, and…
6. examine the role played by Yahoo, the ISP that provided the discussion forum in which the cyber smear took place.

Biomatrix Profile

Biomatrix manufactures a medical product called Synvisc, a lubricant injected into the knee to take the place of natural lubricants that disappear with age. Synvisc, developed in the late 1990's, was designed to help patients who suffer from osteoarthritis, a condition that produces pain and immobility in the knee caused by the disappearance of natural lubricating fluids along with the deterioration of the cartilage that cushions the knee's movement.

As individuals age the natural chemical lubricants in the knee lose their elasticity. Synvisc is designed to reverse this process. Manufactured from from the comb of roosters, it mimics the chemical structure and properties of the knee's natural lubricants. Injected into the knee in a treatment called visco supplementation, it provides patients immediate though temporary relief from osteoarthritis. In many cases it has helped postpone difficult and painful knee surgery.

Cybersmear

From April 1999 to August 2000, three individuals posted over 16,000 messages critical of Biomatrix in a finance discussion forum provided by Internet Service Provider, Yahoo. Using 23 pseudonyms, they made four, unsubstantiated, critical claims:

1. that Synvisc produces serious side effects,
2. that competitors offered better products,
3. that Biomatrix had covered up negative financial and product information, and
4. that sexual improprieties and barbarous cruelties had been committed by top level Biomatrix employees.

All of these claims were successfully refuted. Yet this false information may have had a negative impact on the financial well being of the company. During the period in which the messages appeared in Yahoo, Biomatrix stock dropped from $35 to $21 per share. We will look more closely into the issue of whether the messages by themselves produced this harm. *Biomatrix* believed this and took legal action to stop the damage. They initiated brought a John Doe suit that asked the court to subpoena Yahoo to reveal the real identities of the senders. Yahoo compiled revealing two former Biomatrix employees, Raymond Costanzo and Ephraim Morris. A third participant, Richard Costanzo the twin brother of Raymond, was also identified. These three, who called themselves the BMX (Biomatrix) Police, failed to substantiate the claims they made in their 16,000 messages. Biomatrix petitioned the court for a summary judgment. On August 2, 2000, each was found guilty of defamation.

Technique

The structure of the Internet made this incident possible. First, the Internet provides individuals with a cheap, ready-made tool for reaching a large, specialized, world-wide audience. It "instruments" one-many communication (one person is able to speak to

many persons) by providing forums through which individual speakers can circumvent the expensive mass media and speak directly to millions dispersed world-wide. It facilitates this communication in a variety of ways. Web pages appear in an environment potentially accessible to millions. Massive search engines provided by Internet portals such as Yahoo and Google place those looking for specific information in touch with those who provide it. (Google sends out spiders to search out and index new web pages and then provides a search engine that prioritizes these in terms of use-history.) The Internet also provides a vast number of discussion forums, virtual communities where like-minded individuals come together to share ideas, common interests, and joint projects. Yahoo provides just such an environment through its finance discussion forum. Here those interested in investing come together to share financial information. In a particular zone of the Yahoo discussion forum, those interested in financial information on Biomatrix came into direct contact with those who claimed to have it and were willing to share it.

To understand another way in which the Internet and computers facilitated the events of this case, consider an impressive fact: three individuals were able to post 16,000 messages in the Yahoo discussion forum in such as way as to crowd out all other discussion. Such domination would be inconceivable in the real world mass media without huge expenditures. The Biomatrix Police used a series of simple techniques to produce these impressive results:

- First, they exploited Yahoo's registration procedures by registering several times under different user names. In all they created twenty three pseudonyms under which they posted their messages.
- Second, they were able to crowd out speech from other participants by exploiting Yahoo's procedure for posting messages. Each new posting was placed at the top of the message string to which it belonged. The Biomatrix message string (the series of interrelated messages and replies that discussed the Biomatrix corporation) was quite long because of the large quantity of messages it contained, most of which was generated by the BMX Police. So by copying and reposting the same messages, the Biomatrix Police kept their messages at the top of the string and pushed other messages down to positions of less prominence.
- The BMX Police exploited yet another feature of Yahoo, anonymity. Singling out and targeting real world individuals is essential to holding them responsible. Anonymity, on the other hand, drives a wedge between the individual as the target of responsibility and that individual's actions. This anonymity led the BMX Police to believe they could act with impunity. (Or rather it created the illusion that they could do so, for in fact, as we will see below, their Internet anonymity was limited by Yahoo data collecting procedures and established legal procedures.) But anonymity is a double-edged sword. It reduces our sense of individual responsibility and tempts us to act with impunity. But it also facilitates legitimate free speech by protecting those who would publicize sensitive information from retaliation by those who would cover it up.

By exploiting these characteristics of the Yahoo discussion forum, the BMX Police appeared as many different individuals, working from distinct sources of information, all of whom had independently reached the same conclusion about Biomatrix, namely, that it was a poorly run company on the brink of financial ruin.

Financial Impacts

Biomatrix officials felt that these messages were producing financial and personal harm. The evidence for personal harm lies in messages like the one quoted above where two Biomatrix officials were personally accused of wrongful and criminal actions. The Biomatrix three were unable to provide any evidence to back up these claims when questioned during legal proceedings.

But the claim for financial harm is more difficult to establish. Biomatrix stock dropped $21 during the period in which the messages appeared. There are other cases in which cyber smear has produced clear financial harm. Rumors appeared online that the Emulex Corporation was under investigation by the Security Exchange Commission. These turned out to be false but damaging: in sixteen short minutes, the value of Emulex stock dropped sixty-one dollars. On the other hand, the Biomatrix stock decline, while coinciding with the appearance of the BMX messages, took place over 16 months. It is probable that other factors also contributed to the decline. Biomatrix, itself, mentions three such reasons in the report it filed with the SEC. We add a fourth:

1. Biomatrix mentioned problems it was having in protecting its intellectual property. It cited patent violations as a factor that could affect its profitability. While it had initiated lawsuits to protect these patents, its financial health depended on the outcome of these suits.
2. Biomatrix also expressed concerns over the regulatory climate under which it and other biotechnology companies operated. Several new products were undergoing FDA approval, and the company's financial health depended on the outcomes.
3. Biomatrix mentioned that they were defending themselves against different lawsuits. Of particular concern was a shareholder derivative suit. Interesting enough, Biomatrix itself, was being accused of short selling its stock, that is, of seeking to profit from a decline in its own stock value. Short selling is also a possible motive behind the activities of the Biomatrix Three. (We'll look at the mechanics of short selling below.)
4. Considerable uncertainty also existed over the outcome of Genzyme's friendly buyout of Biomatrix. This takeover, announced during the period in question, also contributed to the uncertainty concerning Biomatrix's financial health and, perhaps, its decline in value.

It is likely that the Yahoo postings affected Biomatrix stock. But other factors also contributed to this decline. This is an important issue. Can companies, like Biomatrix, point to clear financial harms like decline in stock value caused by false information to justify curtailing free speech in cyber space? Is it necessary to curtail speech to protect companies and individuals from defamation? Or is Mill right when he claims that the

best antidote to false speech is not censorship, that is less speech, but more speech out of which true speech will eventually emerge and prevail?

The Motives

There are three possible motives that led the BMX three to post their message: revenge, short selling, and flaming.

The first motive, revenge, follows from the fact that two were former Biomatrix employees. Under what circumstances did they leave the company? Were they mistreated? Did they feel that they had been mistreated? Were they fired? At this writing, these details are unknown. But we can say that cyber smear provides a ready means for those who would extract revenge for perceived injuries brought upon them by a former employer.

The second motive, short selling, requires some explanation. Simply put, short selling is a method for profiting from a decline in the value of a given stock. At first blush, this seems rather difficult to understand since one usually profits from an increase in a stock's value rather than a decrease. We present a formal explanation of short selling in the following quote from Zlotnick v. Tie Communications, 86 F.2nd 818-820 (3rd Cir. 1988):

> *Where the traditional investor seeks to profit by trading a stock the value of which he expects to rise, the short seller seeks to profit by trading stocks which he expects to decline in value….Short selling is accomplished by selling stock which the investor does not yet own; normally this is done by borrowing shares from a broker at an agreed upon fee or rate of interest. At this point, the investor's commitment to the buyer of the stock is complete; the buyer has his shares and the short seller his purchase price. The short seller is obligated, however, to buy an equivalent number of shares in order to return the borrowed shares. In theory, the short seller makes this covering purchase using the funds he received from selling the borrowed stock. Herein lies the short seller's potential for profit: if the price of the stock declines after the short sale, he does not need all the funds to make his covering purchase; the short seller then pockets the difference. On the other hand, there is no limit to the short seller's potential loss: if the price of the stock rises, so too does the short seller's loss, and since there is no cap to the stock's price, there is no limitation on the short seller's risk. There is no time limit on this obligation to cover*.

Let's break this down by considering how I can profit from 100 shares of stock X that I have borrowed from broker A.

How to profit from short selling:

1. Borrow 100 shares of X from dealer A at T1 (say Monday, October 11, 2004). X is worth $10 a share *at this time* so 100 shares of are worth $1000.

2. Immediately sell these 100 borrowed shares of X at its market value of $10 per share or $1000. This still occurs within time frame, T1.
3. Start spreading false rumors about X on the Internet.

   Post a message in a widely read online discussion forum
   Reregister, copy and repost this message under pseudonyms
   - By c_smear/c1_smear/c_smearrr/etc
   - All people who run corporation X are lying thieves OUT TO STEAL YOUR MONEY. They also DRESS FUNNY too. So SHUN THEM LIKE THE PLAGUE!

4. Lower the price of X to $9 a share.
5. Buy back the 100 shares of X at T2 at its new value of nine dollars a share for a total of nine hundred dollars.
6. Give the 100 shares of X back to dealer A.
7. Pocket the difference between the value of 100 shares X at T1 (one thousand dollars) and its value at T2 (nine hundred dollars). Congratulations! Short selling has just earned you a 100 dollars.
8. But there are two small problems. First, ISPs may be required to reveal your IP address under subpoena from the court. Second, defamation, specifically libel, is illegal.

