

your own. There's no need. Put quotes around the words of other people, and tell us who they are and where you got them from. If you've used online sources for your contributions, include the links so others can follow them up.

- 4 Be truthful. Don't invent 'facts'. If you're caught out, expect to be corrected in Webdiary.
- 5 Robust debate is great, but don't indulge in personal attacks on other contributors.
- 6 Write in the first person. Remember, we're having a conversation here.
- 12 'Last dispatch from Canberra', <http://old.smh.com.au/news/webdiary/2001/02/09/FFX8RJRJ6QC.html>
- 13 See footnote 3.
- 14 'Webdiary watch', <http://www.smh.com.au/articles/2002/10/25/1035504881026.html>
- 15 See footnote 4.
- 16 'Bob Carr and me', <http://www.smh.com.au/articles/2002/11/19/1037682014953.html>

10

Control-SHIFT: Censorship and the Internet

KATE CRAWFORD

JOSEPH GUTNICK IS A WEALTHY, MELBOURNE-BASED BUSINESSMAN. HE IS an orthodox rabbi who made millions as a mining mogul while also developing a reputation in philanthropic circles. But what may earn his place in the history books goes beyond his business acumen or his charitable reputation, while being intimately related to both.

It began when Gutnick was given a starring role in an investigative article in *Barron's Digest*. *Barron's* is a weekly financial magazine published in the United States by Dow Jones, the corporate parent of the *Wall Street Journal*. The now infamous 7000-word piece – *Unholy Gains* by William Alpert – ran with the sub-heading: 'When stock promoters cross paths with religious charities, investors had better be on guard'. From Gutnick's point of view, it all went downhill from there. This appeared in print and on the *Barron's Online* web site, hosted on a server that distributes web pages from a corporate office in New Jersey. Meanwhile, in Melbourne, Gutnick read the article on the web site and discovered that his generosity to charities had been impugned as a cover for suspect dealings. He was not amused.

I'm not really concerned with the claims about Gutnick's affairs or whether they are defamatory. What's of keen interest to me, and, for different reasons, thousands of media publishers around the world, is how cases such as these could be used as instruments to limit what you can publish on the Internet.

Gutnick's lawsuit is just one of many in recent years that raise questions about what constitutes acceptable speech on the Internet, how broadly those rules apply, and who they apply to. These cases do not always hinge on

defamation; they are more likely to be instigated under new, wide-ranging copyright laws, such as those seen in the United States. But the result is the same – web sites are being removed, material is being banned, and concern is growing that we are witnessing a new kind of Internet censorship.

It seems to me that this is not so much a new means of control as an old means being applied in a new medium. But there are important differences – the Internet does not operate in the same way as television, radio or print. What effects do we see when defamation law and copyright law are used to restrict speech on the Internet? And how do these differ from state-sponsored Internet censorship regimes such as the one we have in Australia? Isn't the Internet supposed to be the great medium of 'free speech' anyhow?¹

Before we can answer these questions, we need a framework to understand how speech is controlled on the Internet – an analytic of censorship, if you will. This is not intended as a comprehensive summary of approaches to online censorship, but just as a consideration of two modes of control over online content.

Until recently, the established take on the Internet was that it was an inherently free medium – that its distributed global architecture somehow gave it an inbuilt immunity from censorship and control. John Perry Barlow, co-founder of the Electronic Frontier Foundation civil rights group, proclaimed the freedom of the medium to the US government in his widely dispersed Declaration of the Independence of Cyberspace:

I declare the social space we are building to be naturally independent of the tyrannies you seek to impose on us. You have no moral right to rule us, nor do you possess any methods of enforcement we have true reason to fear.²

Barlow's manifesto is very much a document of its time, and it reveals the twin rationales for the belief that the Internet is beyond externally imposed controls – no one had moral jurisdiction and no one had the technical capacity. The Internet was built as a decentralised and diffuse network: spread across millions of servers, it was supposed to be impervious to national borders and independent of any central authority. In this utopian conception of the network, any attempt to block forms of content would fail: in the oft-quoted words of Net-libertarian John Gilmore, '[T]he net interprets censorship as damage, and routes around it'.³

This is no longer the case, if it ever really was. The Internet has metastasised and become mainstream. States are convinced of their moral authority over the Internet, and the technical capabilities to censor have advanced: we can point to Internet censorship regimes in China, Saudi Arabia, Singapore and Burma.⁴ Western democracies are not exempt, although in some cases the means of control may be less direct or centrally governed. While the Internet can still be a powerful means for expression, it is also maturing as an instrument of control.

