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Self-Regulation: How Wikipedia Leverages User-Generated Quality Control Under Section 230

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SELF-REGULATION: HOW WIKIPEDIA LEVERAGES
USER-GENERATED QUALITY CONTROL UNDER SECTION 230

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As Virginia Woolf once wrote, "[T]o enjoy freedom, we have … to control ourselves." In the market for online information services, Wikipedia has done just that. Wikipedia has achieved astounding success via self-regulation. Wikipedia promotes user-generated quality control not as a legal obligation, but as a commitment to its educational purpose and values of its fact-checking community. In doing so, Wikipedia has leveraged the purpose of Section 230 of the Communications Decency Act into consumer welfare. Section 230 protects sites that engage in "Good Samaritan" policing of harmful material, with no requirement on the quality or quantity of such monitoring. Interactive sites should treat the statute an opportunity, rather than mere permission to thrive in the world of Web 2.0: those who can productively self-regulate, should.

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INTRODUCTION

As Virginia Woolf once wrote, "[T]o enjoy freedom, we have … to control ourselves."[1] In the market for online information services, Wikipedia has done just that. Wikipedia has achieved astounding success via self-regulation.[2] Wikipedia promotes user-generated quality control not as a legal obligation, but as a commitment to its educational purpose and to the values of its fact-checking community. In doing so, Wikipedia has leveraged the purpose of Section 230 of the Communications Decency Act into consumer welfare. Section 230 protects sites that engage in "Good Samaritan" policing of harmful material, with no requirement on the quality or quantity of such self-policing.[3] Interactive sites should treat the statute an opportunity, rather than mere permission to thrive in the world of Web 2.0: those who can productively self-regulate, should.[4]

Interactive computer services should aspire to build features that allow for decentralized self-regulation by users who act as Good Samaritan fact and quality checkers.[5] Wikipedia has empowered community members to work collaboratively by

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[1] VIRGINIA WOOLF, *How Should One Read A Book?, in* THE COMMON READER: SECOND SERIES (1926), *available at* http://www.pen.org/viewmedia.php/prmMID/1712/prmID/547 (last visited Jan. 8, 2010) ("But to enjoy freedom, if the platitude is pardonable, we have of course to control ourselves. We must not squander our powers, helplessly and ignorantly, squirting half the house in order to water a single rose-bush; we must train them, exactly and powerfully, here on the very spot.").

[2] *See generally* Lee F. Peoples, *The Citation of Wikipedia in Judicial Opinions*, 12 YALE J.L. & TECH. 1 (2009); Diane Murley, *In Defense of Wikipedia*, 100 LAW LIBR. J. 593 (2008). *But see* Susanna Sherry, *Democracy and the Death of Knowledge*, 75 U. CIN. L. REV. 1053, 1054-55 (2007) (troubling trend of consensus epistemiology) (cited by Frederick Schauer, *Authority and Authorities*, 94 VA. L. REV. 1931, 1934 n.9 (2008)).

[3] 47 U.S.C. § 230(c) (2000).

[4] For a classical economic perspective on self-regulation in light of human rationality and economic psychology, *see generally* Vernon L. Smith, *Constructivist and Ecological Rationality in Economics*, 93 AM. ECON. REV. 465, 465-66 (2003) (published version of Nobel Prize Lecture from Dec. 8, 2002).

[5] For a timely extension of the development of self-regulation, consider the Facebook Community Council, which began testing in January 2010. Kit Eaton, *Facebook Turns to the Crowd to Monitor the Crowdies*, FASTCOMPANY, Jan. 5, 2010, http://www.fastcompany.com/blog/kit-eaton/technomix/facebook-turns-crowd-moderate-crowd (last visited Jan. 5, 2010) (reporting that the "Facebook Community Council" or "FCC" for short, is meant to "harness the power and intelligence of Facebook users to support us in keeping Facebook a trusted and vibrant community."). *See also* Eric Eldon, *Facebook Begins Testing Advanced Crowd-Sourced Content Moderation*, INSIDE FACEBOOK, Jan.

providing transparency of edits on its content pages. Craigslist is another example of this hybrid: while only the original poster can change a posting, any user may flag it for the attention of moderators with an easy link at the top of the site.[6] Contrast this to other sites, such as AutoAdmit and gossip forums, which require users to dig deeply to report problematic content, or actively tell complainers that they will not be cooperative with efforts to "censor" or alter content.[7] The design decision to notify other users of a potential mistake, hazard, or misrepresentative comment provides a minimum level of quality control to an entire forum without centralized approval.[8]

Such self-policing and reporting mechanisms are a scalable, productive feature

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4, 2010, http://www.insidefacebook.com/2010/01/04/facebook-begins-testing-advanced-crowd-sourced-content-moderation (last visited Jan. 5, 2010); Facebook, *Facebook Community Council*, http://www.facebook.com/communitycouncil (last visited Jan. 5, 2010) ("Sorry, use of Facebook Community Council requires an invitation at this time. Facebook Community Council is currently being tested with a small number of users.").

[6] Craigslist, *Flags and Community Moderation*, http://www.craigslist.org/about/help/flags_and_community_moderation (last visited Dec. 15, 2009) ("Users may flag postings they believe to be in violation of craigslist guidelines, by clicking on one of the flagging links at the upper right corner of each posting: Miscategorized - wrong category/site, discusses another ad, otherwise misplaced; Prohibited - violates craigslist Terms of Use or other posted guidelines; Spam/Overpost - posted too frequently, in multiple cities/categories, or is too commercial…Millions of ads are removed through community flagging each month, of which the vast majority are in violation of craigslist terms of use or posting guidelines.").

[7] *See* Doe I and Doe II v. Anthony Ciolli, et al., No. 3:07CV00909 (D. Conn. 2009); Ciolli v. Heide Irvani, et al., No. 2:08-cv-0261, Complaint ¶ 129 (E.D. Pa. 2009) (AutoAdmit litigation) (describing features absent from the AutoAdmit forum: privacy policy, terms of service, deletion of postings at issue, request to Google to remove postings from search engine, logging of IP addresses of users on AutoAdmit website, creation of dispute resolution system, requirement that web operator respond to all emails related to AutoAdmit-related matters within 14 days). For relevant documents, *see* Citizen Media Law Project, *AutoAdmit*, http://www.citmedialaw.org/threats/autoadmit (last visited Dec. 15, 2009).

[8] Value-enhancing collective action, by way of neighborhood watch programs, is described in homeownership scholarship. *See generally* Lee Anne Fennell, *Homeownership 2.0*, 102 Nw. U. L. Rev. 1047, 1099 (2008) (discussing traditional homeowner behavior to enhance fortunes of a community by participation in neighborhood watches, cooperation with police, and enforcement of behavioral and aesthetic norms). The neighborhood watch principle has also been extended to prevention of cybercrime in cyberspace. *See* Benjamin R. Jones, *Comment: Virtual Neighborhood Watch: Open Source Software and Community Policing Against Cybercrime*, 97 J. Crim. L. & Criminology 601 (2007) (describing a model of community policing by individual computer users to combat cybercrime through open-source software); Jonathan A. Friedman & Francis M. Buono, *Limiting Tort Liability for Online Third-Party Content Under Section 230 of the Communications Act*, 52 Fed. Comm. L.J. 647, 664 n.102 (2000) (noting an early form of community standards in walled gardens through the America Online Neighborhood Watch program).

for the creators of websites. Such self-policing features are especially important when content is user-generated. Not all speech is productive and valuable to society. In legal doctrine, the protection of freedom of speech granted by the First Amendment is not absolute. Some categories of speech, such as libel and fraud, are not protected: such speech has landed civil and criminal penalties. While Section 230 gives web site operators broad immunity from liability for third-party content, a sensible web site operator would know that harmful behavior on their web sites attracts the attention of law enforcement, discourages patronage by potential customers, and contributes to social harms to society. As a general principle, a libertarian model that limits government intervention in private ordering on the Internet depends upon the broad notion that reasonable people will regulate their own behavior, and avoid trampling on the rights of others.[9] When those rights come into conflict, it is the obligation of those involved to resolve the conflict themselves if they wish to preempt the blunt tool of legal enforcement. While a web site operator may be completely innocent of responsibility for the actions of one anti-social individual against another individual, the web site operator will still incur the costs of lost time and damaged public image due to the controversy in question. In a world where civic societies exchange resources, protect their own liberty interests, and pursue peace among citizens, the web site operator who maintains an interactive forum must necessarily consider the benefits of instituting self-policing and quality control mechanisms.

In order to preserve the public nature of interactive sites, operators would do well to encourage self-regulation. The benefits of self-regulation to Wikipedia spans much further than the Section 230 limits on liability protected by Congress. Much of

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[9] H. Brian Holland, *In Defense of Online Intermediary Immunity: Facilitating Communities of Modified Exceptionalism*, 56 U. KAN. L. REV. 369, 377 (2008) ("Described by one scholar as "digital libertarianism," and another as "cyberlibertarian[ism]," the vision was one of freedom, liberty, and self-regulation. Cyberlibertarians believed the Internet could and would develop its own effective legal institutions through which rules would emerge. These emerging norms would "play the role of law by defining legal personhood and property, resolving disputes, and crystallizing a collective conversation about online participants' core values.") (citations omitted).

