POLICING THE INTERNET: *JAKE BAKER* AND BEYOND

QUESTION ELEVEN: DOES PORNOGRAPHY DRIVE THE 'NET?

PROFESSOR LOWENSTEIN: I think we owe at least one question to somebody from the Law Review. Let's make this the last question.

AUDIENCE PARTICIPANT: I'm not a member of the Law Review.

PROFESSOR LOWENSTEIN: Sorry. You were sitting in their place. I'll give you the question anyway.

AUDIENCE PARTICIPANT:

I'm Vince Keenan representing the Michigan Student Assembly Students Right Commission.

We were talking earlier about the possibility of taking out, say, alt.sex stories and actually Mr. Steinhardt said that the alt.safe.sex falls under the category of the alt.sex categories.

I'll say as somebody working on the Students Rights Commission, when this story hit, boy, I became a regular of alt.sex stories and catalogued all the responses of all the people on alt.sex stories about Jake Baker's response -- about Jake Baker.

I don't know how often that's going to happen, that one of these groups is going to become sort of the hot bed for civil liberties discussion, but I would say as someone who is very concerned about happenings in the community, it was an invaluable resource.

Another thing that happened in terms of that particular group was that the group I represented worked very, very hard to try and keep -- we wrote hundreds of E-mail responses trying to keep the original story from being posted again.

We had contact with people that we would normally not want to have contact with, but they said, "We have the story, should we re-post it?" And we said for a number of very legitimate reasons, that not the least of which is the security and safety of the individual in question, "Don't re-post this."

And we actually did, to a certain extent, keep it from being re-posted, I believe, for a week and a half or so, until after they arrested Jake.

So I'm concerned about the idea of censoring, or the possibility of even taking out these groups, from the University community?

Let me bring this to a question real quickly.

(Laughter)

AUDIENCE PARTICIPANT:

Just in general, it did bring up one of the thoughts in my mind about, how pornography and obscenity, I mean, completely independent of -- I mean, if I can ask this question independent of this sort of moral and legal implications of it.

It certainly has provided the drive for the development of some of this technology. In the weirdest way, we have (inaudible), you know, everyone has VHS and video tape, nobody has Betamax or base disc because the licensing agreements that allowed x-rated movies to be done on VHS. I don't think (inaudible) can say that VHS can't be a learning medium.

And my question is, maybe someone could comment, how important is pornography and obscenity, you know, in the fringes, and these people have spent up all night talking about, you know, this stuff and writing about it, writing programs for it, how important is it for the development and the future development of the Internet?

DANIEL WEITZNER:

Do you have a view? I mean, I'm curious.

AUDIENCE PARTICIPANT:

I guess -- I mean --

(Laughter)

DANIEL WEITZNER:

I didn't mean to put you on the spot. I mean, I'm curious. You obviously have thought about this.

AUDIENCE PARTICIPANT:

It's changed since Jake Baker has started.

I mean, like I'm amazed at how much stuff of this nature is out there. You know, I mean, like the percentages. I mean, like, it seems to me that it's so big right now, but if you took out that chunk of it, you know, would it continue to expand in the way it was useful.

I mean, once you can upload a pornography picture, you can also upload the Mona Lisa.

So I'm concerned. I mean, like I don't know what the answer is.

PROFESSOR LOWENSTEIN:

Well, maybe we can ask Danny Weitzner. Is this concern with obscenity and pornography a big part of what your organization is concerned about?

Are we making a mountain out of a mole hill, or is it really something that is generating a lot of both the questions and the development of the whole technology?

DANIEL WEITZNER:

Well, I don't think this is a mountain out of a mole hill.

I do think that, there are, probably the most important dimension of this technology is not the technology, but the social and cultural adaptations to it and with it.

I think, this is not just a concern of my organization, but it should be a concern of all of us that we somehow use this medium responsibly. I don't believe that law has all or probably even most of the answers to do that and responsibly. This is not just about whether you put sexually explicit materials on-line or not. It's about how people behave and what sort of social interactions develop.

I detected in your question a suggestion that somehow it's really pornography that's driving the advancement of this technology. And that I really don't think is true.

People have said that about the VHS market. I don't know enough to know whether that's true or not.

This technology developed may even be worse. This technology, in fact, developed for the Defense Department so that they could have some secure networks that survived nuclear explosions.

So, you know, put that into the mix here, and I don't know, you know, it's Nazi doctors.

But you know, here we are with it and I don't think there's an issue of that going back.