TWO MODES OF CONTROL

In analysing acts of censorship, we can distinguish between two levels of operation. On the one hand, censorship acts on particular works to remove them from view, to make them unavailable to the public. In this sense, censorship operates on the level of the specific site, as a targeted response to a particular situation. On the other hand, censorship can be seen to function in accordance with abstract, generalised moral principles, such as upholding community standards or protecting minors. In this second sense, censorship operates as a framework, a 'regime'.

To varying degrees, acts of censorship operate simultaneously on both of these levels. Defamation cases such as *Gutnick v. Dow Jones* have a specific and finite outcome, yet they produce generalised effects as they make their way into common law. Institutions with a generalised censorship charter enact their broad principles in specific cases by ordering the removal of particular works from public view. All acts of censorship involve a mixture of specific and general objectives, and produce a mixture of specific and general effects.

The Internet's massively distributed architecture has brought this distinction between the 'specific' and the 'general' into sharp relief. The sheer size of the global Internet – reaching across hundreds of separate jurisdictions – has made it relatively simple for content producers to avoid censorship restrictions or to go entirely unnoticed by their would-be censors, rendering the 'general' dimension of censorship largely ineffective. While generalised censorship is very difficult to achieve on the Internet, specific acts of censorship can (and do) take place in the networked world and the tools to do so are evolving to become more stringent and effective.

So let's return to Gutnick – his case can furnish us with some clues as to how the lines of control are being re-drawn on the Internet, and whose interests that might serve.

GUTNICK VERSUS BIG MEDIA

Gutnick's argument ran like this: Internet material is 'published' in the territory where it is downloaded and read. Thus, when Gutnick woke up in the morning to read a potentially defamatory article about his business investments on a US web site, it was effectively being published in Australia, and as such was actionable under Australian laws. Dow Jones countered, via its celebrity barrister Geoffrey Robertson QC, that the article was not published in Australia – only in a US print magazine and on the web server in New Jersey. Therefore any defamation case could only be brought in the United States. To decide otherwise, Dow Jones argued, would be catastrophic for free speech and Internet publishing worldwide – suddenly publishers could be held liable according to the laws of any and every country that had access to the Internet. A story published in the United States, for instance, could simultaneously be subject to the wildly varying laws of Malaysia, Finland and Cuba, as well as those in the United States. Chaos and confusion would reign.

The reasons behind these arguments are a little more self-interested. Gutnick wants to prosecute in his home state of Victoria as he is more likely to win. Simply put, under US law the plaintiff has the burden of proof to show that the allegedly defamatory statements are false, whereas in Australia the defendant must prove that a statement is true. Dow Jones, while it has a point that the media industry could be editorially hamstrung if it were subject to all possible international jurisdictions, is also coming to the defence of free speech on the Internet because of the threat to its bottom line. The cost of legal double-checks on all potentially defamatory articles, cross-referenced with different legal systems, would be astronomical.

By the time Gutnick's case reached the Australian High Court, Dow Jones was joined by the *Washington Post*, the *New York Times*, CNN, Reuters, Yahoo and Amazon. The big media players, across the traditional and new media sectors, decided it was time to throw in their weight. The decision had the potential to affect them all.

But despite all that corporate media muscle, the High Court made the decision no one expected: it agreed with Gutnick. In short, defamation law is based on damage to a person's reputation. Gutnick's reputation could be damaged wherever the libellous material was received – in this case, Victoria – so the court decided he should be allowed to pursue action in that state. In the words of Justice Callinan, to do otherwise would be to allow US law to dictate how defamation is considered in other territories:

*What the appellant [Dow Jones] seeks to do, is to impose upon Australian residents for the purposes of this and many other cases, an American legal hegemony in relation to Internet publications.*⁵

Whether or not Gutnick will succeed in that defamation action remains to be seen. All the High Court did was allow the possibility for him to sue in Australia for material posted on the Internet in the United States.