Wikipedia's success today is a product of decentralized self-policing mechanisms that result in iterative quality control by devoted volunteers. An increase in self-regulation will not produce perfect quality control, the failures of Wikipedia's mechanisms should make that clear. However, the results for Wikipedia have been better than the alternative of no regulation, or of completely centralized control. For libertarians and non-libertarians alike, part of the push toward further regulation comes when a particular incident spurs moral outrage such as the Seigenthaler incident,[10] or the AutoAdmit lawsuit.[11] The law can be a blunt tool, having wide-ranging (perhaps overly broad) chilling effects.[12] For example, an unintended consequence of a law that requires a minimum level of self-policing might be the winding down of smaller sites that cannot afford to police themselves adequately without expending a disproportionate amount of resources.[13]

Part I of this article will provide a summary of the development of Section 230 along with commentary on the societal implications of the statute. Part II will discuss Wikipedia's program of self-regulation and quality control. Part III will describe the limits of self-policing in three parts. First, this article will review the trade-offs that are necessarily implicated when living persons and living reputations are at issue. Second, this article will address the difficult policy question of anonymity and privacy for users on interactive websites. Third, this article will consider the role of disclaimers in light

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[10] *See infra note* 170 and accompanying discussion on the John Seigenthaler incident. *See also* Andrew George, *Avoiding Tragedy in the Wiki-Commons*, 12 VA. J.L. & TECH. 8, 44 n.130 (2007) (describing the John Seigenthaler incident).

[11] *See supra* note 5.

[12] *See*, *e.g.*, Speiser v. Randall, 357 U.S. 513, 526 (1958) (*quoted by* Fox v. FCC, 489 F.3d 444, 463 (2d Cir. 2007) (discussing the impact of regulations and enforcement that requires a speaker to legitimize a particular utterance, resulting in efforts to "steer far wide of the unlawful zone" rather than risk penalty). *See also* SOLOVE, THE FUTURE OF REPUTATION, *infra* note 198, at 193 ("The law is an instrument capable of subtle notes, but it is not quite a violin.").

[13] *Id. But see* David V. Richards, Note, *Posting Personal Information on the Internet: A Case for Changing the Legal Regime Created by §230 of the Communications Decency Act*, 85 TEX. L. REV. 1354-56 (2007) (discussing modest implementation costs from government intervention to require interactive websites to register users, while conceding resultant limitations on privacy and First Amendment freedoms).

of differences in media literacy and competency among Wikipedia users. Within the outer boundaries of Section 230, Wikipedia provides a model for web site operators to reap benefits from user-reporting mechanisms. Such user-driven self-policing may serve a broader aim to preempt government regulations that would formally require such mechanisms.

I. SECTION 230 OF THE COMMUNICATIONS DECENCY ACT

A. *An Early History of Section 230*

In 1996, Congress enacted the Communications Decency Act in response to growing concerns over the nature of material available on the Internet.[14] The emerging Internet contained every form of human expression: research, news, literature, and social discussion, but also pornography, hate, and character assassination. Several newsworthy events brought the conflict to a head between *free* speech advocates, who saw the net as an ungovernable libertarian haven where no government could or should be able to censor any idea,[15] and *regulated* speech advocates, who wanted to rein in the more destructive and potentially dangerous speech circulating on the net.[16]

Though not part of the original Act, Section 230 was introduced and enacted soon thereafter,[17] granting service providers immunity from liability for content posted

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[14] Ken S. Myers, *Wikimmunity: Fitting the Communications Decency Act to Wikipedia*, 20 HARV. J.L. & TECH. 163, 172 n.69 (2006) (comparing statements of Sen. Exon and Rep. Cox from 1995 speaking of the end goal to protect children).

[15] *Id.* at 173 n.75, *citing* 141 CONG. REC. H8470 (daily ed. Aug. 4, 1995) ("'[I]t will establish as the policy of the United States that we do not wish to have content regulation by the Federal Government of what is on the Internet, that we do not wish to have a Federal Computer Commission with an army of bureaucrats regulating the Internet because frankly the Interent has grown up to be what it is without that kind of help from the Government.'") (statement of Rep. Cox).

[16] *Id*. at 172, n.70 (describing Sen. Exon's blue binder full of 'disgusting material' to show other senators).

[17] *Id*. at 172, 174. The new Communications Decency Act was signed into law on February 8, 1996, one week following the February 1, 1996 passage of the Telecommunications Act of 1996.

entirely by users of the service, even if the service providers exercised some power to moderate that content.[18] Section 230 was tacked on to the Act, at the urging of free speech advocates,[19] in response to a case where then-popular service provider Prodigy was found liable for user-posted content because of its small degree of moderation,[20] while CompuServe, a comparable service that exercised no moderation power, was cleared of liability in a similar earlier case.[21] Without this legislation, the crop of internet service providers that offered users a mediated Internet experience, supplementing the open web with their own forums, chat rooms, and content, would have had a difficult time staying in business.[22] It was in the providers' interests to exercise *some* control for the consumer experience, removing things that they deemed harmful.[23] On these early platforms, consumers who wanted these services were paying a premium to have some degree of intervention by the ISP.[24] But any provider that faced liability for all of the postings of all of its users would be forced to devote immense resources to monitoring and controlling content, or face liability for harmful content everywhere that users were allowed to post.[25]

Since the enactment of the CDA, the definition of "interactive service provider" under the statute has been found to encompass not only traditional ISPs such as

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[18] *Id.* at 178. *See also* Carafano v. Metrosplash.com, Inc., 339 F.3d 1119, 1122 (9th Cir. 2003) (Section 230 was meant "to promote the free exchange of information and ideas over the Internet and to encourage voluntary monitoring for offensive or obscene material.").

[19] *Id.* at 173 (describing the Cox-Wyden Amendment).

[20] Stratton Oakmont, Inc. v. Prodigy Services, Co., No. 31063/94, 1995 N.Y. Misc. LEXIS 229 (N.Y.S.2d May 26, 1995). See infra discussion.

[21] Cubby, Inc. v. CompuServe, Inc., 776 F. Supp. 135, 140-41 (S.D.N.Y. 1991).

[22] *See* Friedman & Buono, *supra* note 8, at 665 ("[Online service providers] have found that it makes good business sense to police their services. Indeed, in the highly competitive online services marketplace, an OSP's refusal to act responsibly in these areas could have devastating commercial consequences, particularly given the ease with which users can, through chat rooms and message boards, quickly and broadly publicize such irresponsible OSP behavior.").

[23] *Id.*

[24] *Id.*

[25] *See* Holland, *supra* note 9, at 395 (2008) ("The costs of these indirect intermediary liability schemes could be great. Under traditional liability rules, intermediaries may be forced to adopt a least-common-denominator approach, resulting in overly broad restrictions on expression and behavior.").

CompuServe and AOL,[26] but also interactive websites such as Wikipedia, MySpace, Yahoo, and Craigslist.[27] In particular, the massively-collaborative, highly-interactive sites considered part of "Web 2.0" are included under this definition.[28] And, even more so than the traditional ISPs, Web 2.0 sites depend on this immunity to continue existing.

Wikipedia's position is particularly fragile in this respect because of the nature of its content and mission.[29] Wikipedia, an online encyclopedia founded in 2001 and now containing nearly three million entries in English on a potentially unlimited range of subjects, aims to replace the traditional print reference works.[30] Its millions of users and several thousand volunteer administrators create, edit, organize, and patrol the content.[31]

Although Section 223 was struck down as unconstitutional,[32] Section 230 remains good law, granting immunity from liability for information service providers.[33]

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[26] *See*, *e.g*., Zeran v. America Online, Inc., 129 F.3d 327 (4th Cir. 1997).

[27] Plaintiffs typically concede the first prong of analysis under Section 230 that the defendant is a "provider or user of an interactive computer service." *See* Myers, *Wikimmunity*, *supra* note 14, at 179, n.106 (cases where defendants concede or the court takes judicial notice of status as "interactive computer service"); *id*. at 179 n.107 (cases where websites that permit information posting considered within "interactive computer service" definition).

[28] *See* Barnes v. Yahoo!, Inc., 570 F.3d 1096 (9th Cir. 2009); Doe v. MySpace, Inc., 474 F. Supp. 2d 843 (W.D. Tex. 2007); *see also* Recent Case, *Internet Law: Communications Decency Act: Texas District Court Extends § 230 Immunity to Social Networking Sites*, 121 HARV. L. REV. 930 (2008).

[29] Wikipedia deals with more than defamation claims, primarily copyright issues. Scholars have questioned the policy decision to completely immunize ISPs from liability for violations of copyright, computer viruses, and cybercrime. *See* Doug Lichtman & Eric Posner, *Holding Internet Service Providers Accountable*, 14 SUP. CT. ECON. REV. 221 (2006). *See generally* Matthew Schruers, Note, *The History and Economics of ISP Liability for Third Party Content*, 88 VA. L. REV. 205 (2002) (describing the economic costs from notice-based liability and strict liability regimes, compared to statutory immunity under the CDA).

[30] Wikipedia, *Wikipedia:Size of Wikipedia*, http://en.wikipedia.org/wiki/Wikipedia:Size_of_Wikipedia (last visited Jan. 9, 2010).

[31] Wikipedia, *Wikipedia:Statistics*, http://en.wikipedia.org/wiki/Wikipedia:Statistics (last visited Dec. 11, 2009); *Wikipedia Statistics*, Nov. 30, 2009, http://stats.wikimedia.org/EN/Sitemap.htm (last visited Dec. 11, 2009). The statistics given are for the English-language Wikipedia only. As the largest, most visible, and most widely-used of the Wikimedia projects, with the widest-ranging subject matter, examining it allows generalization to the other projects. While the other Wikimedia projects will be mentioned, the English-language project will be the focus here.

[32] Reno v. American Civil Liberties Union, 521 U.S. 844, 849 (1997).

[33] 47 U.S.C. § 230(c)(1) (2000). "Interactive computer service" is defined as "any information

It is Section 230(c)(1) that online services and interactive websites rely on today, which states that "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."[34] Section 230(e)(3) provides for this immunity to apply to not only federal, but also state and local causes of action.[35]

The Communications Decency Act was initially enacted as Title V of the Telecommunications Act of 1996, introduced by Senators James Exon and Slade Gordon to introduce criminal sanctions for the publication and distribution of obscenity and indecency in cyberspace.[36] Congress, in drafting the CDA, added on this provision specifically to overrule *Stratton Oakmont v. Prodigy*,[37] a case holding ISP Prodigy liable for fraudulent statements by one of its users. The court held that Prodigy's "conscious choice, to gain the benefits of editorial control, has opened it up to a greater liability" and theorized that the market would respond to the increased needs of such services by compensating providers for the increased exposure.[38]

The case came out opposite to an earlier case in the same circuit, *Cubby v. Compuserve*,[39] in which CompuServe was not held liable for defamatory postings made by one of its users to its unmoderated forums. The *Stratton Oakmont*[40] court denied that the cases were in conflict, stating that Prodigy's moderation made the crucial distinction.