The third motive is that the Biomatrix Three considered the messages to be flames and therefore protected by Internet free speech and conventions. In other words, they considered their activity online perfectly acceptable given Internet conventions. They also considered the listeners responsible for evaluating the information they provided. If listeners were so ignorant of established Internet conventions that they took everything they read as literally true, the so much the worse for them.

The Legal Trail

Biomatrix, Balzas & Janet Denlinger (plaintiffs), initiated a John Doe lawsuit for defamation. Called "John Doe" because the targets' real identities were unknown since they were operating under usernames and therefore anonymously. To prevail in such a lawsuit, the plaintiffs must show the court that they have a credible case, that is, a case strong enough to go to trial and not be summarily dismissed for lack of evidence. This they were able to do.

The court then ordered Yahoo to reveal the real identities behind the BMX user names. These were Raymond Costanzo and Ehpraim Morris, former Biomatrix employees and Raymond's twin brother, Richard Costanzo.

With the real identities of the BMX Police revealed, Biomatrix was able to bring a defamation lawsuit against them. Each was asked to substantiate the claims he made about Biomatrix and its corporate officers. None was able to do so. Biomatrix asked for

and was granted a summary judgment against the three. On January 26, 2000, all three were found guilty of defamation and ordered to stop posting further messages.

Many did not view this, and other similar cases, as open and shut defamation cases. Of special importance to civil rights groups is the possibility that powerful corporations could use John Doe lawsuits to expose legitimate whistle blowers. This, in their opinions, represented a dangerous to legitimate free speech which could be curtailed by the very possibility (and hence threat) of retaliation. In a related case, two civil rights groups including ACLU, filed a third-party, friend of the court brief, an Amicus Curiae. This argument did not attempt to eliminate John Doe lawsuits so much as strike a better balance between plaintiffs and defendants in defamation lawsuits. This Amicus Curias added the following requirements for uncovering identities behind cyber space pseudonyms:

1. Provide notice to the potential defendant and allow him or her an opportunity to construct a defense
2. Require the plaintiff to specify the objectionable statements.
3. Review the complaint looking for a valid cause
4. Require that the plaintiff produce evidence for each claim
5. Balance the harms to both the plaintiff and defendant. That is, balance the harm produced by defamation to the plaintiff (produced by allowing the speech to continue) with the harm to the defendant of losing anonymity and thus free speech.

Role of Internet Service Provider (ISP)

Yahoo played two roles in this case. First, as an ISP they may bear some responsibility for the content of the messages posted on their boards. The key legal distinction is that between a *publisher* of information and a *distributor* of information. A publisher (think of a newspaper) presumably edits, selects, and evaluates the information it publishes; hence it bears partial responsibility for the content of the information and its impacts. A distributor of information (think of a newsstand operator) does not exercise this editorial discretion; he or she merely provides a place where the information is displayed and disseminated. Yahoo began by playing the role of the distributor of information. Citing free speech protection as a motive, they attempted to distance themselves from the information their users posted through various disclaimers presented to new users as they registered for access to Yahoo message boards. But this case (and others like it) combined with user and community complaints led Yahoo led them to rethink their policies. They have become more actively involved in monitoring the messages, using human readers and software filters to ferret out objectionable content. They also reaffirm their commitment to protect user privacy but clearly specify exceptional situations in which they will make users' information available to others such as court ordered subpoenas stemming from John Doe defamation lawsuits. Should they be compelled to turn over user information, they promise first to notify users two week in advance.

This summary provides an overview of the case. But we need to explore more of its complexity. In the following, we present a chronology, a discussion of ISP

responsibility, and information from the poster point of view, the three individuals who posted the defamatory messages and called themselves the BXM police (BXM = Biomatrix).

Time Line

Biomatrix Time Line

Date	Event	Actors
April 1999 through August 2000	Posting of anti-Biomatrix messages	Richard & Raymond Constanzo Ephraim Morris
April 1999 to July 2000	Biomatrix Shares drop from 35 to 21	
March 2000	Announcement of Genzyme's intention to buy Biomatrix for $245,000,000	
June/July 2000	Initiation of John Doe Lawsuit by Biomatrix	Plaintiffs: Biomatrix, Balazs & Denlinger
July 2000	Court subpoenas Yahoo for identities of message posters (BXM police)	Plaintiffs: Biomatrix, Balazs & Denlinger
8/3/2000	Summary Judgment Against R & R Constanzo & Morris who are found guilty of defamation	Plaintiffs: Biomatrix, Balazs & Denlinger
November 7, 2000	SEC approval of Genzyme plan to purchase Biomatrix	
November 7, 2000	Biomatrix stock rises from $.19 to $19.94	
1/3/2001	Yahoo alters user policies	

Historical Documents

1. Sample Messages

The best way to understand this case is to look at messages in question. Those supporting the Biomatrix Police would label these messages as unrefined but nevertheless important information for those considering investing in Biomatrix stock. Others would consider the messages to be cynical attempts to manipulate the stock market by spreading false and malicious rumors about a company's financial health and the corruption of its top officials.

We first look at the different usernames adopted by Costanzo, Costanzo and Morris. Legal documents filed by Biomatrix identified several usernames under which anti-Biomatrix messages had appeared. The following list shows 12 of the 23 pseudonyms used:

> cd_438; cd_43eight; cd_43eightt;
> rvcrvcrvc_1964; allergictochickenbits;
> dr_stedman; meddra_2000; meddra_2k;
> voteREP; voteREPLCN; vote_republican_2000;
> jenti_is_pro-life

The messages themselves attacked the financial status of Biomatrix in a variety of ways:

1. *Insider Knowledge*. The BMX Police claimed insider knowledge to establish their credibility. They portrayed themselves as public servants devoted to revealing what Biomatrix was trying to cover up. Messages like the following claim insider knowledge of serious legal and ethical breaches committed by Biomatrix:

> *"I am a former Biomatrix employee. I was employed there for over 6 years and reported DIRECTLY to the CEO, Dr. Balazs. While employed, I ran the AC Chemistry Lab which tested production batches of every product manufactured for a variety of CHEMICAL IMPURITITES and general conformance to established specifications. I had many other responsibilities as well…. When it comes to CREDIBILITY, consider the source."*

2. *Unscrupulous Corporate Intentions*. Messages posted by the BMX Police portrayed Biomatrix and Genzyme as unscrupulous companies who would stop at nothing to exploit and deceive outsiders and competitors. They tried to warn off potential investors with claims like the following:

> *"The BMX Police are here to warn investors that corrupt financial institutions, along with the CRIMINAL Biomatrix and Genzyme management, are trying to STEAL YOUR MONEY by misleading investors with FALSE PROMISES of a 'merger' that is not even scheduled to happen."*

"Genzyme and Biomatrix will be SUED FOR INVESTMENT FRAUD as soon the [sic] cancellation of this 'merger' is made public. Indeed Genzyme and Biomatrix management is SOOOOOOO [sic] nervous about the pending lawsuit that they will DELAY the announcement as long as possible…. But the BXM Police will remain to help guide investors through this difficult period. We will be posting FACTS and the TRUTH that Genzyme and Biomatrix are trying DESPERATELY to hide from their investors."

3. *Personal Attacks on Biomatrix Officials*. The Biomatrix defamation suit specified several messages that personally attacked Biomatrix officials, especially top level management. Here are two claims made against high level Biomatrix officials. We have left out the names because of the highly personal nature of these accusations and because Costanzo, Costanzo and Morris failed to provide any backup to these accusations when questioned during legal proceedings:

"Most of you that work there I'm sure already know how much [X] LOVES her women. Just don't reject her offers or you're out the door."

[Y] "is rumored to have been a NAZI SS doctor during World War II…torturing people and experimenting on them like animals."

4. *BMX Police as Whistle-Blowers*. The Biomatrix Police presented themselves as social crusaders out to prevent Biomatrix from harming innocent investors. They claimed that Biomatrix would try to undermine their claims by accusing them of slander whereas in truth they (the BMX Police) were altruistically motivated individuals blowing the whistle on internal corporate wrongdoing. In the following, *meddra_2k* argues that what Biomatrix officials call slander is really whistle-blowing, i.e., the public revelation of true information designed to avoid a public harm:

SLANDER = WHISTLE BLOWING
By meddra_2k
It all depends which side of the fence you're on.
The "pusher" sees the negative information, factual as it may be, as "slander" because they feel that anything that might make stock go down is inherently wrong. Thus, they call it "slander".
The BMX Police know that the TRUTH, as unpleasant as it may be, is NEVER wrong. Indeed, it is our CIVIC DUTY to expose the TRUTH about Biomatrix, its products, and its stock. Thus, we call it "whistle blowing."
The readers of this board are free to evaluate both sides, and their motives for posting, and decide what they wish to do.
Some will learn that this is a SCAM company peddling a SCAM product and run for the door.
Others may not mind that it's a SCAM company peddling a SCAM product as long as the stock price goes up. Certainly, there are enough unethical people out there that won't mind investing in a SCAM that hurts people as long as they profit from it.

This message board is FILLED with such people.
Fortunately, it also has a few do-gooders that help balance the EVIL that men do.

5. *Flaming*. Flaming is a wide-spread practice on the Internet where individuals exchange messages making personal attacks on one another. A flame is aggressive, often obscene, and contains accusations addressed directly to the recipient that are exaggerated and often false. Flames come with their own set of conventions that serve to translate real world shouting matches into cyber world verbal contests. For example, putting words in capital letters is the cyber equivalent of shouting; we saw several examples of this "cyber shouting" in the messages quoted above. While many consider flaming acceptable practice, others find it abhorrent and have created spaces in the World Wide Web where is practice is prohibited. (See Huff and Winters) The following exchange took place between two participants in the Yahoo discussion forum who operated under the usernames, klangwon and cd_43_eighttt. cd_43_eighttt was one of the BMX three:

Message #3
We finally see CD's true colors
by: klangwon
(posted 2/2/00, # 7283)
I nomally [sic] don't read CD's stuff but was scanning today and realized that he had made a big mistake. His "money-grubbing Jewish SCUM" comment is too much. This anti Semitism cannot continue. I am immediately reporting this and hope others do too. CD finally slipped up. It isn't the company he is trashing it is their ethnic makeup.
THIS CANNOT STAND!

