Negotiating the Global Internet Rating and Filtering System: Opposing Views of the Bertelsmann Foundation's Self-regulation of Internet Content Proposal

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The perceived problem of objectionable material on the Internet, particularly pornography, child pornography, and hate speech has perplexed governments, the Internet content industry, civil liberties groups, and parents since the Internet came to the fore of public attention around 1994. Each of these groups have ventured different "solutions" geared at protecting children from what Presidential candidate Al Gore calls the "free-fire zones and red light districts of cyberspace (1999)." Many governments, most notably the U.S. and Australia have attempted to pass legislation criminalizing and limiting access to such material. These government actions have led to vocal opposition from the Internet industry and civil libertarians alike. Both fear the prospect of government enforced censorship; civil libertarians for its effects on democratic free speech, and industry for it effects on the free market. As such, both groups call for self-regulation of Internet content, although they differ as to who "self" might be, and how "regulation" should be operationalized.

On the one hand, the Internet industry has aggressively pushed technological self-regulatory solutions. They point to the use of content filtering software and rating systems as an unobtrusive and empowering way for parents to limit access to material they deem offensive. To this end, several commercial software packages including Cyber Patrol, Net Nanny, and SurfWatch which block access to objectionable Internet material have become popular tools, often distributed by Internet Service Providers. In terms of rating Internet content, in 1996 the World Wide Web Consortium (W3C) developed the Platform for Internet Content Selection (PICS), a protocol which creates a universal language for groups to develop rating systems, label web content, and develop filters to enforce ratings-based rules. Several rating systems including RSACi and SafeSurf have emerged to allow Internet content developers to self rate their content. Concurrently, both Netscape and Microsoft have integrated PICS-based filtering modules into their browsers.

Taking a different approach to self-regulation, civil liberties groups have criticized the above technological solutions. They argue that software filters block access to a wide range of valuable content, and that secretive blocking decisions can be based upon nearly any criteria which are not

open to public or institutional review. Even worse, such filters can be installed "upstream" on a network, thus imposing blocking decisions on large groups of users who have not necessarily consented to the filter's use. Rating systems are similarly suspect because they use value laden content categories, and often lead to government mandated labeling, enforced by government mandated filters (another form of upstream filtering). In short, Internet software filters and rating systems championed as parental empowering alternatives to government regulation, would seem to be anything but. In light of these short comings, civil liberties groups place parents at the heart of "self" in self-regulation, and education, oversight, and discussion, not quick technological fixes, as the best operationalization of "regulation."

Placed squarely between governments, the Internet industry, and civil liberties groups are concerned parents who want to guide children's online behavior in a manner that is consistent with their values and world perspective, without losing the freedoms they require to be autonomous adults. Unfortunately for many parents, none of the "solutions" outlined to date seem adequate. Government regulations and software tools seem to be too restrictive and unamenable to complex, context sensitive decisions about content appropriateness. Yet, without these tools many parents fear that they simply will not be able to protect their children when they are not present to supervise Internet use.

Attempting to strike a delicate balance between all of these competing views, is the Bertelsmann Foundation's "Self-regulation of Internet Content" proposal, released in September 1999. Based on extensive world-wide consultation with government administrators (particularly the European Union), Internet industry representatives, and civil libertarians, the proposal seeks to "protect children online as well as guarantee free speech (1999: 8)." To achieve this end, the proposal calls for the development of a voluntary international content rating and filtering system, which will encourage content providers to self rate their material, and promote the development of a diversity of filters. As the proposal states, "at the core of the recommendations for an integrated system of self-regulation and end user autonomy must be an improved architecture for the rating and filtering of Internet content (1999: 10)."

To create this improved architecture, Bertelsmann's newly proposed system will be comprised of a three-layer cake, an idea developed by Yale Law Professor Jack M. Balkin (Balkin, Noveck, & Roosevelt, 1999). In the first layer will be a standard set of "descriptors" which content producers will use to voluntarily self rate their content. These descriptors will be developed by a nonprofit, independent, and international advisory board. Two groups associated with the Bertelsmann Foundation, the Internet Content Rating Association (ICRA) and the Internet Content Rating for Europe group (INCORE) are currently developing an international rating vocabulary.

At the second layer, groups concerned about particular types of content will be able to create "templates" (a synonym for filters) that rank and compare layer one descriptors. Such templates would be developed by a diverse set of parties, allowing parents to choose the one that best matches with their values. Envisioning a plethora of different filters emerging, Jack Balkin notes "the system is set up to make a thousand flowers bloom (in Kaplan, 1999)."

Finally, layer three would allow groups to create "white lists" which would override crude layer two filter decisions. All of these layers would be based on an open source technology, most likely PICS, thus promoting transparency. The system would then be built into popular Internet software packages which would allow complete user customization of rating systems, filters, and blocking decisions.

To encourage use of its proposed international rating and filtering system, the Bertelsmann proposal calls on governments to create incentives, such as tax breaks. At the same time, and anticipating the response of civil liberties groups, the proposal notes that "governments should not impose criminal sanctions for failure to rate web sites, and they should not filter content upstream without the

knowledge or consent of individual users (Bertelsmann, 1999: 34)."

While the Bertelsmann Foundation believes that its plan represents a free speech friendly alternative to direct government regulation, the civil liberties community and others are not so sure. Many argue that the layer-cake proposal is little more than a fancy version of past Internet rating systems. As such, it will inevitably lead to government mandated rating systems, mandatory self rating, and government sponsored filters. As David Sobel of the Electronic Privacy Information Center (EPIC) notes, "the primary concern is that these systems, although proposed as voluntary are going to be very attractive for government mandates once they are up and running and widely used (in Mendels, 1999)." An even more forceful statement is found in the Global Internet Liberty Campaign's response to the Bertelsmann proposal which was cosigned by several prominent civil liberties groups including the American Civil Liberties Union (ACLU), the Electronic Freedom Foundation (EFF), and EPIC:

> The creation of an international rating and filtering system for Internet content has been proposed as an alternative to national legislation regulating online speech. Contrary to their original intent, such systems may actually facilitate governmental restrictions on Internet expression. Additionally, rating and filtering schemes may prevent individuals from discussing controversial or unpopular topics, impose burdensome compliance costs on speakers, distort the fundamental cultural diversity of the Internet, enable invisible "upstream" filtering, and eventually create a homogenized Internet dominated by large commercial interests. (1999)

So which side is right in this most recent debate over how to deal with objectionable Internet content? Have the Bertelsmann Foundation and Jack Balkin come up with a truly free speech friendly solution which overcomes the problems of earlier Internet rating and filtering technologies? Or, is the layer-cake proposal all icing and no substance; just a pretty face on an old system which will likely lead to government censorship?

The debate surrounding these difficult questions is unlikely to subside anytime soon. With more and more households, businesses, and governments coming online throughout the world everyday, questions of Internet content appropriateness will likely grow even more cloudy. What is clear however, is that the future architecture of free speech on the Internet lays in the balance.

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