Senate Report 104-230 details some of the rationale for Section 230, stating that

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service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions." *Id*. at § 230(f)(2).

[34] *Id.*

[35] 47 U.S.C. § 230(e)(3) (2000) ("Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.").

[36] For a detailed account, *see* Robert Cannon, *The Legislative History of Senator Exon's Communications Decency Act: Regulating Barbarians on the Information Superhighway*, 49 FED. COMM. L.J. 51 (1996).

[37] Stratton Oakmont, Inc. v. Prodigy Servs. Co., 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995).

[38] *Id*. at *5.

[39] *Id*. at *3; Cubby, Inc. v. CompuServe Inc., 776 F. Supp. 135 (S.D.N.Y. 1991).

[40] *Id*. at *4.

the information services developing on the internet "represent an extraordinary advance in the availability of educational and informational resources,"[41] "offer users a great degree of control over the information that they receive,"[42] as well as "a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity."[43] The report goes on to state that as a matter of policy it was desirable to "remove disincentives for the development and utilization of blocking and filtering technologies"[44] and protect "'Good Samaritan' blocking and screening of offensive material."[45] Most of the CDA was struck down by the Supreme Court as unconstitutional under the First Amendment in 1997.[46] In *Reno v. ACLU,* the court held that the standards were unconstitutionally vague and the restrictions on speech the provisions overbroad.[47] Section 230, however, was left intact, as it had no such unconstitutional restrictions.[48] Furthermore, Section 230 was still useful, promising ISP immunity for not only the content proscribed by the struck indecency provisions, but any other illegal material posted by users.

B. *Societal Implications of Section 230*

In drafting Section 230, Congress assumed and intended that service providers would police themselves, controlling the incidence of harmful material on their services in the sort of ad-hoc, voluntary fashion that governs the technical infrastructure of the Internet.[49] The formation of such a voluntary social structure, however, is even more

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[41]   S.   Rep.   104-230   (1997),   *available   at*   http://thomas.loc.gov/cgi-bin/cpquery/T?&report=sr230&dbname=104& (last visited Jan. 9, 2010).
[42] *Id*.
[43] *Id*.
[44] *Id*.
[45] *Id*.
[46] Reno v. American Civil Liberties Union, 521 U.S. 844 (1997).
[47] *Id*.
[48] *Id*.
[49] *See* S. Rep 104-230, *supra* note 42.

difficult to engineer, and faces a greater population of those able to affect it.

Mike Godwin, attorney for the Electronic Frontier Foundation in *Reno v. ACLU*, says of Internet policy decisions: "the decisions we make about the Internet don't just affect the Internet. They are answers to basic questions about the relationship each citizen has to the government. They speak to the extent to which we trust one another with the full range of fundamental rights granted by the Constitution."[50] The safe harbor provision is an unusual display of trust in citizens to regulate themselves.

The safe harbor is a bargain struck between the legislators and the services that enable the free flow of information on the internet, granting them immunity from claims that would limit their ability to give access.[51] Without this immunity, it is doubtful that the wide range of information services existing today would have been able to function. When the *Cubby* lawsuit was filed against CompuServe, a shock wave echoed across the net.[52] Digital communities began to consider the future of what they had built and come to expect; if service providers became strictly liable for carrying speech by unmonitored individual users, unmonitored individual speech was no longer going to happen.[53] The expenses were too great and the risks too much for any but a foolhardy or judgment-proof defendant. Users treated the emerging communities of the Internet like any other public forum, and spoke freely because of it, not giving thought to the reality that their posted words were published just as surely as if they were in *The New York Times*. The Internet itself may not be regulated, but if anyone who could grant you

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[50] MIKE GODWIN, CYBER RIGHTS 355 (MIT Press 2003).

[51] *See* Myers, *Wikimmunity*, *supra* note 14, at 172.

[52] Cubby, Inc. v. CompuServe Inc., 776 F. Supp. 135 (S.D.N.Y. 1991).

[53] Peter H. Lewis, *The Executive Computer; On Electronic Bulletin Boards, What Rights Are At Stake?*, N. Y. TIMES, Dec. 23, 1990 ("'We have 240 forums, containing hundreds of thousands of messages at any time,' Mr. Kissler said. 'Forums are central to the nature of the on-line environment, really the lifeblood of what the communications service provides. Part of that is the lively exchange of opinions on a variety of topics.' The lines get fuzzy when, in the course of that lively exchange, the sender's language or sentiment gets overheated… 'There is some debate in legal circles on the extent to which videotex service providers must screen publicly posted messages,' said Benjamin Wright, a lawyer in Dallas who specializes in electronic communications law. 'If the law sees the provider as more like a newspaper, then the duty to screen is higher. But if the law sees the provider as more like a telephone

access to it would be responsible for your actions using their service just as if they were publishing a newspaper, it would create a chilling effect.[54] Even those who controlled their own internet access, able to speak freely, would have few to speak to.[55]

The opinion in *Cubby* was remarkable for its long-range view of what Internet communication was and would be.[56] In the opinion, Judge Leisure compared the ISP not to the publisher of a newspaper but to the owner of a bookstore, and like the owner of a bookstore, it was not expected to read and monitor every word of every piece of material passing through it.[57] The ISP was merely storing and passing on the information that others had published and should be responsible for.[58] The opinion held that CompuServe was not to be held liable for the material posted by its users unless it had reason to know about it.[59] Any other rule "would impose an undue burden on the free flow of information."[60]

In 1991, when the *Cubby* opinion was drafted, the ISP as provider of a complete, mediated online experience for the user was still a common scenario. Services such as AOL, Prodigy, and CompuServe provided email, forums, chat, featured content, news,

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company, a communications common carrier, then the duty is lower.'").

[54] *See*, *e.g*., Brock N. Meeks, *As BBSes Mature, Liability Becomes an Issue*, INFOWORLD, Jan. 22, 1990 (explaining the breadth of potential, and uncertain, legal liability to systops of electronic bulletin board systems (BBSes) implicating rights of privacy, common carrier obligations, the Fourth Amendment, the First Amendment, copyright, libel, and pornography).

[55] *See generally* GODWIN, CYBER RIGHTS, *supra* note 51; JONATHAN WALLACE & MARK MANGAN, SEX, LAWS, AND CYBERSPACE: FREEDOM AND CENSORSHIP ON THE FRONTIERS OF THE ONLINE REVOLUTION (1996); Book Review, *Sex, Laws, and Cyberspace: Freedom and Censorship on the Frontiers of the Online Revolution*, 10 HARV. J.L. & TECH. 715 (1997).

[56] *Cubby*, *see supra* note 54.

[57] *Id*. at 140 ("A computerized database is the functional equivalent of a more traditional news vendor, and the inconsistent application of a lower standard of liability to an electronic news distributor such as CompuServe than that which is applied to a public library, book store, or newsstand would impose an undue burden on the free flow of information.").

[58] *Id*. ("While CompuServe may decline to carry a given publication altogether, in reality, once it does decide to carry a publication, it will have little or no editorial control over that publication's contents.")

[59] *Id*. at 140-41 ("Given the relevant First Amendment considerations, the appropriate standard of liability to be applied to CompuServe is whether it knew or had reason to know of the allegedly defamatory Rumorville statements.").

[60] *Id*. at 140.

and shopping; a typical user might subscribe to one of these services for years and never leave the walled garden of the service to explore the wider web, and might not even know the rest of the web existed.[61]

Users today have a different experience. For the most part, ISPs are no longer "information services," providing exclusive content to subscribers who may have no reason to venture outward.[62] The once-ubiquitous AOL is a shell of its mid-90s self; recognizing that users no longer sign up for the total walled garden experience, it's slashed its staff, eliminated many of its old features, and begun to offer free accounts to those who use another ISP for their actual connection to the internet, supporting itself by advertising on its in-house content which it publishes to the whole web.[63]

An ISP today may provide you email and a personal home page, maybe. But your internet-using experience is primarily about the sites you visit, not the transport access service you use.[64] Users who once signed up for internet service to access provider-specific chat rooms or message forums will now use any provider, as long as they can access MySpace, YouTube, or Wikipedia.[65]

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[61] Barnaby J. Feder, *Toward Defining Free Speech in The Computer Age*, N.Y. TIMES, Nov. 3, 1991 ("Computer networks like Prodigy and CompuServe offer a wide range of services to owners of personal computers via telephone lines. They offer news, weather reports, reviews of books, movies and restaurants, home shopping and banking, games, instruction, private electronic mail and public bulletin boards.").

[62] Anthony Ciolli, *Chilling Effects: The Communications Decency Act and the Online Marketplace of Ideas*, 63 U. MIAMI L. REV. 137, 138 (2008) (arguing for additional legislation to include a fee-shifting provision and statutory tort of no-fault defamation to update for the Web 2.0 environment of 2008 compared to the walled gardens of 1996).

[63] *Id.* at 169-81. Ciolli presents a comprehensive history tracking the ubiquity of free America Online CDs to the fallout of subscribers in 2003 by the rise of broadband. America Online ended the walled garden proprietary content service for $14.95 per month in January 2004. *Id.* at 173.

[64] *Id.* at 178 ("The creation of such websites and services that circumvented America Online's walled garden would hasten the demise of proprietary networks and eventually usher in a world where Internet users would obtain their interactive content from a wide variety of different sources, most of whom would not have any affiliation or special agreement with their Internet service provider.").