Message #4
Klanglost, YOU are Jewish SCUM
By cd_43_eighttt
(posted 2/2/00, # 7285)
MONEY-GRUBBING JEWISH SCUM, that is.
Does THAT annoy you, Klanglost?
Does THAT really piss you off?
Do I fill you with the hate of a thousand NAZIs?
Do you wish you could reach through your computer and strangle the life out of me?
If so, PLEASE STAY AND POST MORE!

As we saw in the Machado case, those who send flames hold that this is an acceptable practice in cyber space and a part of Internet free speech. We'll look at some arguments for and against this claim below. At this point, we can see that flaming is pretty strong stuff, even for the cyber world, and that it allows its practitioners to play fast and loose with the truth as well as other social conventions and norms.

2. Biomatrix Webpage

Biomatrix is now a part of Genzyme. Information on Genzyme can be found at www.genzyme.com. Genzyme sold the rights to synvisc to Wyeth but announced buying them back on November 4, 2004.

3. Legal Briefs: John Doe Papers

The Amici Curiae Brief filed by Public Citizen and the American Civil Liberties Union of New Jersey (ACLU-NJ) discusses the possibility of corporations using John Doe lawsuits to uncover and retaliate against legitimate whistle-blowers. It can be found at www.citizen.org. Do a search into the brief filed in *Dendrite International, INC v John Does Nos. 1-4 and 5-14 inclusive*.

4. Biomatrix SEC Report

5. Article (or Summary): Responding to Cybersmear

Several interesting articles on Cybersmear can be found at www.johndoes.org and www.shrm.org/law/report. Professor Lyrissa Lidsky has an interesting article, *Silencing John Doe* published in the Duke law Journal 855. John I. Hines Jr. and Michael H. Cramer have an article, "Protecting Your Organization's Reputation Against Cybersmear" published by the *Society for Human Resource Management*, May-June 2003.

6. Yahoo ISP Documents (User Responsibilities, Privacy Policy, Click Activated Filter)

Be Careful What you read
Information posted to message boards should not be used as a substitute for independent research, and should not be relied on to trade or make investment decisions. Prudent investors do their homework and don't believe everything they read on message boards. For more information and tips regarding investments and the Internet, please visit the SEC Web site.
Never assume people are who they say they are, know what they say they know, or are affiliated with whom they say they are affiliated. Yahoo! Is not responsible for the accuracy of any information posted on the message boards, and is not responsible for any trading or investment decisions based on such information. Yahoo! Reserves the right to edit, refuse to post, or remove any content.

Yahoo! may send personally identifiable information about you to other companies or people when:
We have your consent to share the information;
We need to share your information to provide the product or service you have requested;
We need to send the information to companies who work on behalf of Yahoo! to provide a product or service to you. (Unless we tell you differently, these companies do not have any right to use the personally identifiable information we provide to them beyond what is necessary to assist us.);

We respond to subpoenas, court orders or legal process; or
We find that your actions on our web sites violate the Yahoo! Terms of Service…

Socio-technical System

A socio-technical system can be described in terms of six categories: (1) hardware and software, (2) physical surroundings, (3) people, roles, and groups, (4) procedures, (5) laws and regulations, and finally (6) data and data structures. A careful look at the Biomatrix STS provides crucial insights into this case.

Hardware and Software. Personal computers connected to the Internet provide the first hardware component. Costanzo, Costanzo, and Morris posed their messages by taking advantage of the cheap access to cyberspace provided by their personal computers.

Other hardware and software components in the case can be located in the composition of the Internet itself, i.e., its three layers (Lessig, 2002, 23-25). First, there are the phone lines, fiber optic cables, and wireless infrastructure that form **the physical layer** of the Internet. Superimposed on this physical layer is e2e, the **code layer**. As Lessig puts it…

> This principle—called the "end-to-end argument" (e2e)—guides network designers in developing protocols and applications for the network. End-to-end says to keep intelligence in a network at the ends, or in the applications, leaving the network itself to be relatively simple (Lessig, 2002, 34).

This second layer of code, e2e, embeds key values. By relegating the complexity to the edges of the internet and building simplicity into the network itself, the code favors **transparency** (as opposed to privacy), **freedom** (as opposed to control), and **anonymity** (i.e., concealment of real world user identity). Lessig's central theme, which he explores in *Code* and the *Future of Ideas*, is that government and commerce are eliminating these values embedded in Internet code by building in systems of control. Two such systems stand out in this case, PICS (filters) and encryption.

The Biomatrix case rests on clear acts of defamation. Since defamatory speech harms its targets, government and business have given considerable attention to how it can be prevented or mitigated. According to Lessig, we control Internet activities through four avenues: **norms** (defamatory speech becomes socially unacceptable), **laws** (we'll look at legal means for controlling cyber speech below), the **market** (restricting access to cyber speech by charging for it), and **architecture or code** (using PICS or encryption). Each itself can be effective; when combined they can together be even more effective. Preventing defamation by embedding controls in code requires changing the architecture of the Internet. Filters called PICS (platform for Internet content selection) represent one such change. This software identifies and automatically blocks defamatory speech. For example, Yahoo currently offers a filter that eliminates objectionable language. The user can choose to activate the filter by a simple mouse click. Two problems arise with PICSs: (1) they can eliminate legitimate along with illegitimate speech and (2) they take

away from Internet users the opportunity to evaluate speech for themselves. This pre-filtering makes it likely that PICS can circumvent user autonomy. Furthermore, since the programmers who design the PICS embed moral choices that the users should be making for themselves, the pre-filtering activity constitutes paternalism.

Another avenue of control lies in locating speech in appropriately labeled domains and then, through encryption technology, permitting access only to those who understand the nature of the restricted speech and actively consent to "hearing" it. For example, pornographic material can be placed in Internet domains to which access is restricted through encryption. Only those who certify certain qualifications (e.g., age) or those who are willing to pay a set price would be allowed access. Access to these protected domains could be restricted to qualifying and consenting adults. Lessig finds this better than PICS because the moral decision concerning consent to listen to the content of the speech is located in the listener rather than the designer.

Physical Surroundings. The events of Biomatrix take place in cyberspace. When we enter cyberspace, we inhabit a world like the training simulations in the movie, *Matrix*. Real world rules, customs, laws of nature, and civil laws are transformed or suspended. Three transformations are especially interesting for this case: (1) the transformation of personal identity, (2) the transformation of responsibility, i.e., the practice of holding individuals accountable for their actions, and (3) the transformation of speech itself, i.e., *how* we speak, *to whom* we speak, and *how we listen*.

Personal Identity. In the real world, personal identity is tied to bodily continuity and social roles. Each of us has a body that we come to understand as the common referent of our mental and physical states. Our bodies provide us with a physically grounded sense of identity that persists through time. We also identify ourselves—and others identify us—through the social and professional roles we play. Family roles (husband, father), religious affiliations (Catholic), jobs (teacher), professional roles (software engineer), and political parties (Democrat) represent some of the markers we use to locate others and ourselves in the social matrix.

Both of these identity fixing practices are transformed in cyberspace. Individuals in multi-user domains can inhabit different bodies, often at the same time. In cyberspace, the ties between individuals and their social and professional roles are loosened. Through different the characters that we create in cyberspace, we experiment with being lawyers, doctors, clowns, political leaders, and criminals. We change roles in cyberspace with the same ease that we change clothes in real space. All of this makes identity more fluid and less definite.

Responsibility. The fluidity of identify in cyberspace changes the practice of responsibility, that is, the manner in which we hold agents accountable for their actions. Agents are difficult to identify in cyberspace because identity is more fluid and because anonymity is the default condition. Actions are also difficult to characterize. When Bungle (a cyberspace character) *created* voodoo doll (a computer program) that forced legba (a virtual character) to "*rape*" Starsinger (another virtual character) in

LambdaMOO (a multi-user domain) something certainly happened. But this something is difficult to capture in real or virtual terms: it was obviously more than a sequence of digital events but less than a real world rape. To say that cyberspace changes the rules from the real world misses the point. Events like LambdaMOO require that we develop a common vocabulary that allows us to move back and forth between cyberspace and real space.

Speaking. The Internet is not just a medium in which speech happens. It provides a network that joins speakers and listeners while overcoming real world barriers like dispersal in time and space as well as expense of access. In the Biomatrix case, the BMX Police said some very specific things about Biomatrix (most of them defamatory) to a very specific audience (individuals interested in investing in Biomatrix). An Internet Service Provider, Yahoo, provided the networking software that put these speakers in touch with their audience at very little cost. Other features of the Internet, such as the ease of copying a few generic messages over and over and then posting them under different pseudonyms, allowed these speakers to display their speech prominently in Yahoo's bulletin board and crowd out other speech. Thus the features embedded in the architecture of cyberspace instrumented the speech of the BMX police. They enabled a form of communication not possible in real space.

The Biomatrix case takes place in the physical surroundings of cyberspace. Here, the meanings of personal identity, responsibility, and speaking undergo substantial transformation. Nevertheless, the events that occurred in cyberspace spilled over into real space and produced real consequences such as a decline Biomatrix stock and damage to the reputation of its corporate officials. Consequently, it is necessary to map the characteristics of cyberspace onto those of real space to get a clear idea of this aspect of the Biomatrix socio-technical system.

People and Roles. Four stakeholders dominate the Biomatrix case: the Biomatrix Police, the Biomatrix Cororation & Corporate Officials, Internet Service Providers (especially Yahoo), and Civil Liberties Groups.