It may sound like a trifling, Australia-specific decision; nitpicking over the definition of 'publication' for the purposes of determining if a local businessman can sue a foreign publication. Dr Matthew Collins, barrister and author of *The Law of Defamation and The Internet*, wryly commented that it is the 'first time an ultimate appellate court has to decide where material is published'.⁶ And in many ways the decision is simply a straight application of the existing case law for defamation in print, radio and television, without making any special exemptions for the fact that the material was online. But while it is an Australian ruling, it is likely to be treated with authority in other countries with a similar system of common law, such as Canada, the United Kingdom and Singapore.

The world's major media producers saw an immediate danger and responded with routine hyperbole about the opening of floodgates. Headlines included: 'A dark day for the Internet'; 'Libel without frontiers shakes the net'; 'How Diamond Joe's libel case could change the future of the Internet'; and my personal favourite from the *Wall Street Journal*, 'We wuz robbed'.⁷

Gutnick's case has yet to be decided, but it could provide a new legal mechanism by which to control information on the Internet: namely, to have news stories or entire web sites removed, even if they are hosted in foreign nations with different laws. This is a targeted, specific form of control, and in Gutnick's case it may seem justified – a libellous article will be removed, damages awarded. But this tool can now be applied by different parties and with broader ramifications. We are already seeing jurisdictional decisions made along the same lines in the United States.

In January 2003, just a few months after the Gutnick decision in Australia, a Los Angeles federal judge ruled that movie studios and record companies can proceed to sue the parent company of Kazaa, currently the world's most popular file-swapping service. Kazaa is an heir to Napster; it allows Internet users to connect to each other and share and swap music and video files. Despite the fact that Kazaa was created by Sharman Networks – a company

based in Australia and incorporated in Vanuatu – it can now be actionable for breach of copyright in California. As such, it is now more likely to face the same future – or lack thereof – as Napster.⁸

The Kazaa case raises a further point. The dominant media and entertainment companies may be arguing for free expression in defamation cases, but in copyright cases such as the one brewing over Kazaa, we can witness a very different response. Here the aim is to shut down peer-to-peer clients, to remove forms of exchange from the Internet that are not seen as profitable to the movie-making and recording arms of the media industry.

While the general objective to prevent downloading of copyright works from the Internet is near impossible, broader copyright provisions are providing corporate interests with the means to censor and remove specific online services with considerable efficacy.

WELCOME TO THE DIGITAL MILLENNIUM

Intellectual property, and its distribution over the Internet, is the central issue in an emerging, complex battle. In the opening sorties, the industries that make profits by investing in copyright works are winning. Media and entertainment companies are now finding ways to control the flow of information using copyright protections that have been expanded for the digital realm.

Consider this: how do you regulate the use of someone's intellectual property in a medium where everything already exists as a copy? To access a web page, your computer is basically creating a copy of a version hosted elsewhere – it reads the Hypertext Mark-up Language and translates it into words and images on your screen. Then you can easily copy and paste that text into any document you choose. If you access a music file on the Internet and download it, you have made a perfect digital copy. The same goes for video. Communications theorist Cees Hamelink calls the Internet 'one enormous photocopying machine'.⁹ So how can this kind of activity be monitored or regulated, let alone prosecuted, on a network as vast and decentralised as the Internet?

This is the concern articulated by the major players in Hollywood and the recording industry. These are companies that make profits by publishing and distributing other people's intellectual copyright – books, articles, films and songs. Suddenly they were faced with a global network that could publish and distribute these items without the middle-men. In short, media

and entertainment companies had not yet figured out a way to protect their profits in the digital realm, so they began to lobby furiously – chequebooks in hand – for extra government protection via copyright laws.

The results of this cash-heavy lobbying are only now being evidenced – currently in the United States, and in the foreseeable future in Australia. In short, the balance has shifted from favouring consumers – who could simply download what they liked – to companies, who have now secured powers in the digital realm that exceed those in the offline world.

It began with entertainment industry bodies such as Hollywood Motion Picture Association of America (MPAA) and the Recording Industry Artist Association pushing for every possible way to develop stricter copyright laws, from mandatory copy-protection technology in all digital devices, to giving companies the authority to hack into the computers of people who had downloaded copies of films and music.