[65] *Id.* at 179 ("[T]he typical Web 2.0 website specializes in community and allows its users to interact with each other in some way through its service…Because a Web 2.0 service is typically just a regular website, and not an Internet service provider, users are able to migrate freely from one Web 2.0 service to

C. *Recent Developments in Limits of Section 230*

Since the enactment of the CDA, operators of interactive websites have enjoyed a near-absolute immunity for third-party content. But in recent years, the tide has begun to turn, as courts are establishing new theories of liability where Section 230 protections do not apply.

One is the *Roommates.com* decision in which the roommate-finder website was not immune under Section 230 for violations of the Fair Housing Act after providing prompts for users to describe their roommate preferences.[66] The opinion states that Roommates.com was actually inducing the illegal conduct rather than simply providing a venue where users could behave legally or illegally.[67] Its liability with regard to the information posted in its unstructured fields was immunized, but the information expressed via its pull-down menus and questionnaire were subject to the Fair Housing Act and state law.[68]

The ongoing litigation of *Barnes v. Yahoo!* is another example of a plaintiff seeking damages from a website for third-party content.[69] In this case, plaintiff Barnes found material defamatory to her posted by her ex-boyfriend on Yahoo forums and profiles.[70] Under the line of Section 230(c)(1) case law, it is unlikely that Yahoo would have been found at all liable for harms she suffered; the judge states as much in his

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another or, more commonly, participate in many Web 2.0 communities at the same time.").

[66] Fair Housing Council of San Fernando Valley v. Roommates.com, LLC, 521 F.3d 1157 (9th Cir. Apr. 3, 2008) (en banc).

[67] *Id.*

[68] *Id.*

[69] Barnes v. Yahoo!, Inc., 2005 WL 3005602 (2005) (dismissing claim on Section 230 defense), *affirmed in part, reversed in part by*, Barnes v. Yahoo!, Inc., 570 F.3d 1096 (9th Cir. Sept. 28, 2009) (discussing the distinction between contract and tort obligations of Yahoo to remove material from publication under a promissory estoppel claim), *denial of rehearing en banc, on review*, Barnes v. Yahoo!, Inc., 2009 WL 4823840 (D. Or. Dec. 11, 2009) (denying Yahoo's motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for plaintiff's failure to state a claim upon which relief can be granted in the amended complaint for breach of contract on a theory of promissory estoppel).

[70] 570 F.3d at 1098.

opinion.[71]   However, Barnes contacted Yahoo! customer service to try to resolve the problem.[72]   A representative assured her that the content would be removed.[73] However, Yahoo failed to follow through within two months, and Barnes filed suit in Oregon state court.[74]   The Ninth Circuit held that "[i]nsofar as Yahoo made a promise with the constructive intent that it be enforceable, it has implicitly agreed to an alteration in such baseline. . . . insofar as Barnes alleges a breach of contract claim under the theory of promissory estoppel, subsection 230(c)(1) of the Act does not preclude her cause of action."[75]   On remand, the District Court for Oregon denied Yahoo's motion to dismiss the promissory estoppel claim.[76]

II. WIKIMEDIA AND WIKIPEDIA

The online encyclopedia Wikipedia is run by the 501(c)(3) nonprofit Wikimedia Foundation, which is based in San Francisco, California, but incorporated in its former home state of Florida.[77]   Though its website aims to be a resource to all nations of the world,[78] its legal presence is firmly based in the United States, with no offices outside

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[71] *Id*. at 1102-03 (treating Yahoo as a "publisher or speaker" with immunity under Section 230 despite plaintiff's characterization that Yahoo owed a higher duty than a publisher through its "negligent undertaking").

[72] *Id*. at 1098.

[73] *Id*. at 1099.

[74] *Id*.

[75] *Id*. at 1108-09 (distinguishing between contract and tort obligations of Yahoo to remove material from publication under a promissory estoppel claim).

[76] Barnes v. Yahoo!, Inc., 2009 WL 4823840 (D. Or. Dec. 11, 2009) (denying Yahoo's motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for plaintiff's failure to state a claim upon which relief can be granted in the amended complaint for breach of contract on a theory of promissory estoppel).

[77] Wikipedia, *Wikimedia Foundation*, http://en.wikipedia.org/wiki/Wikimedia_Foundation (last visited Dec. 18, 2009).

[78] Wikimedia Foundation, *Mission Statement*, http://wikimediafoundation.org/wiki/Mission_statement (last visited Dec. 18, 2009) ("The mission of the Wikimedia Foundation is to empower and engage people around the world to collect and develop educational content under a free license or in the public domain, and to disseminate it effectively and globally."); Wikimedia Foundation, *Values*, http://wikimediafoundation.org/wiki/Values (last visited Dec. 18, 2009) ("Though US-based, the organization is international in its nature.").

the nation's borders.[79] Several user associations exist in other countries which have no formal association with the foundation.[80]

The main database and cache servers which store the information users contribute to the site are also based in the United States, sitting in a data center in Tampa, Florida.[81] There is a cluster of cache servers in an Amsterdam data center; these merely mirror data sent to them from the masters in Tampa.[82]

Though the Foundation aims to be an international organization, it limits its international legal presence, primarily because of the difficulty of complying with relevant laws across international jurisdictions.[83] Aside from the convenience of it being the country of the founders' residence, the United States was chosen as the legal base for the projects because of the favorable legal climate for running nonprofits and internet companies in the United States, and in large part, laws surrounding liability for content submitted by users.[84] There are currently over twenty chapters around the

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[79] Wikimedia Foundation, *Staff*, http://wikimediafoundation.org/wiki/Staff (last visited Dec. 18, 2009).

[80]   Wikimedia   Foundation,   *Mission   Statement*, http://wikimediafoundation.org/wiki/Mission_statement (last visited Dec. 18, 2009) ("In collaboration with a network of chapters, the Foundation provides the essential infrastructure and an organizational framework for the support and development of multilingual wiki projects and other endeavors which serve   this   mission.");   Wikimedia   Foundation,   *Local   Chapters*, http://wikimediafoundation.org/wiki/Local_chapters (last visited Dec. 18, 2009) ("Local chapters are self-dependent organizations that share the goals of the Wikimedia Foundation and support them within a specified geographical region.").

[81] Wikimedia Foundation, *Servers*, http://meta.wikimedia.org/wiki/Servers (last visited Dec. 18, 2009);   *Wikimedia   Foundation   Annual   Report   2007-2008*,   at   15, http://upload.wikimedia.org/wikipedia/foundation/2/2a/WMF_20072008_Annual_report.pdf (last visited Dec. 18, 2009) (with some regional capacity in the Netherlands and South Korea, as well as donated servers, space, and bandwidth by multiple partners).

[82] *Id*. ("About 300 machines in Florida, 26 in Amsterdam, 23 in Yahoo!'s Korean hosting facility."); *see also* WikiTech, *Server Roles*, http://wikitech.wikimedia.org/view/Server_roles (last visited Dec. 18, 2009) (providing an updated listing of Wikipedia's servers).

[83] *See*, *e.g*., David Kravets, *Convicted Murderer Sues Wikipedia, Demands Removal of His Name*, WIRED, Nov. 11, 2009, http://www.wired.com/threatlevel/2009/11/wikipedia_murder (last visited Jan. 9, 2010) (describing Wolfgang Werle's lawsuit against Wikipedia under German law which requires publications to alter archives to rehabilitate and reenter society).

[84]   *See   also*   Wikipedia,   *Wolfgang   Werle   and   Manfred   Lauber*, http://en.wikipedia.org/wiki/Wolfgang_Werl%C3%A9_and_Manfred_Lauber (last visited Jan. 9, 2010).

world, each representing a single country or sub-national region.[85]   These chapters organize local activities such as holding educational workshops, developing relationships with local institutions, and handling requests from local press; they also function as social organizations.[86]   However, all of these chapters are independently structured and run, kept legally and financially separate from the Wikimedia Foundation itself.[87] They raise funds for their own activities and develop their own bylaws.[88]

The Wikimedia projects were entirely built by volunteer users of the site.[89]   The site and servers were solely owned by Jimmy Wales until 2003, when he transferred power to the newly-formed Wikimedia Foundation, which incorporated that year and gained 501(c)(3) nonprofit status in 2005.[90] The small organization employed only two paid staff members until 2006, and in 2009 currently employs roughly 30 staff who handle technical, administrative, legal, and fundraising tasks for the small organization; none are employed to create or monitor article content.[91]

Nor could any hired force short of an army hope to do the job. An average of

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[85] Wikimedia Meta-Wiki, *Wikimedia Chapters*, http://meta.wikimedia.org/wiki/Wikimedia_chapters (last   visited   Dec.   11,   2009);   Wikimedia   Foundation,   *Local   Chapters*, http://wikimediafoundation.org/wiki/Local_chapters (last visited Dec. 18, 2009).

[86] *Id*.

[87] Wikimedia   Foundation,   *Agreement   Between   Chapters   and   Wikimedia   Foundation*, http://wikimediafoundation.org/wiki/Agreement_between_chapters_and_Wikimedia_Foundation   (last visited Dec. 18, 2009) ("Wikimedia chapters are independent organizations, which operate in a specific geographical region and support the aims of the Wikimedia Foundation. This agreement constitutes the formal recognition of this independent organization as a Wikimedia Chapter and defines the rights and obligations of both the Wikimedia Foundation and the Wikimedia Chapter.").

[88] *Id*. ("The Chapter shall supply to the Foundation a copy of its bylaws and or incorporation documents together with a certified translation into English if not already in that language.").

[89] Wikipedia, *Wikipedia:About*, http://en.wikipedia.org/wiki/Wikipedia:About (last visited Dec. 18, 2009) ("Wikipedia is written collaboratively by an international group of volunteers. Anyone with internet access can write and make changes to Wikipedia articles.").