Biomatrix (BMX) Police: Sixteen thousand messages critical of Biomatrix were postedfrom April 1999 to August 2000. These messages were posted under 23 pseudonyms including the following:

> cd_438; cd_43eight; cd_43eightt;
> rvcrvcrvc_1964; allergictochickenbits;
> dr_stedman; meddra_2000; meddra_2k;
> voteREP; voteREPLCN; vote_republican_2000;
> jenti_is_pro-life

Following a John Doe lawsuit, three individuals were identified behind the pseudonyms: Raymond Costanzo and Ephraim Morris, both former Biomatrix employees. A third individual, Richard Costanzo, we Raymond's brother. These three dubbed themselves as "the Biomatrix or BMX Police" i.e., a group of self-styled crusaders whose mission was

to expose the wrongdoing of the Biomatrix corporation and its corporate officials. Later in this case, all three were found guilty of defamation.

Biomatrix Corporation & Corporate Officials
The Biomatrix Corporation along with two of its high-ranking corporate officials were the targets of the 16,000 messages. In response, the corporation and its officers petitioned the court through a John Doe lawsuit to subpoena Yahoo to reveal the real world identities behind the BMX Police. Then, Biomatrix and its corporate officials became the plaintiffs in a defamation lawsuit brought against Costanzo, Costanzo, and Morris. Biomatrix claimed that it had been harmed by the messages in that its stock price dropped from $35 to $21. Its corporation officials claimed they had been harmed by the false information spread about them.

Yahoo, an Internet Service Provider (ISP)
Yahoo provided the BMX Police with an online discussion forum. They also collected information on users as a part of the account registration process. Upon subpoena from the court, they provided the real identities behind the pseudonyms used by the Biomatrix Police. Finally, as ISPs they bear certain legal and moral responsibilities for the content of the information posted at their website. Legally, it remains to be seen whether they are responsible as publishers, media, common carriers, or distributors. (We'll will discuss these four levels of legal responsibility later in this case.) Morally, they may bear vicarious responsibility for some of the actions of the BMX Police. Vicarious responsibility occurs when one agent bears responsibility for the actions of another such as when a parent is held responsible when a child breaks a window. ISPs, because they instrument or make possible certain kinds of actions or because they take on certain supervisory responsibilities may bear vicarious responsibility for parts of these actions

Civil Liberties Groups
Civil Liberties Groups such as the American Civil Liberties Union and ? joined forces to file an Amicus Curiae (Friend of the Court Brief) as an interested third party to a John Doe Lawsuit designed to uncover real world identities behind cyberspace user names. The Civil Liberties Groups joined forces to respond to what they see as increasing incursions into free speech on the Internet. We will outline the main points of their Amicus Curiae in the Laws & Regulations section of this STS description just below. Their concern is that John Doe lawsuits could be used by parties interested in covering up information on illegal or unethical activities by threatening potential whistle blowers with legal retaliation. Civil Liberties Groups have also raised serious free speech concerns dealing with the filtering and encryption systems described above. In general, these groups argue for balancing the need to control harmful speech with the need to preserve free speech online. .

Procedures. In this section, we focus on four procedures that served to structure actions and events in the Biomatrix case: (1) the procedure for signing up for a Yahoo account, (2) the procedure used by the BMX Police to post messages in the Yahoo discussion forum, (3) the business practice of short selling, and (4) a general description of how the Intenet can serve as a widely and easily accessible medium of communication.

[Short selling; signing up for Yahoo account, logging in, & posting messages in finance discussion forum] [Procedures in real world vs. cyber space for determining identity, responsibility, and audience in speaking] Several procedures play significant roles in the Biomatrix case. First, there is the procedure of setting up a user account with Yahoo that would allow individuals access to the Business and Finance message board and allow them to post messages. Important here is the privacy procedure of Yahoo (who collected information about its users) and the conditions under which it would release user ID information. Also important were procedures involved in stock trading, especially computer-driven trading since the decline in Biomatrix stock value (from $35 to $21) provided a possible motive for the defamatory messages. Finally, the stock trading procedure known as short-selling played an important role in this case. In Zlotnick v. Tie Communicatons, 86 F.2d 818,820 (3rd Cir. 1988), the Third Circuit Court describes short selling as follows:

> Where the traditional investor seeks to profit by trading a stock the value of which he expects to rise, the short seller seeks to profit by trading stocks which he expects to decline in value….Short selling is accomplished by selling stock which the investor does not yet own; normally this is done by borrowing shares from a broker at an agreed upon fee or rate of interest. At this point, the investor's commitment to the buyer of the stock is complete; the buyer has his shares and the short seller his purchase price. The short seller is obligated, however, to buy an equivalent number of shares in order to return the borrowed shares. In theory, the short seller makes this covering purchase using the funds he received from selling the borrowed stock. Herein lies the short seller's potential for profit: if the price of the stock declines after the short sale, he does not need all the funds to make his covering purchase; the short seller then pockets the difference. On the other hand, there is no limit to the short seller's potential loss: if the price of the stock rises, so too does the short seller's loss, and since there is no cap to the stock's price, there is no limitation on the short seller's risk. There is no time limit on this obligation to cover.

What is especially interesting is that Biomatrix itself was accused of short selling by some of its investors in a lawsuit brought against them after the events of this case. This was in connection with its merger with Genzyme

Laws and Regulations. **[Three stage legal procedure in narrative. John Doe lawsuit to determine speaker identity. Court order to ISP to provide user identity. Defamation lawsuit to determine speaker responsibility. Amicus curiae to shift process to balance better plaintiff and defendant rights. Consideration of ISP responsibility—does Yahoo operate as publisher, distributer, or common carrier?]** Certainly the legal procedures and laws surrounding the protection of free speech are important here. For example, in a John Does lawsuit designed to get the court to subpoena ISPs for user IDs, it is necessary to show sufficient evidence of defamation. We provide a table that highlights legal decisions and relevant legislation, including decisions on lawsuits against ISPs for defamatory messages posted in their Web sites, lawsuits against ISPs for violating the privacy of uses, and legislation such as the

Common Decency Act (CDA). Of special interest in computer ethics is the relation between the legal responsibility of ISPs for monitoring the activity in their discussion forums and the moral responsibility. The two different in substantial respects.

Data and Data Structures. Yahoo collects information about its users when they open an account for three general purposes: to customize advertising and content addressed to individual users, fulfill user requests for products and services, and to target announcements about specials and new products to interested users. In general, they affirm the importance of protecting anonymity to promote free speech online. However, they provide a series of exceptions to their policy of protecting anonymity that are worth quoting in full:

> Yahoo! may send personally identifiable information about you to other companies or people when:
>
> We have your consent to share the information;
>
> We need to share your information to provide the product or service you have requested;
>
> We need to send the information to companies who work on behalf of Yahoo! to provide a product or service to you. (Unless we tell you differently, these companies do not have any right to use the peronsally identifiable information we provide to them beyond what is necessary to assist us.);
>
> We respond to subpoenas, court orders or legal process; or
>
> We find that your actions on our web sites violate the Yahoo! Terms of Service…

Users do not have to pay for access to Yahoo. However, Yahoo does make money by using the information it has collected about users to help advertisers better target their products. In general, they commit to protecting user anonymity but the above list offers some significant exceptions.

Ethical Reflections

Safety
Individuals (employees, professionals, consultants) who have access to safety information, including risk information, are obliged to make sure this information is made generally available to the public. "Public" refers to those who have to bear a risk but have not participated directly in the decision concerning whether that risk is acceptable. (See Davis) Most of the time this obligation can be carried out through normal activities like testing a new product for safety and documenting use history and then informing the appropriate manager or supervisor. However, there are times when risk information fails to reach risk bearers, especially when those with an interest in covering it up do so. This creates an obligation for professionals who have discovered these risks to ensure that the public is informed.

Online discussion forums like Yahoo's financial section can instrument legitimate, public-serving speech; they can provide means for communicating safety and risk information. But they can also enable other, less beneficial speech. The BMX Police made false and defamatory claims about Biomatrix that caused its stock to drop. Naïve investors, who speculated on the basis of this specious information, may also have been harmed. Can the Internet's capacity to convey essential safety information be balanced with its capacity for instrumenting the harmful intentions of would-be slanderers?

In an Amicus Curiae (a friend of the court brief), several civil liberties groups argue that John Doe lawsuits could be used by unscrupulous companies to retaliate against employees who turn to the Internet to publicize vital safety information that others would cover-up. The Documents section of this case study presents their argument in more detail. In essence, the civil liberties groups contend that the need to communicate sensitive information anonymously must be balanced with protecting decent individuals against slander facilitated by anonymity.

Medra_2k (one of the pseudonyms used by the BMX Police) addressed this issue in his message entitled, "Slander = Whistle Blowing." Here he contends that communicating negative information about Biomatrix can be both slanderous and a civic duty. It all depends on your point of view. From the point of view of Biomatrix, negative information is slanderous. From the point of view of the investor looking for information on Biomatrix, it is whistle blowing and a civic duty. But does the distinction between slander and whistle blowing depend solely on point of view? What about the message's content, its truth or falsity? If content is relevant—and we think it is—then the distinction between slanderer and whistle blower depends also on the veracity of the message. When true, the speaker is a whistle blower. When deliberately false, the speaker is a slanderer. (Why does Medra_2k miss this point?)

Another important issue concerns the connection between anonymity and whistle blowing. If we choose to protect whistle blowing by anonymity, then we also facilitate slander. But there are means for protecting whistle blowers who choose not to conceal their identities. For the last twenty years, legal measures have emerged that protect

legitimate whistle blowers from retaliation. *Pierce v Ortho Pharmaceutical* prohibits retaliation against whistle blowers who carry out a "clear mandate of public policy." (Publicizing risk information represents just such a mandate.) Moreover, since provisions in professional codes of ethics that require professionals to promote public health, safety, and welfare count as "clear mandates of public policy," these codes can be used to defend whistle blowers who suffer retaliation. Professional employees can refuse immoral or illegal orders using their code of ethics as a defense. Lawsuits brought by those who have suffered punishment for speaking the truth can also use codes of ethics as part of their defense. These protections may be difficult to enact (see chapter 5) but they have been successfully used in the past.