Arguments for greater industry protection haven't always worked – back in the 1980s, when Jack Valenti, President of the MPAA, argued the videotape recorder was the 'Boston strangler' of the American film industry,¹⁰ the US Congress was rightly skeptical and decided against enacting videotape recorder protection bills.

But something changed by the 1990s – according to law professor and author of *Digital Copyright*, Jessica Litman, it was 'thanks in large part to the massive increase in lobbying money spent by entertainment industries', so that, all of a sudden, 'most members of Congress would agree that more copyright protection is always better than less'.¹¹

One of the results of this newfound concern to increase copyright protection is the controversial *Digital Millennium Copyright Act of 1998* (DMCA). Amongst other things, this Act was designed to make it easier for copyright holders to fight piracy. Under the Act, if a party believes their copyright has been infringed, they can send a demand to an Internet Service Provider (ISP) to remove the offending material. If the ISP complies immediately, it cannot be held liable for contributing to copyright infringement. The site owner can file a counter-complaint if they feel their site has been unjustly removed and a court can then decide whether or not to reinstate it.

The DMCA has been widely criticised for its 'guilty until proved innocent' model. Sites are simply removed when a complaint is received, and will only be restored if they are proved legitimate. It gives a great deal of power to

complainants – all they have to do is protest to an ISP about a site, and the ISP will take it down immediately for fear of further legal action.

It's not just ISPs that are affected by this law. Google, the world's most popular search engine, was recently found to be within the long reach of the DMCA. Google was issued with a complaint by the Church of Scientology that its search results included links to a site that was using copyright material by L. Ron Hubbard. The disputed site was, unsurprisingly, a damning critique of Scientology and was using the works of L. Ron Hubbard as part of its evidence against the church. Google was required under the DMCA to remove links to that site or be liable for infringement, despite the fact that Google was not responsible for the content and the site itself was based in Norway.

To date, the DMCA has been used in dozens of cases to restrict publication and expression. For instance, it was used to put a Russian computer programmer in jail, to deter a Princeton professor from publishing research, and to remove articles from magazine web sites.¹² It has even been invoked in an attempt to force ISPs to hand over the names of customers who are suspected of swapping music files on the Internet.¹³

But if we use the Watergate investigative method, and follow the money, we see who is benefiting from such legislation: the major players in the media and entertainment industries. The considerable investment spent on preserving their offline monopolies in the online world is paying off.

Marc Rotenberg, director of the Electronic Privacy Information Centre and co-editor of *Technology and Privacy: The New Landscape*, sums up the new mood in the United States. In an article in *Salon*, he argues that copyright law:

*has become the silly putty of media attorneys and Washington lobbyists, stretched in space and time to protect all manner of activity, including business techniques and technological protocols that were probably not the kinds of things initially envisioned by the framers of copyright law.*¹⁴

Rotenberg reflects one of the key points being made by the widely published critic of copyright law, Stanford law professor Lawrence Lessig. In Lessig's latest book, *The Future of Ideas*, he demonstrates how dominant media players are manipulating copyright laws – originally designed to promote publication – as a way to dampen innovation, restrict free expression

and protect their monopolies. 'This is the reality that the current law has produced. In the name of protecting copyright holders ... we have established a regime where the future will be as the copyright industry permits.' These large media companies 'are in effect getting more control over copyright in cyberspace than they had in real space, even though the need for more control is less clear'.¹⁵ He concludes his book by arguing that we are witnessing a counter-revolution on the Internet where control is overturning freedom. 'We move through this moment of an architecture of innovation to, once again, embrace an architecture of control.'¹⁶

The specific applications of copyright law to the online realm that we've considered demonstrate a clearly defined goal to target individuals and services, rather than aiming for general or moral principles. Instead of attempting to stop all individuals from swapping music files or from criticising L. Ron Hubbard, the approach in these cases is to attack specific hubs of activity – the Recording Industry Artist Association closes down Napster, or the Scientologists block sites from Google. These actions have a finite conclusion, and an achievable set of objectives – they operate on a micro-level rather than a macro-level.