[90] Wikimedia Meta-Wiki, *Wikimedia Movement*, http://meta.wikimedia.org/wiki/Wikimedia (last visited Dec. 11, 2009).

[91]   Wikipedia,   *Wikipedia:Frequently   Asked   Questions*, http://wikimediafoundation.org/wiki/Frequently_Asked_Questions (last visited Dec. 18, 2009) ("The Wikimedia Foundation has a staff of 33, led by the Executive Director, Sue Gardner. The staff supports the work of the hundreds of thousands of volunteers who contribute content to the Wikimedia communities. It is also supported by countless volunteers participating through committees, as interns, or on an ad hoc basis.").

1,437 pages were added per day in 2008,[92] some as "stubs" only a sentence or two long, others as nearly fully-formed multiple-page articles;[93] roughly the same number are created and then quickly deleted, primarily for being nonsense or garbage.[94] Thousands of new edits are made to existing pages in the same span of time. And they don't stop when office hours end. The site is edited by people around the world, by early birds and insomniacs, by students and professionals of all stripes.[95] Simply monitoring those pages for plainly obvious nonsense and garbage would be a full-time job for several people. To additionally check every new edit for false or misleading statements, plagiarized content, or anything else that simply doesn't belong, would require the round-the-clock efforts of a skilled research team.

Wikimedia's 2008-2009 annual budget was nearly $6 million, with most of the outlay going to technical and administrative staff, bandwidth, and hardware.[96] An estimate by *Silicon Alley Insider* places the market value of Wikipedia at $7 billion, with potential revenue from context-based advertising in the millions of dollars per month.[97] But because of the project's commitment to neutrality, its nonprofit status, and the wishes of its user community, none of the Wikimedia projects display advertisements, a situation unlikely to change in the short-term future.[98] The bulk of its

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[92] Wikipedia, *Wikipedia:Modelling Wikipedia's Growth: Quadratic Model for Article Count of Wikipedia*, http://en.wikipedia.org/wiki/Wikipedia:Modelling_Wikipedia's_growth (last visited Dec. 18, 2009).

[93] *Id*.

[94] *See generally* Wikipedia, *Wikipedia:Deletion Policy*, http://en.wikipedia.org/wiki/Wikipedia:Deletion_policy (last visited Dec. 11, 2009). For general information on Wikipedia statistics, *see* Wikipedia, *Wikipedia:Statistics Department*, http://en.wikipedia.org/wiki/Wikipedia:Statistics_Department (last visited Dec. 18, 2009).

[95] For statistical graphs on deleted pages by day, hour, and second in 2007, *see* Wikipedia, *User:Emijrp/Deleting*, http://en.wikipedia.org/wiki/User:Emijrp/Deleting (last visited Dec. 18, 2009).

[96] Wikimedia Foundation, *2008-2009 Annual Plan Questions and Answers*, http://wikimediafoundation.org/wiki/2008-2009_Annual_Plan_Questions_and_Answers (last visited Jan. 13, 2010).

[97] Dan Malven, *Wikipedia Should Go For-Profit, Give Profits Away*, SILICON VALLEY INSIDER, http://www.businessinsider.com/2008/3/better-idea-for-wikipedia-go-private-give-away-profits.

[98] Wikipedia, *Wikipedia:Advertisements*, http://en.wikipedia.org/wiki/Wikipedia:Advertisements (last visited Dec. 18, 2009) ("The issue has been the topic of ongoing discussion. Revenue generated from advertisements could improve the website and help achieve its goals. On the other hand, advertising may

income stream comes from individual donations, primarily from donors giving under $50 each.[99] A small part of its budget comes from licensing the brand name to carefully-selected products such as books and DVDs, and another portion comes from foundational grants (both restricted and unrestricted).[100] None of this is lucrative enough to allow for the hiring of a sufficient force of paid content screeners. Even if it were, Wikimedia is hesitant to offer payment to supplement project-based tasks currently done by volunteer efforts: volunteer motivation and goodwill often decreases when volunteers become paid, to the point that turning volunteers into paid editors may actually reduce the total amount of work done.[101]

But most of Wikipedia's content is perfectly unobjectionable.[102] A fair amount is well-cited and well-written.[103] Studies in *Nature*,[104] *c't*,[105] *Stern*,[106] and *The*

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be at odds with the mission of a neutral, non-profit website which aims to educate… There is a long history to this issue. See: strategy:Advertising, meta:Polls, meta:Advertising on Wikipedia, meta:Opt-in Google-ads, Enciclopedia Libre, Wikipedia talk:Tools/1-Click Answers, and Wikipedia:User categories for discussion/Archive/December 2007#Wikimedia and advertising… There are currently no plans for advertising on Wikipedia. The current standpoint is that the Wikimedia Foundation should not carry advertisements…. This topic has been raised again in late 2009 strategy discussions. See strategy:Category:Proposals on funding through advertising.").

[99] Wikimedia Foundation, *Fundraiser Statistics*, http://wikimediafoundation.org/wiki/Special:FundraiserStatistics (last visited Dec. 11, 2009).

[100] Wikimedia Foundation, *Benefactors*, http://wikimediafoundation.org/wiki/Benefactors (last visited Dec. 18, 2009).

[101] *See generally* Bruno S. Frey & Lorenz Goette, *Does Pay Motivate Volunteers?*, Institute for Empirical Research in Economics Working Paper No. iewwp007 (1999), *available at* http://ideas.repec.org/p/zur/iewwpx/007.html ; Bruno S. Frey & Reto Jegen, *Motivation Crowding Theory: A Survey of Empirical Evidence*, 15 J. OF ECON. SURVEYS 589-611 (2001), *available at* http://ideas.repec.org/p/zur/iewwpx/049.html; Uri Gneezy & Aldo Rustichini, *Pay Enough or Don't Pay at All*, 115 QUARTERLY J. OF ECON. 791-810 (2000).

[102] For a detailed record of errors and controversies, *see* Wikipedia, *Criticism of Wikipedia*, http://en.wikipedia.org/wiki/Criticism_of_Wikipedia (last visited Dec. 18, 2009) (citing systemic bias and group dynamics with specific examples).

[103] *See also* Wikipedia, *Reliability of Wikipedia*, http://en.wikipedia.org/wiki/Reliability_of_Wikipedia (last visited Dec. 18, 2009).

[104] Jim Giles, *Special Report: Internet Encyclopedias Go Head to Head*, 438 NATURE 900-01 (2005), *available at*   http://www.nature.com/nature/journal/v438/n7070/full/438900a.html (last visited Dec. 18, 2009); Editorial, *Britannica Attacks and We Respond*, 440 NATURE 582 (2006), http://www.nature.com/nature/journal/v440/n7084/full/440582b.html (last visited Dec. 18, 2009).

[105] *See Reliability of Wikipedia*, *supra* note 106 *(citing* Michael Kurzidim, *Wissenswettstreit. Die kostenlose Wikipedia tritt gegen die Marktführer Encarta und Brockhaus an*, c't, 21/2004, Oct. 4, 2004, S.

Guardian[107] among others have compared it favorably to traditional encyclopedias such as *Encyclopedia Britannica* and *Brockhaus*, which have expert authors and a dedicated editorial staff.[108] Students rely on Wikipedia even as they are exhorted not to, because they find it to be easy enough and good enough; journalists, who ought to know better, have done the same.

To accomplish this level of utility, Wikipedia relies on the efforts of its thousands upon thousands of volunteers. Most of the essential functions of the site can be performed by any user, even someone who has never registered: adding text, removing text, checking citations, copyediting, developing organizational structure, participating in policy creation.[109] A few seconds to create a username and password unlocks a few more functions: the ability to create an entirely new page, upload photographs and media, edit partially-locked pages, set personal interface preferences,

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132-139, *available at* http://www.heise.de/ct; Dorothee Wiegand, Entdeckungsreise. Digitale Enzyklopädien erklären die Welt, c't, 6/2007, Mar. 5, 2007, p. 136-45, http://www.heise.de/ct).

[106] *Id*. (*citing* Wikipedia: Wissen für alle. Stern 50/2007, Dec. 6, 2007, pp. 30-44, *available at* http://www.stern.de/computer-technik/internet/:stern-Test-Wikipedia-Brockhaus/604423.html (last visited Jan. 11, 2010)).

[107] Mike Barnes, *Can You Trust Wikipedia?*, THE GUARDIAN, Oct. 24, 2005, http://technology.guardian.co.uk/opinion/story/0,16541,1599325,00.html (last visited Dec. 18, 2009).

[108] Encyclopedia Britannica, *Fatally Flawed: Refuting the Recent Study on Encyclopedic Accuracy by the Journal* Nature, Mar. 2006, http://corporate.britannica.com/britannica_nature_response.pdf (last visited Dec. 18, 2009) ("Britannica undergoes continuous revision and fact checking. Our editors work unceasingly to revise and improve the encyclopedia and to publish the results in a timely way. We work with thousands of contributors and advisers around the world—scholars and experts all—and maintain a brisk correspondence with our readers as well."), *citing* Michael J. McCarthy, *It's Not True About Caligula's Horse; Britannica Checked Dogged Researchers Answer Some Remarkable Queries; Where Houdini Was Born*, WALL ST. J., A1, Apr. 22, 1999 ("And the weighty job of keeping the 44 million-word Encyclopaedia Britannica updated and factual falls to a panel of 7,000 professors and egghead contributors world-wide and a handful of bookworm sleuths in the complaint department. Britannica has just begun a massive, three-year overhaul of its entire database. When that is completed, editors anticipate about half the articles - nearly 22 million words - will have been tweaked, simplified, overhauled or tossed.").