Whistle blowing, in its best sense, seeks to prevent harm. But it also cause harm to the target (it harms the target's reputation) and the speaker (it may cost the speaker his or her job). To get a sense of these costs, look at the experiences of Ruth Ibarra and Margaret Gooderal in the Hughes case.) Moreover, whistle blowing can violate duties of confidentiality. So whistle blowing, i.e., going public with information about impending harms, is a last resort, not a first resort. The BMX Police made false claims about Biomatrix, they failed to document their claims, and they resorted to whistle blowing without trying other measures first. Medra_2k's attempt to cloak his actions under the mantle of whistle blowing fall somewhat short of its mark.

Power

The Internet empowers individuals by providing a variety of platforms from which they can speak. These platforms are easy to access, cheap, and allow individuals to network with a large and interested audience. The virtual communities that have been built up in the internet instrument communication not possible in the real world by overcoming spatial and temporal limitations. The Internet connects individuals widely dispersed in space. It also allows for asynchronous communication.

Power and responsibility are necessarily connected. The philosopher, F.H. Bradley puts this in a rather interesting way when he stipulates three conditions for holding an individual morally responsible. (ES I) **Self-sameness**, a metaphysical condition, requires maintaining an identity over time. (We'll look at this issue more when we examine virtue ethics.) **Moral sense** combines three capacities or powers: the ability to distinguish generally between right and wrong, the ability to shape actions in terms of one's understanding of right and wrong, and the ability to respond emotionally to moral relevance. Finally, the **ownership** condition stipulates that the action must stem from the agent's will. This requires situational knowledge and absence of compulsion. Thus, Bradley connects power with responsibility by setting forth three requirements for holding an individual morally responsible: self-sameness, moral sense, and ownership.

We best understand responsibility through a legal metaphor. Being morally responsible means having to answer before a moral tribunal or court. (ref) The moral tribunal sets forth certain standards. Should our answers fall short of these standards, then we must provide an account in terms of the "conditions of imputability," i.e., self-sameness, moral sense, and ownership. Put differently, we offer excuses based on our lack of power in this situation to act up to standard. Power refers specifically to the conditions we set forth in the above paragraph. Most frequently we offer excuses like, "I didn't have full knowledge of the situation," or "I was acting under compulsion." If these excuses fail to "get us off the hook" then punishment kicks in. Falling short of moral standards creates a debt that we pay through punishment.

This rather formal account of the connection between power, responsibility, and punishment can be supplemented by thinking about the martial arts. Mastering the skills of the martial arts (kung fu, jujitsu, karate) give us power over others. What is also true—but less understood—is that they imply responsibility in the form of self discipline and restraint on when and how to exercise this power. So a student's apprenticeship begins with the performance of seemingly irrelevant tasks which teach the discipline of exercising these powers morally. In the martial arts, moral education and self-defense skills are inseparable; they are two sides of the same coin.

The Internet also empowers individuals by providing them with cheap access to a vast audience of interested listeners. With this power comes the potential to do great harm as the BMX Police did when they drove down the price of Biomatrix stock by disseminating false information through Yahoo's financial discussion forum. How, then, do we direct this power toward the good, if this is, indeed, possible?

Lessig points out three ways we can control speech in cyberspace: code, norms, law, or the market. We could change the **code** of the Internet through PICS (programs that filter out objectionable speech) or encryption (which would allow us to isolate domains of objectionable speech). **Norms** like netiquette or moral duties (tell the truth) represent the ideal way since good behavior would be generated from within the agents rather than be imposed on them from above. The **market** would restrict access to those willing and able to pay for it. Finally, the **legal** option has been pursued through legislation seeking to control speech (CDA), establish a framework for anti-defamation lawsuits, and fine tunings such as John Doe suits designed to pierce speaker anonymity.

How should we steer or direct the power that the Internet provides us? Should we change the Internet's code, rely on ethics and norms, use market mechanisms, or operate through the law? Which method would be most effective? Which is most consistent with autonomy? Should we restrict practice on the Internet the way we restrict practice of the martial arts? (Allow only those who demonstrate moral discipline access.)

Free Speech

By this time, you may already have worked through various rights relevant to computing and computing activities. The rights framework we have adopted in this book is based on the following:

1. A right is a *capacity of action essential to autonomy* that others are obliged to recognize and respect.

2. A duty is a principle that *obliges us to recognize and respect the legitimate rights* claims of others.

3. *Rights and duties are correlative*; for every right there is a series of correlative duties and duty-holders.

4. For a right claim to be legitimate, the right must be *essential* to autonomy, *vulnerable* to a standard threat, and imply correlative duties that do not deprive the duty-holders of anything essential (*feasible*).

5. Correlative duties generally fall into three categories. First are the most fundamental duties *not to deprive* right-holders of their right. Second are the duties *to prevent* others from depriving right-holders of their rights whenever possible. Finally, in cases where right-holders have been deprived of their rights, there are the correlative duties *to aid those deprived.*

The main claim of freedom of speech consists of the right to express our opinions, even if—and especially when—these are offensive to others. Is this a legitimate or valid claim? If so, it must be essential, vulnerable, and feasible. Why would freedom of speech be essential to autonomy? Is part of the formulation of essential thoughts the ability to speak them publicly and receive feedback from others? What represents the standard threat to freedom of speech? Is it censorship (which certainly consists of the suppression of speech)? Is defamation a form of censorship or a legitimate reaction to harm-causing speech?

John Stuart Mill limits freedom of speech by what he calls the harm principle. If the speech threatens to harm someone (the speaker not included) then society can suppress that speech in its own defense. So yelling, "Fire!" in a crowded is not protected under the right of freedom of speech. Inciting to riot, that is, motivating others to inflict harm, would also, presumably, not be a part of legitimate free speech. Freedom of speech—even for its most vociferous advocate—is not absolute but has its limits.

Mill bases his argument against censorship on the *content* of opinions. He shows how censorship is founded on the untenable position of infallibility. If one censors opinion contrary to received opinion, then one insulates it from every avenue of criticism and improvement. In the final analysis, this assumes without proof the veracity of the

received opinion. His argument explores the charge of infallibility by looking at three possibilities:

1. *The content of the speech is true*. In this case, censorship is wrong because it denies society of the benefit of the truth. This is the most obvious case of the wrongfulness of censorship.

2. *The content of the speech turns out to be (only) partially true*. In this case, censorship is still wrong because it suppresses part of the truth and thus denies society its benefits.

3. *The content of the speech is entirely false*. This is the test case. If censorship is wrong even when the view suppressed is entirely false, then this is the telling argument. For Mill, censorship *is* wrong even if the suppressed speech turns out to be entirely false, because suppressing the false deprives the truth of *clarity* which is achieved by contrasting the true with the false and *vigor* which is purchased by defending the true from the challenges of the false.

If we modernize Mill's argument, it would seem that he would be disturbed by the use of defamation lawsuits to control cyberspeech. If the BMX Police spread false information about Biomatrix, then Biomatrix should counter with more truth. Defending itself in Yahoo would clarify its position (by contrast with the false) and add vigor to its claims.

So far we have examined free speech in terms of its content. But what about the speaker? In *First National Bank of Boston v Belotti* 435 U.S. at 765, 98 S. Ct. at 1407, 55 L. Ed. 2nd at 707 (1978) the Supreme Court of the United States extended corporate free speech to include the political along with the commercial. Commercial free speech allows a corporation to advertise its products on TV, by mail, or in the newspaper. But the First National Bank of Boston took out ads against a ballot referendum in a Massachusetts election, an example of political speech. The minority opinion of the Supreme Court expressed strong concern about capacity of corporate speech to drown out individual speech in the political arena. The majority, however, focused on the speech, not the speaker, territory more hospitable to those arguing against censorship.

This also makes sense in cyberspace where individuals have more equal access to their audience. In real space, the audience is accessed only through the expensive mass media giving the advantage to the corporation with its huge financial resources. In cyberspace, the networking capacities of the Internet put the speaker in direct contact with the audience and thus circumscribe the need for purchasing access to audiences through the expensive mass media.

Vicarious Responsibility and Internet Service Providers

Vicarious responsibility, holding one agent responsible for the actions of another, goes against most of our moral intuitions. So when it comes to holding Yahoo responsible for the defamation of the BMX police, we would expect most of you to find this, somehow, wrong.

Vicarious responsibility, though, is accepted in two areas. First, we hold parents (legally) responsible for the actions of their children, primarily because the children themselves have not fully developed the capacities necessary for taking full responsibility. So when a child hits a towering fly ball through the second floor window of the local school, the parent (or the insurance company) gets the bill.

Second, we hold managers vicariously responsible for the actions of their subordinates under certain conditions. If subordinates are acting under orders, they are still responsible. The excuse, "I was following orders," was used after the Second World War to justify Nazi atrocities but was ultimately not accepted at the Nuremburg Trials.

Managers have been found responsible for the actions of their subordinates in situations where they did not even know what they were doing. (*U.S. v Park* discussed by Larry May in *The Morality of Groups*, p. 89.) If subordinates acted in their supervisor's interest or if supervisors neglected to make themselves aware of what their employees were doing in their name, then managers can be held (vicariously) responsible, that is, responsible for actions not properly their own.

According to the law, there are three analogies under which we can treat ISPs. If they are treated as **publishers**, then they are responsible for what appears in their portals because, as publishers, they can exercise editorial control over its content. If they are seen as **common carriers** (think about the phone companies who provide the wires for communication), then their responsibility is limited to restricting access to the medium of communication. (They could install filters to weed out pornographic content.) Finally, if they are treated as **distributors**, they are not responsible for the defamatory content that appears in their forums but they are responsible for its timely removal once notified of its presence, as well as preventing it from reappearing.