I think that to the extent that I have a major concern about the interaction between this issue and the development of this technology, it's really the issues.

(Lights turned off)

(Laughter)

PROFESSOR LOWENSTEIN: Ought, oh.

DANIEL WEITZNER: How am I supposed to take that.

(Laughter)

DANIEL WEITZNER:

Usually they flick on and off. It's a little more subtle.

It's really the issues about that Barry raised about carrier liability. If the University of Michigan and America On Line get held responsible for policing all this, then we're in real trouble. That is the issue that I would say I have the most worry about here.

PROFESSOR LOWENSTEIN:

Let me just ask Virginia Rezmierski a kind of specific question raised by the student who asked about access here.

Has the University of Michigan considered limiting student access to these kinds of networks, like the alt.sex area on the Internet?

VIRGINIA REZMIERSKI:

Yes. And decided that it was against the values of the University of Michigan to do so.

(Applause)

PROFESSOR LOWENSTEIN: But Barry Steinhardt wanted to talk and then we'll follow up with Professor MacKinnon.

BARRY STEINHARDT:

Two things.

First I want to commend the University of Michigan for that, and particularly, Virginia, for making the distinction between the issues of access and what you do with that information once you attain it.

I think that is an important distinction.

I also wanted to just follow up on something that Danny said and follow up on your question.

I don't know whether sex is - or sexually explicit material -- and I would reject the term pornography, because I don't know what it means -- but I don't know whether it's driving the development of the technology or not.

My real concern, though, is that the remedy, is the almost obsession that a lot of people have with the regulation of sexually explicit material will result in remedies that are going to severally restrict the content that's available.

I mean, to use your example if the University of Michigan finds itself in a position where it may be liable for having sexually explicit, indecent, lascivious materials it may have to not ban all sex but it may also have to ban, you know, the World Wide Web page for the Louvre, because there are all kinds of what many people would regard as classic pieces of art, sculpture, paintings, et cetera, which some people find to be lascivious.

That's the road that we're headed down if we're going to begin to hold the carriers liable for content, particularly when we begin to use vague terms like lewd and lascivious.

PROFESSOR LOWENSTEIN: Professor MacKinnon.

PROFESSOR MACKINNON:

Yeah. I mean, just before everybody's really hasty about their approval of access by students to pornography on the Internet, all of your fees are going to supporting this.

Suppose you knew that eighty-five percent of the activity around here on the Internet was pornography. Say a really big percentage. And that people were doing with it the kinds of things Jake Baker was. That is, say he's getting paid by the University on a work study or whatever, to sit at a computer to do something, and he's consuming alt sex stories and writing them.

I just sort of thought I'd inject that possible piece of reality for your consideration. In addition, there was a question that Virginia Rezmierski posed earlier and it was -- there were several of them.

Can you be harassed if you're not a recipient of it? Can writing itself be violent? Can you be targeted by something that is loving if you don't want it? In other words, if it's targeted at you and it is loving, can that be harassing and is this all appropriate use of resources?

I would say to this, can you be harassed if you're not a recipient? Yes, you can be, because things are said about you that surround you, that create your environment, that make what your world is whether you got it or not. In other words, it's targeted at you even if you didn't get it, and that creates an environment of sexual harassment.

Can writing itself be violence? I say, no. It can do harm, however, and it doesn't mean it is violent.

But this part about what it is -- is it an appropriate use of resources? I think that's this question.

Do you all want to be paying for people to do what Jake Baker did?

In addition, should the women's fees at this university go to supporting open access to materials that then go to creating a hostile environment for them -- in which interferes potentially with their getting equal access to the benefits of an education.

(Applause)

PROFESSOR MACKINNON:

As to whether pornography should be an access to which it should be funded at this University, I think that the consequences that that has putting the University in a trafficker position, for equal access to the benefits of an education for women here, should be part of that discussion.

What does it do to target women for rape and sexual abuse? How does it connect with the actual rape rate on this campus? I mean, I think that's the kind of thing that we should be thinking about.

PROFESSOR LOWENSTEIN:

We're going to have to wrap it up there with probably a lot more questions raised than were answered.

I want to just thank the *Michigan Telecommunications and Technology Law Review* for making it all possible.

(Applause)

MARK LONG:

I just want to encourage people who are interested in these issues to visit our Web page and continue to learn as we have tonight about these issues.

I'd like to thank the panelists for a fascinating discussion, and Professor Lowenstein for filling in at the last moment.

Thank you. Good night.

(Applause)