[109] Wikipedia, *Wikipedia:Why Create An Account*, http://en.wikipedia.org/wiki/Wikipedia:Why_create_an_account? (last visited Dec. 18, 2009) ("You do not have to log in to read Wikipedia, nor is a registered account required to edit Wikipedia articles—almost anyone can edit almost any article at any given time, even without logging in. When not logged in to an account, by default a person edits instead by their IP address, assigned by their internet service provider (ISP).").

and e-mail other users.[110]

Over a thousand users, however, have a few extra tools, and are called "administrators" ("admins", for short).[111] Admins on Wikipedia have some additional technical abilities: they can delete pages entirely, "protect" pages by locking down editing from users who have not logged in, or all (non-admin) users, and they can block IP addresses or user accounts from making any edits to the site.[112] Officially, this is it; the role is not particularly powerful or glamorous.[113] Unofficially, these users tend to be the most active on the site as well as those with the most thorough knowledge of its policies, procedures, and guidelines.[114] A project run with so little official hierarchy relies heavily on social norms and buy-in to the goals and mission by the most socially powerful participants;[115] on Wikipedia, the volunteer admins are largely filling this

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[110] *Id*. ("Nevertheless, creating an account is quick, free, and non-intrusive, and it is generally considered a good idea to do so for a variety of reasons.").

[111] Wikipedia, *Wikipedia:Administrators*, http://en.wikipedia.org/wiki/Wikipedia:Administrators (last visited Dec. 18, 2009); Wikipedia, *Wikipedia:Administrators' How-To Guide*, http://en.wikipedia.org/wiki/Wikipedia:Administrators%27_how-to_guide (last visited Dec. 18, 2009) (including contents like, "# 1 Blacklisting persistent spam," "# 4 Dealing with abusive editors," "# 14 Unblock a user, IP or range," "# 16 Using rollback," or "# 17 Being useful").

[112] *Id.*

[113] Wikipedia, *Wikipedia:What Adminship is Not*, http://en.wikipedia.org/wiki/Wikipedia:What_adminship_is_not (last visited Dec. 18, 2009) ("* 2.1 Adminship is not a trophy * 2.2 Adminship is not an entitlement * 2.3 Adminship is not diplomatic immunity * 2.4 Adminship is neither compulsory nor necessary to aid Wikipedia * 2.5 Adminship is not a game * 2.6 Adminship is not for sale * 2.7 Adminship is not a big deal").

For the importance of social norms and expectations, *see also Village Stocks*, *infra* note 117, *What Wikipedia is Not*, *infra* note 120, *Do's and Don'ts of WikiWar*, *infra* note 156. The importance of social norms for self-regulation is underscored by Daniel Solove's scholarship on the future of reputation and privacy, *see infra* note 198 and accompanying discussion.

[114] *See* Wikipedia, *Wikipedia:Administrators' Reading List*, http://en.wikipedia.org/wiki/Wikipedia:Administrators%27_reading_list (last visited Dec. 18, 2009); Wikipedia, *Wikipedia:List of Policies*, http://en.wikipedia.org/wiki/Wikipedia:List_of_policies (last visited Dec. 18, 2009).

[115] For an amusing, entertaining example of enforcement of social norms, see the wiki-idiots hall of shame for examples of extreme edits by administrators. *See* Wikipedia, *Wikipedia:Village Stocks*, http://en.wikipedia.org/wiki/Wikipedia:STOCKS (last visited Dec. 18, 2009) ("It is a truth universally acknowledged that intelligent and otherwise sensible editors and administrators occasionally engage in acts of extreme stupidity. Based on the fundamental principle that such blatant disregard of sensibility, however unintended, is best punished by humiliation, the village stocks have been built to identify the wiki-idiots in our midst."). *See also* David A. Hoffman & Salil Mehra, *WikiTruth through WikiOrder*, 59

role.[116]

Noticeably absent in mechanisms of creation and control of content are Wikimedia staff and officers.[117] Not a single one is dedicated to site content creation or quality control issues as part of her duties.[118] The site is intended to be self-regulating by its community of volunteers, and its policies and guidelines as well as its practices reflect that.[119]

A. *Section 230's Applicability to Wikipedia*

A finding of immunity under Section 230 depends on a service that claims to be a qualifying information service provider meeting all three parts of a three-prong test: first, whether it is a "provider or user of an interactive computer service", second, whether any complaint brought would rely on treating Wikipedia as the "publisher or speaker", and third, whether potential liability would be for "information provided by another information content provider."[120] Ken Myers has written a definitive analysis

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EMORY L.J. __ (forthcoming 2010), *available at* http://ssrn.com/abstract=1354424 (last visited Dec. 18, 2009).

[116] In the culture of the site, a great deal of effort is spent trying to acculturate administrators into this dual role: little extra official power, but significant social influence and expectations. The new administrators' how-to guide at is a good jumping-off point for those interested in reading further. *See Wikipedia:Administrators' How-To Guide, supra* note 113.

[117] *See* Wikimedia Foundation, *Staff, supra* note 81.

[118] This is excepting intervention during ongoing litigation: on occasion, the general counsel will direct the removal or alteration of content. *See generally* Wikipedia, *Wikipedia:What Wikipedia is Not*, http://en.wikipedia.org/wiki/Wikipedia:CENSOR#Wikipedia_is_not_censored (last visited Dec. 22, 2009) ("Obviously inappropriate content (such as an irrelevant link to a shock site, or clear vandalism) is usually removed quickly. Content that is judged to violate Wikipedia's biographies of living persons policy, or that violates other Wikipedia policies (especially neutral point of view) or the laws of the U.S. state of Florida where Wikipedia's servers are hosted, will also be removed.").

[119] *See* Wikimedia Foundation, *Values, supra* note 80 ("We are a community-based organization. We must operate with a mix of staff members, and of volunteers, working together to achieve our mission. We support community-led collaborative projects, and must respect the work and the ideas of our community. We must listen and take into account our communities in any decisions taken to achieve our mission.").

[120] 47 U.S.C. § 230 (2000).

on whether Wikipedia meets this definition.[121] His analysis examined how a scenario where Wikipedia is sued would fall under each part of the test, and concluded that Wikipedia does qualify.[122]   Short analyses by other legal scholars, including Anita Ramasastry and Daniel Solove, have come to the same conclusion.[123]

The conclusion has some caveats, though.   The first prong is fairly straightforward: previous case law has upheld the interpretation that this "interactive computer service" not only to traditional ISPs but also to interactive websites which do not provide last-mile internet access to end users, including Wikipedia, but also Craigslist,[124] MySpace,[125] and a public terminal at Kinko's print shop;[126] it is unlikely that this entire line of cases would be overturned; an isolated 2001 case in a New Jersey district court, *800-JR Cigar, Inc. v. GoTo.com*, is one of the only cases to find otherwise, holding that since "[GoTo did] not provide access to the Internet like service providers such as AOL... [t]he Court does not find that argument persuasive."[127] Myers' analysis of this prong, however, also concludes that users of such a service would also escape liability.[128] I believe this conclusion to be wrong legally, but also undesirable as a matter of policy, for reasons I'll address later.

The second prong holds more potential for liability. It extends service provider immunity to claims treating the defendant service provider as the "publisher or speaker"

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[121] Myers, *Wikimmunity*, *see supra* note 14.

[122] *Id*. at 178-79.

[123] Anita Ramasastry, Commentary, *Is an Online Encyclopedia, Such as Wikipedia, Immune From Libel Suits? Under Current Law, the Answer Is Most Likely Yes, But that Law Should Change*, FindLaw's Writ, Dec. 12, 2005, http://writ.news.findlaw.com/ramasastry/20051212.html (last visited Dec. 21, 2009);   Daniel Solove, *Suing Wikipedia*, Concurring Opinions, Nov. 11, 2005. http://www.concurringopinions.com/archives/2005/11/suing_wikipedia_1.html (last visited Dec. 21, 2009).

[124] Chicago Lawyers' Committee for Civil Rights Under Law, Inc. v. Craigslist, Inc., 519 F.3d 666 (7th Cir. Mar. 14, 2008).

[125] Doe v. MySpace Inc., 2008 WL 2068064 (5th Cir. May 10, 2008) (defendant not liable for failure to institute adequate safety measures to prevent sexual predators).

[126] PatentWizard, Inc. v. Kinko's, Inc., 163 F. Supp. 2d 1069 (D. S.D. Sept. 27, 2001).

[127] 800-JR Cigar, Inc. v. GoTo.com, Inc., 437 F. Supp. 2d 273, 295 (D. N.J., July 13, 2006).

[128] Myers, *Wikimmunity*, *supra* note 14, at 179-81.

of the injurious material.[129] These include "defamation, negligence for failure to prevent defamation, or negligence for failure to remove defamatory information after notification" and potentially other claims arising under state or local laws.[130]

Claims treating Wikipedia as the "distributor," however, rather than a "publisher" or "speaker," have been attempted with limited success. The seminal *Zeran v. America Online*[131] case held that distributor liability was a mere subset of publisher liability, and so it too was covered under the language of the statute. A lower court held to the contrary in *Barrett v. Rosenthal*,[132] attaching liability to an interactive service provider that continued to distribute material after having actual knowledge of its existence. The California Supreme Court and Court of Appeals quickly reversed the erroneous decision based on the *Zeran* case.[133]

Finally, the third prong requires that the problematic information be "provided by another information content provider."[134] Myers notes that this presents the greatest amount of litigation complexity and ambiguity for Wikipedia: it is possible to consider Wikipedia itself as the provider, but that this result seemed unlikely in light of the majority of case law.[135] The argument for Wikipedia as provider depends on treating the Wikipedia contributor as an agent of the platform. The threshold question for this determination is, "what counts as the 'person or entity' whose actions the court should analyze?"[136] Courts have decided that users "contributing" content were not part of the platform "entity."[137]

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[129] *Id.* at 181; 47 U.S.C. § 230(c)(1) (2000).

[130] *Id.*

[131] Zeran v. America Online, Inc., 129 F.3d 327, 330 (4th Cir. 1997).