However, there can also be generalised principles in play behind these applications of copyright law. The arguments mounted by Hollywood lobbyists and recording industry executives alike are often framed in terms of theft of intellectual property: every individual who downloads music from the Internet is a thief. Edgar Bronfman Jr, chairman of Seagram (parent company of Universal Studios), argued that file-sharing technologies turn all their users into criminals and, in a dubious analogy, likened Napster to the former Soviet Union, in that it takes 'advantage of each person's least admirable qualities'.¹⁷

Without going into the flaws of the 'downloading is stealing' rhetoric, a generalised charter to block all file-sharing from the Internet to 'protect artists from theft' is almost impossible to achieve. As we know, the Internet as it exists today is too dispersed and distributed for these generalised approaches to censorship to be consistently successful.¹⁸ Without substantial changes to the technological foundations of how the Internet operates, file-sharing will continue even when big services such as Napster are shut down. In contrast, using copyright law with precise objectives to target individual services or sites on the network can succeed. Established interests can use these means to great effect, and individuals and online services can be isolated and silenced.

AUSTRALIA AND THE SPECTRE OF THE DMCA

Australia may be compelled to develop its own system of wide-reaching copyright controls in the digital realm – an antipodean version of the US DMCA. The Australia–US Free Trade Agreement, currently still under negotiation, aims to remove certain trading inconsistencies between the two countries. One of the issues flagged for discussion is developing greater uniformity on copyright legislation. Recent reports indicate that the United States is recommending that Australia enact its own version of the DMCA, as a necessary part of ‘the two nations “harmonising” key legislation on commerce’.¹⁹

If Australia does institute a similar copyright regime to that of the United States, ISPs would be held individually liable for content infringements unless they agree to remove web sites as soon as they receive a complaint. Just as in the United States, we would have a system that favours the copyright holders, and forces Internet publishers to prove that they have not infringed copyright before their web sites could be reinstated.²⁰

Australia’s online civil liberties group, Electronic Frontiers Australia, expressed its concern at the reports. The executive director of the EFA, Irene Graham, laid out the potential threat posed by widening copyright provisions in Australia:

*If we get a similar system to the US we will certainly see more attempts to remove material from the Internet. The DMCA has been used by big corporations in the US as a tool of censorship on the Internet. Australia already has the government’s Internet censorship regime to deal with – this would add another threat to speech on the Internet.*²¹

CENSORSHIP AND THE VILLAGE IDIOT

The Australian Internet censorship legislation provides a very useful case study – mainly due to the fact that there are few other examples of online censorship regimes in the West. So few, in fact, that when the *Broadcasting Services Act (Online Services)* (BSA) was passed, we earned the moniker of ‘the global village idiot’ by the president of the American Civil Liberties Union, Professor Nadine Strossen. Strossen made the observation that the legislation was unworkable because of the ease with which it could be

circumvented; and troubling, as it gave an ‘an open-ended license for whoever’s enforcing the law to inject their values into it’.²²

The Federal government passed the BSA back in 1999 when moral panic about Internet porn was running high. The Act gave the Australian Broadcasting Authority the power to receive complaints about web sites, and issue take-down notices to ISPs to have unsuitable material removed from the Web.

Naturally, the regulations only apply to Australian ISPs and only affect the Australian content they host. Web sites originating overseas are beyond the government’s reach. So what constitutes unsuitable material? The government applied a method similar to that used in film and video classification. According to the Act, anything classified R (material requiring an adult perspective, or simply unsuitable to minors), X (sexually explicit material) or RC (refused classification, such as child pornography) is prohibited content and must be removed. There is one exception – online R-rated material is permitted if the site requires adults to supply their credit card, driver’s licence or birth certificate before they can access the content.

While these are similar classification criteria to film and video content, the media could not be more different in their means of distribution. Films, for example, are distributed in Australia via a small number of film distribution companies. Material on the Internet is distributed by thousands of content producers, and received by millions. Banning a film is a question of issuing an edict to a single distributor – banning a type of classified content on the Internet affects a large number of people and is extraordinarily difficult to patrol.

The Internet classification guidelines are intended to be tougher in application than offline media. Cinemas are not compelled to check the identity and age of all adults wanting to see an R-rated movie; and, in the offline world, X-rated movies can be mail-ordered without ID or credit cards. But something about the Internet warranted stronger controls – namely, what the minister identified as ‘the widespread availability of the Internet to minors’, particularly in the home.²³

This is the underlying moral framework of the legislation – to protect children from unsuitable content on the Internet. However, given such a generalised objective, it is impracticable for the legislation to succeed. There is no evidence to suggest that children are any more protected from online pornography today than they were before the legislation came into effect in 2000.