IPSs have two key tools at their disposal for treating harmful content. They can filter speech as it comes into their domain through PICS (see the STS section of this chapter) or they can isolate objectionable speech into certain domains sealed off by encryption. They can also set guidelines (along with users) as to what constitutes objectionable speech and how to deal with it. As far as vicarious responsibility, we propose a framework summarized in the following table:

ISP	**Foreseeable Harm**	**Unforeseeable Harm**
Intended Harm	1. Responsible	2. *Not* responsible
Unintended Harm	3. Responsible	4. *Not* responsible

By crossing foresight with intention, we can classify harms caused by the speech broadcast (or instrumented) by ISPs.

1. Internet Service Providers are responsible for harms that they both intend and foresee. Although we know of no case like this, an ISP could intend harm to a competitor and allow a user to post information in its bulletin boards that defame this competitor. Here responsibility (and blame) is clear because it was both intended and foreseen.

2. Internet Service Providers are not responsible for harms that they intended that were brought about accidentally by means they did not foresee. Here again, although not corresponding to an actual case, an ISP through luck could have had a user who posted defamatory information about a competitor. The ISP had intended harming the competitor themselves but the user beat them to the punch. They are not responsible because there is no connection between intention and result. But they are not responsible by luck, not design.

3. This third category covers categories such as recklessness and negligence. An ISP foresaw (or could have foreseen) a certain harm but took no measures to prevent it, because they didn't bother (**negligence**) or they perceived certain gains by risking it (**recklessness**). In neither case was the harm directly intended. But they could have stopped it, and they failed to do so.

4. ISPs are not responsible for harms that they could not have foreseen and did not intend. But they are responsible, once these have occurred, for taking measures to prevent their reoccurrence.

We certainly have not made the case for the vicarious responsibility of ISPs in cases like Biomatrix. But this framework does help set the context for an interesting discussion of their responsibility in cases like Biomatrix as well as others.

Exercises

Biomatrix Exercises

1. **Problem Generation**: using the Intermediate Concept Grid, discuss the potential moral problems facing Yahoo as it implements its new policies on privacy and participation in its discussion forums.

	Ethical Issues				
	Safety	**Privacy**	**Intellectual Property**	**Free Speech/ Ethical Dissent**	**Digital Divide**
Issue	"A thing is safe if, were its risks fully known, those risks would be judged acceptable in light of settled value principles." (MS, 108	**Relational Model**: Relevance of information to relation between possessor and seeker	Property is a natural right; we mix our labor with something and it becomes ours Consideration of liberties bundled under property: possessing, excluding others, disposing of, profiting from	Right to express opinions or views, even if others find them objectionable According to JS Mill, this right is limited by the harm principle (speech can be checked if it is likely to significantly harm others)	Gaps in accessing computing technology that arise between various groups based on country, race, gender, and income
Problems in Context (Biomatrix)					

2. Testing: In the testing phase of the software design cycle, we use the ethics tests and a feasibility test to evaluate, compare, and rank different solutions to a problem we have identified. The following is a scenario that provides an opportunity to evaluate alternatives of action. WARNING: THE FOLLOWING EXERCISE CONTAINS STRONG LANGUAGE!

"I am GOD!!!!!!"

You are a Yahoo employee, recently hired, and in charge of monitoring the content of the messages posted at various Yahoo message boards. Today, several individuals participating in the discussion forum in the Business and Finance section have reported that an individual they suspect was a former employee of Biomatrix has been posting messages that are highly critical of them and possibly defamatory. You decide to monitor the situation first hand and find the following exchange:

Message #1

I'm not CD, I know him from Biomatrix
by i_know_who_cd_is
(posted 2/2/00, # 7224)
And if he doesn't leave the board right now I'll post his name right here, right now! I'm not bluffing. I'll do it. If he values his anonymity he'll leave now.

Message #2
I AM GOD!!!
by: cd_43eighitt
(posted 2/2/00, # 7232)
No one is going to SCARE ME OFF THIS BOARD!!!
SUCK AN EGG!!!

Message #3
We finally see CD's true colors
by: klangwon
(posted 2/2/00, # 7283)
I nomally [sic] don't read CD's stuff but was scanning today and realized that he had made a big mistake. His "money-grubbing Jewish SCUM" comment is too much. This anti Semitism cannot continue. I am immediately reporting this and hope other do too. CD finally slipped up. It isn't the company he is trashing it is their ethnic makeup. THIS CANNOT STAND!

Message #4
Klanglost, YOU are Jewish SCUM
By cd_43_eighttt
(posted 2/2/00, # 7285)
MONEY-GRUBBING JEWISH SCUM, that is.
Does THAT annoy you, Klanglost?
Does THAT really piss you off?
Do I fill you with the hate of a thousand NAZIs?
Do you wish you could reach through your computer and strangle the life out of me?
If so, PLEASE STAY AND POST MORE!

Yahoo provides its users with a series of "community guidelines" designed to maintain a civil dialogue in the discussion forum. You review these guidelines:

1. Do not harass, abuse, or threaten other members.
2. Do not post content that is obscene or otherwise objectionable.
3. Try to stay on topic. If you want to discuss a topic that is not related to the community area in which you are participating, try going to anther topic area or create a new one.
4. Refrain from using these community services for commercial or advertising purposes.
5. Don't post copyrighted content without permission from the owner.

6. Adult-oriented content is permitted only in areas marked as "adult Content" areas. You must be 18 years old or over to access these areas (for example, adult chat and adult clubs).

What should you do? Design your own solution and use the ethics test matrix to evaluate it or construct an ethics testing matrix to evaluate the following three options:

1. Do nothing. If the users are offended by cd_43eighttt's remarks they can ignore his messages. Besides this is just flaming, a common practice in online community discussion forums.
2. Expel cd_43eighttt from the message board. Make sure that he or she doesn't return under a different username.
3. Contact cd_43eighttt privately and give him a warning: if this activity continues (if you receive more complaints), you will expel him from the discussion forum.

Use the following grid as a guide in preparing the Ethics Test comparison:

Test/Solution	**Reversibility**	**Public Identification**	**Harm/ Beneficence**	**Feasibility**
Solution 1				
Solution 2				
Solution 3				

3. Solution Generation: In this phase of the design cycle, you will be generating solutions to the problem(s) formulated in the previous phase. To prompt this, we are going to have you use a benchmarking activity to get the solution generating process started.

The ISP you work for is redesigning its discussion forums in response to user complaints about participants who don't stay on the topic, use obscene language, threaten and harass other users, and in general abuse the norms of good discussion behavior. Your job is to gather information on how other ISPs have set up their forums. (We provide you with information from NBCi, CNN, and Yahoo. You need to update this and look at other ISPs.) Your job is to compare different discussion formats, looking for strengths and weaknesses, and make recommendations for your employer as to the kind of forum they should set up.

4. Work out the right of free speech using the Rights/Duties Table. You will need to come up with a summary of free speech (approximating a definition); show that it is essential to autonomy and integrity, vulnerable, and that it does not deprive the correlative duty holders of something essential. Finally, describe the levels of correlative duty and each correlative duty-holder. Use the table below as a guide.

Free Speech	**Definition**	**Justification**	**Correlative Duty and**	**Correlative Duty Holder**
		Essential	Not to deprive or violate	
		Vulnerable	Prevent deprivation or violation	
		Feasible	Aid the deprived	

5. Using the Virtues Table, develop an account of the virtue of honesty. Use the following table to help guide the process.

Virtue	**Description**	**Excess and Defect**	**Skill(s) Required**	**Supporting emotions, attitudes, and beliefs**	**Moral Exemplar**
Honesty		*Excess*		*Emotion*	
		Defect		*Attitude*	
				Belief	

Biomatrix Perspectives

ISP

Yahoo played a crucial role in this case as an ISP (internet service provider). They got things started by setting up a message board under the Business and Finance section of their web page where investors could exchange information on investment targets. A message board functions similarly to email; users interested in posting financial information sign in, find the message board, write messages, and send them to be posted. Posted messages are read by others who can choose to reply. Posters (those who post messages) are known in the discussion forum by their user names so that anonymity is partially protected. Yahoo collects information about user identities as a requirement for access to the discussion forum. They commit to maintaining privacy and state the conditions under which exceptions to privacy will be made. If users agree to this policy they complete their registration. If not, then they will not be allowed access to the forum. Yahoo does provide an explanation of why they collect this information: "Yahoo! uses information for three general purposes: to customize the advertising and content you see, to fulfill your requests for certain products and services, and to contact you about specials and new products." (See Yahoo! Privacy Center)

Yahoo originally intended to provide a forum for information exchange and nothing more. Nevertheless, such forums are largely characterized by the behavior of participants. *Irresponsible* individuals can post false information and spread malicious rumors; they can harm people and organizations. In the Biomatrix case, Raymond and Richard Costanzo and Ephraim Morris spread false rumors about the sexual activities of Biomatrix officials and employees. They also made questionable claims about the side effects of Biomatrix's product, Synvisc. Biomatrix officials found these messages so offensive, that they brought a defamation lawsuit against these individuals. The court agreed finding the defendants Richard Costanzo, Raymond Costanzo, and Ephraim Morris all guilty of defamation in a summary judgment. Well look more closely at the messages posted by the BXM police (the name Raymond Costanzo, Richard Costanzo and Ephraim Morris gave to themselves) and the defamation lawsuit below.