[132] Barrett v. Rosenthal, 112 Cal. App. 4th 749; 5 Cal. Rptr. 3d 416 (Cal. App. 1st Dist., Nov. 10, 2003) (*Rosenthal I*), *reversed by* Barrett v. Rosenthal, 40 Cal.4th 33, 146 P.3d 510 (Nov. 20, 2006) (Rosenthal II).

[133] *Rosenthal II. See also Myers*, *Wikimmunity*, *supra* note 14, at 181.

[134] 47 U.S.C. § 230 (c)(1) (2000).

[135] Myers, *Wikimmunity*, *supra* note 14, at 187.

[136] *Id.* at 188.

[137] *Id.* at 188, *citing* Carafano v. Metrosplash.com, Inc., 339 F.3d 1119, 1124 (9th Cir. 2003); Barnes v. Yahoo!, Inc. (D. Or. Nov. 8, 2005).

B. *Wikipedia's Self-Regulation*

Wikipedia could be completely unmoderated as well, but it chooses to self-regulate. The editing community employs several methods of quality control to prevent illegal, harmful, or otherwise detrimental content from overtaking the site.

The first method is "soft security:" Wikipedia has several explicit policies and guidelines prohibiting users from posting content that would be illegal. In order to be in compliance with site policies, site content must not be libelous.[138] It must be verifiable[139] and referenced to a reliable,[140] independent source.[141] It must not be gratuitously indecent; while Wikipedia contains articles on a wide variety of articles on

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[138] Wikipedia, *Wikipedia:Libel*, http://en.wikipedia.org/wiki/Wikipedia:Libel (last visited Dec. 22, 2009) ("It is Wikipedia policy to delete libelous material when it has been identified"), *citing* Jimmy Wales, *[WikiEN-1] Zero Information is Preferred to Misleading False Information*, May 16, 2006, http://lists.wikimedia.org/pipermail/wikien-l/2006-May/046440.html (last visited Dec. 22, 2009) ("I can NOT emphasize this enough. There seems to be a terrible bias among some editors that some sort of random speculative "I heard it somewhere" pseudo information is to be tagged with a "needs a cite" tag. Wrong. It should be removed, aggressively, unless it can be sourced. This is true of all information, but it is particularly true of negative information about living persons. I think a fair number of people need to be kicked out of the project just for being lousy writers. (This is not a policy statement, just a statement of attitude and frustration.)").

[139] Wikipedia, *Wikipedia:Verifiability*, http://en.wikipedia.org/wiki/Wikipedia:Verifiability (last visited Dec. 22, 2009) ("The threshold for inclusion in Wikipedia is verifiability, not truth—that is, whether readers are able to check that material added to Wikipedia has already been published by a reliable source, not whether we think it is true.").

[140] Wikipedia, *Wikipedia:Reliable Sources*, http://en.wikipedia.org/wiki/Wikipedia:Reliable_sources (last visited Dec. 22, 2009) ("How reliable a source is, and the basis of its reliability, depends on the context. As a rule of thumb, the more people engaged in checking facts, analyzing legal issues, and scrutinizing the writing, the more reliable the publication. Sources should directly support the information as it is presented in an article, and should be appropriate to the claims made. If a topic has no reliable sources, Wikipedia should not have an article on it.").

[141] Wikipedia, *Wikipedia:No Original Research*, http://en.wikipedia.org/wiki/Wikipedia:No_original_research (last visited Dec. 22, 2009) ("Wikipedia does not publish original research or original thought. This includes unpublished facts, arguments, speculation, and ideas; and any unpublished analysis or synthesis of published material that serves to advance a position. This means that Wikipedia is not the place to publish your own opinions, experiences, arguments, or conclusions. Citing sources and avoiding original research are inextricably linked… "No original research" is one of three core content policies, along with neutral point of view and verifiability.").

horrific acts as well as graphic sexual topics,[142] they are to be presented in such a way as to be informative, not for shock value.[143] It must also avoid infringing copyrights, but service provider immunity for copyright infringement is covered by another law: section 512 of the Digital Millennium Copyright Act.[144] If these policies were always followed, it is difficult to think of any material that could be posted where a plaintiff could state a substantive claim, in the United States, at least.[145] In other jurisdictions, libel laws and privacy laws are stronger than the very weak protections in the United States; in others, mere distribution of information about certain topics may be illegal.[146]

In a world where we could count on everyone to follow these policies we would

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[142] *See Wikipedia:What Wikipedia is Not*, *supra* note 120 ("However, some articles may include text, images, or links which some people may find objectionable, when these materials are relevant to the content. Discussion of potentially objectionable content should not focus on its offensiveness but on whether it is appropriate to include in a given article. Beyond that, 'being objectionable' is generally not sufficient grounds for removal of content.").

[143] Wikipedia, *Wikipedia:Profanity*, http://en.wikipedia.org/wiki/Wikipedia:Profanity (last visited Dec. 22, 2009) ("Words and images that would be considered offensive, profane, or obscene by typical Wikipedia readers should be used if and only if their omission would cause the article to be less informative, relevant, or accurate, and no equally suitable alternatives are available. Including information about offensive material is part of Wikipedia's encyclopedic mission; being offensive is not.").

[144] 17 U.S.C. § 512 (2009) (limitations on copyright liability relating to material online).

[145] *See generally Wikipedia:What Wikipedia is Not*, *supra* note 120 ("* 2.1 Wikipedia is not a dictionary * 2.2 Wikipedia is not a publisher of original thought * 2.3 Wikipedia is not a soapbox or means of promotion * 2.4 Wikipedia is not a mirror or a repository of links, images, or media files * 2.5 Wikipedia is not a blog, webspace provider, social networking, or memorial site * 2.6 Wikipedia is not a directory * 2.7 Wikipedia is not a manual, guidebook, textbook, or scientific journal * 2.8 Wikipedia is not a crystal ball * 2.9 Wikipedia is not an indiscriminate collection of information * 2.10 Wikipedia is not censored…. * 3.1 Wikipedia is not a democracy * 3.2 Wikipedia is not a bureaucracy * 3.3 Wikipedia is not a battleground * 3.4 Wikipedia is not an anarchy * 3.5 Wikipedia is not your web host.").

[146] *Discretion in Privacy Law*, GERMAN AM. L.J., Sept. 14, 2008, http://galj.info/2008/09/14/#0914-nameiminternet.txt (last visited Dec. 22, 2009) ("The constitutional protection of privacy, known as Persönlichkeitsrecht, is protected by art. 1 of the German federal constitution. It may outweigh the public interest in minor criminal cases. Therefore, publishing the full name a person may lead to a civil liability when the person is convicted of parking at an expired meter."). *See also Pair Guilty of "Insulting Turkey*," BBC NEWS, Oct. 11, 2007, http://news.bbc.co.uk/2/hi/europe/7040171.stm (last visited Dec. 22, 2009) (describing Turkish penal code Article 301 which criminalizes insults to Turkish identity); Neil MacFarquhar, *Iran Cracks Down on Dissent*, N.Y. TIMES, June 24, 2007, http://www.nytimes.com/2007/06/24/world/middleeast/24iran.html (last visited Dec. 22, 2009) (describing a stern three-page warning from Iran's National Security Council to newspaper editors detailing banned topics such as the rise in gasoline prices, new international sanctions, civil society movements, and US-Iran negotiations). Pages could be filled with examples from most countries in the

have no need for much law at all to regulate those who participate in an open project. The majority of users comply, and contribute productively, to the astonishment of many.[147] But what about the others? Not everyone "reads the manual," learning site policies before editing.[148] Some make problematic edits just as a test: shouting nonsense into a microphone to see if it's really on and anyone is listening; some don't believe that Wikipedia would *really* let all changes go live on the site (and are horrified to see that it does). Others are bored schoolchildren or jokers, looking to cause a bit of mayhem and disruption. Some are otherwise good users who have a strong view that policy needs to be changed on a particular subject. Others are people who come to Wikipedia with a particular agenda, who attempt to use the site to smear the reputation of another person or organization.

Soft security, then, is supplemented by harder methods. The first line of defense is for quality-checkers to patrol "Recent Changes."[149] Every change on the site is logged and visible in a feed that allows users to browse the most recent edits, along with their content, and the username or IP address of the editor.[150] Initially, and for several years, this was all done manually; it's now done with the help of automated software

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world, which have less protection of freedom of speech than the United States.

[147] Quoth Wikimedia UK press contact David Gerard, "Fortunately, Wikipedia works in practice even if it can't possibly work in theory." Mark Glaser, *Your Take Roundup:: Believers, Negativists Debate Wikipedia's Trustworthiness*, Apr. 20, 2006, http://www.pbs.org/mediashift/2006/04/your-take-roundupbelievers-negativists-debate-wikipedias-trustworthiness110.html (last visited Dec. 22, 2009).

[148]   *See   generally*   Wikipedia,   *Wikipedia:Manual   of   Style*, http://en.wikipedia.org/wiki/Wikipedia:Manual_of_Style (last visited Dec. 22, 2009) (listing an extensively detailed style guide for basic publication, with subpages codifying style rules on text formatting, titles, abbreviations, etc.).

[149] Wikipedia, *Recent Changes*, http://en.wikipedia.org/wiki/Special:Recentchanges (last visited Dec. 11, 2009).