In fact, there is considerable evidence to the contrary. The story is told in the statistics: the ABA's reports on the scheme reveal how few sites are actually taken down. For example, in 2000, the ABA received 491 complaints, of which 139 were determined to be prohibited content, but only 22 were found to be hosted in Australia. Therefore only 22 sites could be issued with take-down orders. Even this figure may have been exaggerated upward by the government, according to research by the Electronic Frontiers Australia group. To put the official number of removed pages in context, recent estimates suggest there are over eight billion pages of data on the Web.²⁴ There is no way to check if the sites, once removed from a hosting service, did not simply spring up elsewhere on the Internet using a different ISP.

The Internet censorship scheme is both inefficient and extraordinarily expensive – costing around \$2.7 million per year, on government estimates. But according to a spokesperson for Communications Minister Senator Alston, the BSA is achieving its objectives, as 'the removal of these illegal and highly offensive sites means families feel comfortable about their children accessing the Internet'.²⁵

This kind of oratory attempts to disguise the minimal impact of the scheme, while highlighting the ultimate futility of the government's putative goal. There are multitudes of readily accessible porn sites on the Web, and the numbers are growing. If a porn site is shut down, the owner can move it to a different ISP, host it overseas, or just set up a new one. Families that feel secure in the knowledge that the Australian government has somehow made the Internet 'safe' are being misled. The onus remains on them to educate their children about using the Internet, or to regulate their usage. The government's generalised objective to 'protect the children' is another example of symbolic politics, along with 'defending the Australian way of life', 'the war on drugs' and 'the war on terror'. While these have a rhetorical impact, from a practical perspective they are empty claims.

This generalised mode of Internet censorship, premised on general moral principles, is comparatively inefficient. As long as there is unsuitable content available to minors on the Web, the legislation has failed to meet its articulated goal. Even when a few targeted sites are removed, the overriding objective is not achieved. Given the heterogeneous and polycentric structure of the Internet, specific sites can be silenced, but shutting down entire genres of expression is exceedingly difficult.²⁶

AFTER THE SWITCH IS THROWN

The idea that the Internet is inherently a medium of free expression and democracy is unsustainable. The Internet can be controlled, monitored and censored. But as Internet theorist Manuel Castells points out, it has not yet become a total architecture of control:

*The Internet is no longer a free realm, but neither has it fulfilled the Orwellian prophecy. It is a contested terrain, where the new, fundamental battle for freedom in the Information Age is being fought.*²⁷

By attempting to map the modes in which speech is now being controlled online in the West, we can identify two levels of operation: the use of a generalised (and necessarily moral) objective, more typically driven by the state, and the use of specific objectives to silence key sites or services.

However, it is important to recognise that these approaches are not opposed to one another, where one is purely state-focused and the other is solely in the hands of the market. The libertarian state-versus-market dialectic does not hold up to much scrutiny in this context. General and specific censorship objectives are used in varying degrees by both state and corporate interests. Furthermore, government policies on the Internet and market interests are mutually implicated, evidenced by the multi-million-dollar corporate lobbying for digital copyright protections. The two do not have clearly separated aims or methods. But the role of moral guardianship is one traditionally adopted by state bodies, and as we've observed in Australia, generalised moral censorship objectives are proving to be less effective in a medium as decentralised as the Internet.

It's too soon to gauge how much impact defamation law will have on the Internet, but we are already witnessing the growth of copyright as an instrument of control online. As demonstrated in the work of Lawrence Lessig and Jessica Litman, widened copyright laws have been used effectively for silencing critics, restricting research and closing down file-sharing activities.

If the tools to control content on the Internet are multiplying, and their use increasing, what does this mean for the development of the Internet as a medium? According to Marc Andreessen, the co-author of the first web browser and founder of Netscape, the period of innovation and freedom on the Internet is over.²⁸ In this view of the future, the dominant players are left

to fight it out over the Internet's development – it's over to Microsoft, AOL Time Warner and News Corporation. The last two lines in Lessig's *Future of Ideas* are bleak: 'The switch is now being thrown. We are doing nothing about it.'²⁹

Dutch Internet critic Geert Lovink disagrees.