The BXM police were a major presence on the Yahoo Business & Finance discussion forum for several months. They flooded the message board with 16,000 postings, crowding out other users. They insulted and threatened those who disagreed with them; at one point they stooped to making outrageous anti-Semitic comments about Biomatrix officials and other Yahoo message board participants. Their actions caused harm, although the nature and extent of that harm is not entirely clear. *Their* responsibility is apparent, but what about the responsibility of the ISP, Yahoo? Some have argued that Yahoo should be held responsible because it instrumented the actions of the BXM police; it provided them with the discussion forum and the software support system that made their defamatory actions possible. Yahoo also failed to prevent defamation by not exercising sufficient supervisory or even editorial control over the discussion forum. (Think about why would Yahoo have not wanted to exercise more editorial control over the content of their discussion forum.) Finally, some would hold

Yahoo responsible because only they have pockets deep enough to compensate Biomatrix for damages. They should pay because they can pay.

To what extent *is* Yahoo responsible for what occurs within its discussion forums? Although this question can be approached both legally and morally, neither perspective offers a completely unambiguous answer. Legally, it depends on whether Yahoo plays the role of a *publisher,* a *distributor,* or a *common carrier* of information. Publishers exercise editorial control; they review the material, revise its style and content, and thus contribute to what is published. Their contribution can be understood through analogy with book or newspaper editors. Distributors, on the other hand, play a more passive role; they pass along information generated by others but do not determine or shaping the style, content, or quality of this information. Common carriers, like the phone company, play essentially the same passive role as distributors in that they exercise no control over content. So the legal question is whether Yahoo was a publisher, a distributor, or a common carrier of the BXM police posters.

This legal analysis is somewhat general. So let's add some content by exploring three analogies. Is the role and responsibility of an ISP more like that of a parent, a telephone service provider, or a the publisher of a professional, academic journal?

- We hold parents morally responsible for the actions of their children, first, because children are not full-blown, responsible agents. Since they lack the many of the necessary capacities, we cannot hold them fully responsible. Their parents fill in this gap by representing them, counseling them, and serving as their guardians. Parents also provide children with feedback in the form of reward and punishment that helps children grow into responsibility. Yahoo can supervise the activities of its discussion forum users. It can set standards, hire monitors to enforce them, and use software filters to delete messages that violate them. But the kind of supervision exercised in these two cases is clearly different. For one thing, parental supervision is more intimate and extensive than is possible for an ISP. For another thing, if Yahoo were to exercise supervision as pervasive as parental supervision, they would have to violate the privacy of their users. So the analogy between ISP supervision and parental supervision breaks down when we turn to consider the extent and pervasiveness of the supervision; parents are responsible to a degree that could never—and should never—be met by an ISP.
- Telephone companies are not held responsible for what their users do with telephones. Monitoring all telephone conversations would be practically impossible due to the sheer volume. Moreover, this would violate the privacy of telephone users. (How could we assure that the information telephone companies collect during their monitoring forays would not be misused or carelessly stored?) Because Yahoo's message board contains less volume of activity, monitoring would be possible, especially with the combined use of human editors and software filters. Yahoo, because of its socio-technical context, could monitor messages more effectively with less negative impact on privacy.
- This brings us to a third analogy. Editors of professional academic journals are clearly responsible for what they publish. Their job is to ensure that it is accurate,

attributed to the right source, and substantiated by objective evidence. To ensure this, they employ a series of measures they require that: (1) authors provide their real identities and take responsibility for the content of their submissions; (2) submissions be sent to qualified editors for peer review to determine their quality and veracity; (3) authors provide the means whereby others can independently test and validate their claims. Compared to professional journals, the information posted in online discussion forums is unrefined. This does not mean that it is useless or false, only that it is raw and requires more work. Online discussion may become gateways through which vital information is integrated into the intellectual commons; but as they stand they do not contain the procedure to refine and finish this information. Yahoo acknowledges this in a proviso it posts to be read by those entering its message board:

> *Be Careful What you read*
>
> *Information posted to message boards should not be used as a substitute for independent research, and should not be relied on to trade or make investment decisions. Prudent investors do their homework and don't believe everything they read on message boards. For more information and tips regarding investments and the Internet, please visit the SEC Web site.*
> *Never assume people are who they say they are, know what they say they know, or are affiliated with whom they say they are affiliated. Yahoo! Is not responsible for the accuracy of any information posted on the message boards, and is not responsible for any trading or investment decisions based on such information. Yahoo! Reserves the right to edit, refuse to post, or remove any content.*

- Yahoo in this disclaimer is distancing itself from the content of the messages posted in its discussion forum; it is trying to play the role of a distributor of this information rather than a publisher. If we compare the role Yahoo prescribes for itself in its disclaimer with the role of a journal editor, we that the difference lies in Yahoo's greater passivity. But how far should these disclaimers go toward getting it off the hook. Yahoo reserves the "right to edit, refuse to post, or remove any content." This makes it more than a distributor of information but less than the editor of a professional journal.

This does not provide a definitive statement of the legal and moral responsibility of Yahoo in the Biomatrix case. (We want you to think on this further.) But we can come up with a preliminary problem specification for Yahoo in this case. Yahoo, it seems, needs to balance four responsibilities are not always consistent with one another: (1) promoting free speech by protecting user privacy and anonymity, (2) promoting responsible use and behavior in its discussion forums; (3) anticipating and taking effective measures to prevent irresponsible use, and (4) developing effective responses to irresponsible use that, nevertheless, occurs. This forces Yahoo beyond the position of a mere passive distributor of information but still places it short of the care required of the editor of a professional academic journal.

Posters

At this point, little is known about the reasons that Raymond Costanzo, Richard Costanzo, and Ephraim Morris had for posting some 16,000 anti-Biomatrix messages. We can think of three. Perhaps, since two of the three were former Biomatrix employees, they wanted to get back at the company that mistreated them as employees. Another motive lies in the practice of short selling. In Zlotnick v. Tie Communicatons, 86 F.2d 818,820 (3rd Cir. 1988), the Third Circuit Court describes short selling as follows:

> Where the traditional investor seeks to profit by trading a stock the value of which he expects to rise, the short seller seeks to profit by trading stocks which he expects to decline in value….Short selling is accomplished by selling stock which the investor does not yet own; normally this is done by borrowing shares from a broker at an agreed upon fee or rate of interest. At this point, the investor's commitment to the buyer of the stock is complete; the buyer has his shares and the short seller his purchase price. The short seller is obligated, however, to buy an equivalent number of shares in order to return the borrowed shares. In theory, the short seller makes this covering purchase using the funds he received from selling the borrowed stock. Herein lies the short seller's potential for profit: if the price of the stock declines after the short sale, he does not need all the funds to make his covering purchase; the short seller then pockets the difference. On the other hand, there is no limit to the short seller's potential loss: if the price of the stock rises, so too does the short seller's loss, and since there is no cap to the stock's price, there is no limitation on the short seller's risk. There is no time limit on this obligation to cover.

So it is possible that their motive was pure and simple greed. A final reason—perhaps 'explanation' is a better word—lies in what we saw at play in the Machado case. Flaming is a partially accepted practice Online (especially when operating anonymously). Moreover, flaming involves bluffing (making threats one never intends to carry out), exaggeration (making extravagant, unsupportable claims) and a great deal of insulting. Add to this the assumption that what we do online has no real world consequences, and we have an explanation for—although not a justification of—the behavior of the BXM police. (In many of their messages, Raymond Costanzo, Richard Costanzo and Ephraim Morris referred to themselves as the BXM police, i.e., as those who saw it as their mission to expose the wrongdoing of Biomatrix.) They did what they did because they came to believe (perhaps through self-deception) that it was permissible.

Richard Costanzo, Raymond Costanzo, and Ephraim Morris were all found guilty in the defamation lawsuit brought by Biomatrix. They did not provide evidence for the claims they made in 16,000 postings under various pseudonyms. It would be easy to dismiss them as liars or as the occasional rotten apples that lie in every barrel. But this quick dismissal would prevent us from learning some very important lessons. As of this date, we are still not sure why they did what they did. But we can think of three interesting arguments that they might have used to justify their actions.

But why bother? The insight we gain by looking further into these arguments might provide ISPs with useful insights for designing or modifying online discussion forums. People sometimes behave badly in such forums. Why? Three plausible arguments can be constructed to explain what the posters did; (1) the argument from the virtual world; (2) the argument from the practice of flaming; (3) the argument from the right of free speech. We do not offer these arguments as paradigm examples of valid arguments; in fact, we think that each one suffers from substantial flaws. But in the case of the first two (virtual world and flaming), they are strengthened by the fact that they overlap with and compliment one another. We offer these arguments as a means of entering into an imaginary dialogue with the BXM police. Look at each argument. Consider its strengths and weaknesses. Think about whether you have made similar arguments in the past to justify actions. And give careful thought to their limitations and weaknesses.

The argument from the virtual world.

The virtual world is not real; it is an isolated world created by imaginative humans working with computers and computer networks. Moreover, it is a self-contained world; what happens in the virtual world stays in there and never spills over into the real world. We can best understand this through an analogy with games.

1. Games have *boundary conditions* that separate them from the real world. Baseball, for example, is physically separated from the real world. It takes place inside a baseball field. These physical boundaries (and there are also psychological boundaries) serve to separate the game world from the real world.
2. The game world is built around *rules.* In baseball the team with the most runs wins. A series of rules determines legitimate ways to score runs. Baseball is constituted by a set of rules that allows us to understand and order the activities performed in the game world. These rules hold in the game world but not in the real world. To repeat the central point, there is no spillover into the real world.
3. Games require individuals (participants) to play certain *roles.* Different roles in the game world coordinate to provide a different and more complex mode of structuring. Rules allow us to understand and integrate actions; roles allow for further integration of individuals and their activities. In baseball, we have the roles of hitter and pitcher; hitters try to hit the ball thrown at them by the pitcher; pitchers throw the ball at hitters and try to get them out.
4. Finally, games provide us with closure. We enter the game world, carry out the rule- and role-governed activities, and then conclude the activities. In baseball, we play for nine innings. At that point the game is over unless there is a tie. Somebody wins, somebody loses, but nobody is hurt. We finish the game, shake hands, leave the ballpark, and go back to living in the real world. There is a clear boundary that we cross here; we finish the game and reenter the real world.

The discussion forum on the Yahoo Web site is nothing but a virtual world, a game. A lot of things go on there; we make sense of them by understanding the boundaries, rules, roles, and closures that constitute this virtual world. They are different from those elements that constitute the real world; they, thus, isolate the virtual from the real world. Were the BXM police subject to constraints like truthfulness? Look at the

structure of the virtual world in which they posted their messages. Yahoo warns its users to be suspicious of the veracity of the messages posted on its boards. Truth, then, is not one of the rules of this virtual world. So it is inappropriate to hold those operating in the virtual world responsible for standards that apply only in the real world.

Finally, the consequences of virtual world interactions are confined to the virtual world; they do not spill over into the real world. We enter the game, play by its rules, terminate it, and go back to living in the real world. What happens in this virtual, game world does not produce real world consequences. Truth telling is not a constitutive rule in the virtual world of message boards. All those playing the message board game know this or should know this. So no harm is done. Because the actions of the BXM place took place in the virtual world, their consequences do not spill over into the real world. Holding them responsible to real world rules violates this separation of the real and virtual world. So the BXM police should not be punished for the messages they posted and the false claims made in these messages.

The argument from the practice of flaming

This argument develops further the point made just above by specifying just what kind of game is being played in the virtual world. It has boundary conditions: the virtual world of the Yahoo Business & Finance Message Board. It also has rules; these rules constitute the practice of flaming. In flaming we do things in the virtual world that are clearly not acceptable in the real world. If all those playing the flaming game recognize that it is a game and play by the flaming-game rules, then nobody will be hurt.

Three activities are allowed in the practice of flaming that are not permissible in the real world: *exaggeration*, *bluffing* (as a form of aggressive play), and *personal insult*. In exaggeration we stretch the truth beyond what is permissible in the real world. A small number of people experience side effects from using Synvisc. These may or may not be caused by Synvisc. On the message board, this becomes the claim that using Synvisc is dangerous to your health. Or Synvisc contains polysaccrides. This can be exaggerated into the claim that getting injected with Synvisc is nothing more than getting shot full of sugar. People posting messages on the Yahoo board understand that exaggeration is permissible. People reading these messages are also instructed to assume that the content is exaggerated. If everybody plays by the flaming rules, then nobody is hurt. Holding those who act in the virtual world responsible to standards that apply only to the real world is to make the category mistake of mixing rules between the virtual and real world. This is simply unfair and is like changing horses in the middle of the stream.

We can make similar arguments for other activities in the practice of flaming such as bluffing and personal insult. When cd_43eighttt challenges “genadinik” (an username) to “put your muscle where your keyboard is,” he is bluffing and bluffing is an acceptable practice in the flaming-game if not in the real world. Everybody on that message board should understand this. There is no intention to fight in the *real* world. To think otherwise is to confuse the virtual with the real.

The arguments from the virtual world and from flaming rest on the claim that what goes on in the message board is self-contained and can’t spill over into the real world to do harm. If there is any real world effect, this argument asserts, it would be the benefit of getting all this meanness out of our systems. The last argument, the argument

from free speech, is different. It leaves the virtual, game world behind. It holds that what happens online has real world consequences. It also concedes that the messages posted by the BXM policy had (or could have had) harmful effects. But it replaces the conclusion that these messages should have been censored and their authors expelled from the discussion community with a different one. Mill put it well: the best antidote to false, defamatory speech is not less speech (suppression of the false, defamatory speech) but more, true speech. Intelligent people quickly discover which claims are false; they are helped to this discovery by other different claims that provide evidence and arguments. The defamatory claims about Biomatrix officials were never substantiated; they were also irrelevant to the purpose of exchanging investing information. Most participants in the Yahoo message board understood and responded by ignoring them or by offering counterarguments and citing evidence; few were gullible enough to base financial decisions on unsubstantiated, anonymously submitted messages. So the false claims about Biomatrix and Synvisc could be refuted simply by further investigation on the part of the readers; plenty of evidences based on clinical trials existed as to the effectiveness of Synvisc and its side effects.

Most ISPs hold open the option of acting when a member begins to drown out other speakers by continually posting copied messages under different usernames. This action, which appears to limit free speech, could be justified by focusing on the free speech rights of all and the right of some to not have their speech crowed out by others. So taking measures to assure that all users have access to the forum does not block free speech; it rather ensures that the right is equally distributed.

The false speech that appears on the message board can be overcome in its effects by more good speech, not less speech. Moreover, the whole purpose of the bulletin board is to promote the free exchange of information. Censorship (deleting messages) and expulsion (silencing speakers) undermine the fundamental mission of online discussion formats. Simple consistency demands unrestricted discourse, even if we find some of that discourse distasteful.

These three arguments are placed before you as ISPs for your careful evaluation and consideration. Do their analogies hold? How strong is the right of free speech? Is it strong enough to override other rights? What of Mill's provision that liberty (exemplified in free speech) is limited by the harm principle, i.e., that liberty can be limited when only it threatens to harm others? Think about these considerations. Then carry out the following exercise:

You are an employee at an ISP like Yahoo. You have been instructed (post Biomatrix) to set up an online discussion forum in which participants share financial information about possible investments. Take this task through the software development/ethical analysis process. Using the conceptual matrix, what kinds of problems are likely to arise in the implementation and operation of your discussion forum? Generate solutions to this problem. (To help with this process, we provide the discussion policies of Yahoo, NBCi, and CNN to give you a basis of comparison.) Finally, test your solution on the Biomatrix case. Look at the memos posted above. How would your discussion forum deal with them?

ISP Liability: The Legal/Legislative Trail

The Communications Decency Act CDA (1996 – 1997)	The CDA was passed by congress in 1996 and struck down (with the exception of section CPPA and section 230). One section (Exxon act) was devoted exclusively to online pornography. It was deemed too broad and violated free speech protections in the constitution
The Child Pornography Protection Act CPPA (1996 – 2002)	Was originally unscathed by Supreme Court review, but later also declared unconstitutional. It most controversial parts was it definition of child pornography which included depictions that "appear to be" or are "modified to appear that" or "conveys the impression that" a minor is engaging in sexual acts. This outlawed a broad range of literature and art
The Child On-line Pornography Act COPA (1998-1999)	Passed in response to the failure of the CDA. But later met the same fate
Section 230 of CDA (Communications Decency Act)	"No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." Often called the IPS good Samaritan law, this section of the CDA still stands. But its interpretation is still unclear. Is any person who writes gossip (in public or not) "another information content provider"?
German Information and Communications Act (1997)	Censors Neo-Nazi propaganda. The jurisdictional issues are unresolved here. Jurisdictional issues and community standards vary dramatically from country to country, as does regulation of speech on the internet
Cubby v. CompuServe	CompuServe not found liable because it was a distributor of information, not a publisher. "CompuServe did not write, edit, or even review" the defamatory material. (www.ssbb.com/standard.html)
Stratton Oakmont v. Prodigy	Prodigy, because it made guarantees about controlling content and providing a child safe online environment was found liable. "Prodigy had, in the past, reserved the right to control the content of its bulletin boards, and utilized special computer software to screen out obscene or offence language." (www.ssbb.com/standard.html)
Batzel v. Cremers	Email is posted online without permission of author. Damages occurred but the ISP was not found responsible for this posting. Significant dissent from Judge Ronald M. Gould.
Aquacool_2000 v. Yahoo	Gregory Hackett (alias Aquacool_2000) sued Yahoo for giving his identity to AnswerThink Consulting Group Inc. AnswerThink sued Hackett for defamation. They also fired him, had him hand over a block of stock, and forfeit a million dollars.

Biomatrix Socio-technical System

Hardware/Software	Physical Surroundings	People, Roles, & Groups	Procedures	Laws & Regulations	Data & Data Structures
Personal Computers	**Cyberspace**: (Open sourcing and frontier mentality)	**BMX** (Biomatrix) **Police**	Signing up for Yahoo account including providing personal identity data	Defamation: Publisher Distributor Common Carrier	Yahoo procedures for collecting user identity
3 layers to Internet: Physical (phone lines), Code (e2e), Content	**Identity** (More fluid along with anonymity)	**Biomatrix** + Corporate Officials	Posting messages on Yahoo bulletin board	John Doe Lawsuits to find user ID (need to show potential defamation case)	Yahoo privacy protection procedures
PICS Filters (platform for internet content selection)	**Accountability** (Anonymity makes it difficult to hold accountable)	**Yahoo** (Internet Service Provider)	Short Selling	Legal Precedents (Prodigy—publisher—along with CompuServe—distributor) Communications Decency Act including analogies with child porn	Advertising purposes served by user information
Encryption (restrict access to domains)	**Speech** (Flaming as tolerated if not accepted practice)	**Civil Liberties Groups**	Usernames (pseudonyms) online	Amicus Curiae	Conditions under which Yahoo will violate confidentiality of user information

	Ethical Issues

		Safety	Use of Power	Privacy	Intellectual Property	Free Speech	Equity & Access
Levels of Social Analysis	BMX Police	Need to disseminate legitimate safety concerns	Claimed Biomatrix corporate officials abused power	Keeping anonymity to prevent retaliation against speech		Preserving right to speak in Cyber-space	Access to discussion forums and legal system
	Biomatrix	Delivering a safe product to public	Power to defend against defamation	Preventing rumors about personal lives of employees	Concerns about patent protection (in SEC report)	Protection from libel and access to diverse discussion forums	Access to discussion forums and legal system (response to defamation)
	Investors	Minimizing financial risks (complete & accurate financial information)	Power to gain access to information about investments	True, accurate, and timely information about investments	IP confidentiality should not extend to essential financial information	Does free speech include "honest mistakes"	Access to investment information
	Internet Service Providers	Overlap of safety and privacy (outsiders using info against users)	Using power to balance harm prevention & free speech	Protecting user privacy		Responsible as publisher, common carrier or distributor?	Creating discussion forums and providing users equal access