*It's fairly easy to draw up a gloomy picture, but that's not how I see it ... I always see crisis as an opportunity. It creates space to regroup and rethink strategies. So what needs to be done is setting up independent Internet infrastructures, software, communities and content. Another virtual world is possible!*³⁰

The critical difference between the pessimism of Lessig's vision of an architecture of control and Lovink's model of independent resistance is one of knowledge. If the majority of Internet users, and the members of the broader public, are barely aware that the Internet is facing increased censorship and control, then they cannot begin to resist it. To adapt a line from Kathryn Bigelow's film *Strange Days* (1995), the Internet is not 'like TV only better' – it is a medium that allows for direct participation. And as we become informed about the options before us, we have the ability to make active choices about the kind of Internet we wish to participate in, and the means of expression that will be permitted to flourish there. If we as media consumers and producers know the rules of the game, we can create our own virtual spaces in the gaps between the specific and the general operations of control.

NOTES

- 1 For my part, I will note that I am as leery of the term 'free speech' as I am of 'free market', but that's a topic best kept to a different chapter. I will use it in a loose shorthand for the time being, with invisible inverted commas.
- 2 John Perry Barlow, 'A Declaration of the Independence of Cyberspace (1996)', in Peter Ludlow (ed.), *Crypto Anarchy, Cyberstates, and Pirate Utopias* (Massachusetts: MIT Press, 2001), 28. There have been so many critics and commentators over the years who followed this line that it's a little unfair to pin it on any single individual. The belief that the Internet is inherently free is less commonly found these days, and generally only by those still under the sway of the Californian ideology espoused by Nicholas Negroponte, Louis Rossetto, and others from the *Wired* orthodox church.

- 3 Cited in Howard Rheingold, *The Virtual Community: Homesteading on the electronic frontier* (Cambridge: MIT Press, 1993), 7.
- 4 For example, all Internet traffic in China must go through the Chinese government's own filtering system – or firewall – which regularly blocks particular Internet addresses. It has now earned the name of The Great Firewall of China. According to a study by researchers at the Harvard Law School in 2002, at least 18 931 sites were found to be blocked to Chinese Internet users out of a sample of 204 012 sites. A similar but less extensive system of government filtering is used in Saudi Arabia, and Harvard researchers are also tracking its development. See The Berkman Center for Internet and Society, at <http://cyber.law.harvard.edu/>.
- 5 The transcript of the High Court judgement, in *Dow Jones & Company Inc. v Gutnick* of 10 December 2002, can be found in the Australasian Legal Information Institute database: <http://www.austlii.edu.au>
- 6 As quoted in Darrin Farrant, 'The world logs on to Gutnick's Internet case', *Age*, 28 May 2002.
- 7 'Editorial', *Australian*, 11 December 2002. David McCullagh and Evan Hansen, *CNET News.com*, 11 December 2002; David Fickling and Stuart Millar, *Guardian*, 11 December 2002; *Wall Street Journal*, as cited in Mark Glaser, 'Aussie libel ruling: Bad or horrible?', *Online Journalism Review*, 12 December 2002.
- 8 In February 2001, Napster was found by the 9th Circuit Court of Appeals in California to be illegally copying and distributing music and was effectively shut down. For a timeline, see 'Napster: Life and death of a P2P innovator' at the Berkeley Intellectual Property Weblog at <http://journalism.berkeley.edu/projects/biolog/>
- 9 Cees J. Hamelink, *The Ethics of Cyberspace* (London: Sage Publications, 2000), 157.
- 10 Cited in Sam Costello, 'How VCRs may help Napster's legal fight', *The Industry Standard*, 25 July 2000. <http://www.thestandard.com/article/0,1902,17095,00.html> accessed 22 November 2002.
- 11 Cited in Damien Cave, 'Chained melodies', *Salon*, 13 March 2002. http://www.salon.com/tech/feature/2002/03/13/copy_protection/ accessed 20 November 2002.
- 12 The full list of cases where the DMCA has been used can be found at the Chilling Effects Clearinghouse: <http://www.chillingeffects.org>.
- 13 In late 2002, the Recording Industry Artist Association (RIAA) tried to use the DMCA to compel an ISP, Verizon Communications, to hand over the name of a customer accused of illegally trading music files. Verizon refused, and at the date of publication was appealing the case in court. This is the first time the RIAA targeted an individual for swapping songs on the Internet, rather than suing companies such as Napster. See Declan McCullagh, 'Verizon appeals RIAA subpoena win', *CNET News.com*, 30 January 2003. <http://news.com.com/2100-1023-982809.html> accessed 30 January 2003.

- 14 Marc Rotenberg, 'Internet liberation theology', *Salon*, 7 November 2001. <http://archive.salon.com/tech/review/2001/11/07/lessig/> accessed 17 November 2002.
- 15 Lawrence Lessig, *The Future of Ideas* (Random House: New York, 2001), 201–2.
- 16 *ibid.*, 268.
- 17 Quoted in Costello, 'How VCRs may help Napster's legal fight'.
- 18 Here I am specifically referring to the Internet as it is used in the West, not under authoritarian or totalitarian regimes. In political systems that already operate with rigid media controls and constant Internet filtering, a more generalised approach to censorship can be effective – as noted above.
- 19 Simon Hayes, 'US tightens Net copyright', *Australian*, 28 January 2003.
- 20 We are already seeing the attention of major music corporations beginning to focus on possible copyright breaches in Australia. In February 2003, Sony, EMI and Universal launched legal action against Melbourne, Sydney and Tasmanian universities over students allegedly downloading music illegally on their networks. See Sue Cant, 'Why the record giants are putting our unis in a spin', *Sydney Morning Herald*, 25 February 2003.
- 21 Irene Graham, personal interview, 3 February 2003.
- 22 Quoted in Kirsty Needham, 'Alston defends content law after "idiot" charge', *Sydney Morning Herald*, 25 August 1999.
- 23 Department of Communications, Information Technology and the Arts, press release 19 March 1999. http://www.dcita.gov.au/Article/0,,0_1-2_1-4_13648,00.html
- 24 Statistics on the number of pages on the Web vary wildly and increase dramatically every few months. This estimate comes from research conducted by the Google search engine company, announced on 6 April 2002.
- 25 Quoted in Christine Jackman, 'Net surfers dob in porn sites', *Courier-Mail*, 17 April 2001.
- 26 There may come a time when the technical infrastructure underlying the Internet allows for far more widespread applications of control. There are several ways this could be achieved, but this is beyond the scope of this chapter. For more on this topic, see Lawrence Lessig, *Code and Other Laws of Cyberspace* (New York: Basic, 1999).
- 27 Manuel Castells, *The Internet Galaxy: Reflections on the Internet, business and society* (Oxford: Oxford University Press, 2001), 171.
- 28 Quoted in Lessig, *The Future of Ideas*, 266.
- 29 *ibid.*, 268.
- 30 Lovink, personal interview, 1 February 2003.



INTERVIEW WITH LINDA JAVIN
 REPRESENTING THE
ASYLUM SEEKERS
 (NOVELIST AND SINOLOGIST)

How did you initially become interested in the issues surrounding asylum seekers?

After *The Monkey and the Dragon* came out, I had a couple of ideas for novels in mind; but I was so angry about the whole 'children overboard' business, the Tampa, and our treatment of asylum seekers, I wanted to do something which addressed that issue first. I had been interested in writing for theatre for a long time, and it occurred to me that what I wanted to do was to write a comedy with a very punchy message about asylum seekers. I came up with the idea for *Seeking Djira*, which is about a bunch of self-obsessed Australian writers at a writers' centre who are unexpectedly confronted with an asylum seeker who has escaped from Villawood [a detention centre in Sydney]. Everyone's very confused about who the other people are: he thinks he's stumbled into some weird, dysfunctional family, and they think that he's the famous Middle Eastern poet who they're expecting. So it's a comedy of errors, written in the style of a classic bedroom farce. Anyway, I was starting to write this play when I realised I'd never met an asylum seeker, and had no idea how to do the character. I went to Villawood with the intention of going only a few times, to do some research. But I became very involved with the people I met and so, since November 2001, my whole life has revolved around asylum seekers.