[150] *Id.* (showing the latest changes at 20:49 on Dec. 11, 2009: "Legend: N - new page, m - minor edit, b - bot edit. 11 December 2009. * *List of songs by "Weird Al" Yankovic*; 20:49 . . (+123) . . 86.7.207.64 (talk) (→Compilation albums:) * *Haunted (film)*; 20:49 . . (-1) . . 216.163.200.47 (talk) (→Plot:) * User talk:92.12.22.90; 20:49 . . (+92) . . 92.12.22.90 (talk) (→Unblock: new section) * *Robin Hood Airport Doncaster Sheffield;* 20:49 . . (-1) . . 87.232.125.146 (talk) * *Lama (martial art);* 20:49 . . (0) . . 187.131.51.29 (talk) (→Chinese Lineages and Beyond:) * *User talk:Hajatvrc;* 20:49 . . (+825) . . SpikeToronto (talk | contribs) (Message re. Samuel Morse (HG)) * *McDonaldland;* 20:49 . . (+427) . . 76.77.139.243 (talk)…") (emphasis added).

tools ("bots") which help identify some of the most common patterns of undesired edits so that an administrator can roll back the change, leaving the remainder of the edits for manual undoing.[151]

Users who consistently violate site policy may be blocked from editing for a short period of time or indefinitely.[152] For a user whose entire edit history consists of abuse, this is a quick process.[153] For an established user whose use of the site has deteriorated over time, this is accomplished first through community dispute-resolution mechanisms and then through a quasi-judicial arbitration process.[154]

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[151] Wikipedia, *Wikipedia:Bots*, http://en.wikipedia.org/wiki/Wikipedia:Bots (last visited Dec. 22, 2009) ("Bots are automated or semi-automated tools that carry out repetitive and mundane tasks in order to maintain the 3,129,408 articles of the English Wikipedia. Bots are able to make edits very rapidly and can disrupt Wikipedia if they are incorrectly designed or operated. For these reasons a bot policy has been developed. There are currently 1,069 bot tasks approved for use on the English Wikipedia; however, they are not all actively carrying out edits."). *See also* Wikipedia, *Wikipedia:Types of Bots*, http://en.wikipedia.org/wiki/Wikipedia:Types_of_bots (last visited Dec. 22, 2009); Wikipedia, Wikipedia:Bots/Status, http://en.wikipedia.org/wiki/Wikipedia:Bots/Status (last visited Dec. 22, 2009) (describing bots that perform various functions like interwiki between Ukranian and English pages or repairing dead weblinks); Wikipedia, *Wikipedia:List of Bots by Number of Edits*, http://en.wikipedia.org/wiki/Wikipedia:Types_of_bots (last visited Dec. 22, 2009).

[152] Wikipedia, *Wikipedia:Arbitration*, http://en.wikipedia.org/wiki/Wikipedia:Arbitration (last visited Dec. 22, 2009); Wikipedia, *Wikipedia:Dispute Resolution*, http://en.wikipedia.org/wiki/Wikipedia:DR#Last_resort:_Arbitration (last visited Dec. 22, 2009) ("If the case involves serious user misconduct, Arbitration may result in a number of serious consequences up to totally banning someone from editing, as laid out in the Arbitration policy. Note that Arbitration is normally for disputes about user conduct, while Mediation is normally for disputes about article content.").

[153] Wikipedia, *Wikipedia:Long-term Abuse*, http://en.wikipedia.org/wiki/Wikipedia:Long_term_abuse (last visited Dec. 22, 2009) (listing the names of users and the pattern of their infractions, such as Suki Vandal, Sneaky Stats Vandal, Bogdanov Sockpuppets, BenH, Lyle123, JJonathan, and others).

[154] *See* Hoffman & Mehra, *WikiTruth*, *supra* note 117, at part B.1 (describing the architecture of today's wiki dispute resolution process describing talking to one another, requests for comment, Wikiquette alerts, mediation, and finally, arbitration). Wikipedia etiquette incorporates social norms and humorous concepts like WikiWar and WikiPeace.

See also Wikipedia, *Wikipedia:WikiWar*, http://en.wikipedia.org/wiki/Wikipedia:WikiWar (last visited Dec. 22, 2009) (with a summary of Wikipedia civility essays that span the basics on how to be civil, compromise, apology, truce; describing the philosophy behind civility in essays like, Wikipedia is not about winning; a summary of Wiki relation topics like WikiLove, WikiHate, WikiCrime, WikiViolence, WikiBullying, WikiPeace, and WikiWar; and a list of do's and don'ts like assuming good faith and not calling a spade a spade).

Essay topics on Wikipedia civility show provide a window into the core values and social norms behind Wikipedia content management. Essay topics for "Do's" include: "Assume the assumption of

In addition to these, the developer community[155] has added tools and features to help prevent the spread of problematic edits.[156] One such early innovation was the introduction of differing user access levels to begin with, which the early MediaWiki software did not have.[157] Other features include the "bad image list,"[158] which limits

good faith · Assume no clue · Assume clue · Avoid personal remarks · Avoid the word "vandal" · Award barnstars · Call a spade a spade · Candor · Drop the stick and back slowly away from the horse carcass · Deny recognition · In praise of 1RR · Revert only when necessary · Get over it · Go ahead, vandalize · Mind your own business · Discussing cruft · Keep it down to earth · Revert, block, ignore."

Essay topics for "Don'ts" include: "Arguments to avoid in edit wars · Don't be inconsiderate · Don't call a spade a spade · Don't call the kettle black · Don't take the bait · Do not insult the vandals · Just drop it · Don't edit war over the colour of templates · Don't be ashamed · Don't drink the consensus Kool-Aid · Don't feed the divas · Don't stuff beans up your nose · Don't spite your face · Don't revert due to "no consensus" · Do not call things cruft · No angry mastodons · Don't be an ostrich · Don't template the regulars · Don't be a fanatic · Don't accuse someone of a personal attack for accusing of a personal attack · Don't fight fire with fire."

For the transcript and record from an Arbitration proceeding based upon etiquette principles, *see Dmcdevit v. Durova arbitration proceeding from November 25, 2007*, http://en.wikipedia.org/wiki/Wikipedia:Requests_for_arbitration/Durova#Private_correspondence (last visited Dec. 22, 2009). In the Durova proceeding, Durova had sysop privileges and blocked a user named "!!" upon suspicion that he was a banned user resurfacing under another name. Durova agreed to give up her sysop privileges for blocking the user without prior approval from the Arbitration Committee. The Arbitration Committee encouraged user "!!" to keep contributing high quality content, and a third party, Giano, whose comments bordered personal attacks, was reminded of etiquette which depends on good will between editors. *Id*.

[155] Wikipedia, *Wikipedia:Community Portal*, http://en.wikipedia.org/wiki/Wikipedia:Community_portal (last visited Dec. 22, 2009) (offering users a dashboard of tools and manuals, including a Wikipedia Signpost daily bulletin board of news and updates). *See also* Wikipedia, *Wikipedia:Department Directory*, http://en.wikipedia.org/wiki/Wikipedia:Department_directory (last visited Dec. 22, 2009) (describing departments of community users organized by news, abuse response, dispute resolution, deletions, policy, and article writing with creation, maintenance, vandalism, expansion, cleanup, refinement, images, and technical integration of articles with other pages); Wikipedia, *Wikipedia:List of Shortcuts*, http://en.wikipedia.org/wiki/Wikipedia:List_of_shortcuts (last visited Dec. 22, 2009) (listing of policy pages for particular questions).

[156] Wikipedia, *Wikipedia:Tools*, http://en.wikipedia.org/wiki/Wikipedia_tools (last visited Dec. 22, 2009) (including tools like wikEd which is a full-featured in-browser text editor for Wikipedia edit pages). Other tools offer functionality for browsing and editing, searching across languages, page histories that show revision comparisons and the responsible editor, called WikiBlame, edit counters, cleaning up vandalism, importing content into Wikipedia, and connection applications like Six Degrees of Wikipedia to find the shortest path through wikilinks.

[157] Wikipedia, *MediaWiki*, http://en.wikipedia.org/wiki/MediaWiki (last visited Dec. 22, 2009). MediaWiki is a software platform used to support databases and pages on Wikipedia. MediaWiki comes with a basic set of features related to restricting access and defining user groups. *Id*.; *see also MediaWiki*, http://www.mediawiki.org/wiki/Main_Page (last visited Dec. 22, 2009); MediaWiki, *How Does MediaWiki Work?*, http://www.mediawiki.org/wiki/How_does_MediaWiki_work%3F (last visited Dec.

certain particularly graphic images only to the articles where their use is in the proper context, "oversight,"[159] which removes certain content such as private identifying data or outright libelous statements from the page history, and "checkuser,"[160] which allows selected users the ability to find the IP addresses behind a username in order to target user blocks. Describing every such technical tool for self-regulation could be a full paper in itself. Because the MediaWiki software is open source, any user with the programming skills can develop new features and tools to improve its functionality.[161] Some must be incorporated into the version in use on the site, and these go through a vetting process by the lead developers; ones that involve major interface or functionality

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22, 2009) (providing documentation, customization, versions and downloads, installation, support and contact, and development of the free server-based software licensed under the GNU General Public License (GPL)).

[158] Wikipedia, *MediaWiki:Bad Image List*, http://en.wikipedia.org/wiki/MediaWiki:Bad_image_list (last visited Dec. 22, 2009); Wikipedia, *MediaWiki talk:Bad Image List*, http://en.wikipedia.org/wiki/MediaWiki_talk:Bad_image_list (last visited Dec. 22, 2009) ("The images listed on MediaWiki:Bad image list are prohibited by technical means from being displayed inline on pages other than the ones it is specifically allowed on. Images on the list have normally been used for widespread vandalism where blocks and protections are impractical. The list includes a mechanism to allow posting of listed images to specific pages.").

[159] Wikipedia, *Wikipedia:Oversight*, http://en.wikipedia.org/wiki/Wikipedia:Oversight (last visited Dec. 22, 2009) ("Suppression on Wikipedia (in the past also known as Oversighting) is a form of enhanced deletion which, unlike normal deletion, expunges information from any form of usual access even by administrators. It is used within strict limits to remove defamatory material, to protect privacy, and sometimes to remove serious copyright violations, from any page or log entry (including if required the list of users) on English Wikipedia. On the English Wikipedia, "oversight", the right to suppress edits, is entrusted to a restricted number of users, who can suppress material if it meets the strict requirements below. Use of these tools is monitored both by other oversighters who patrol the log, and by Arbcom via its Audit subcommittee.").

[160] Wikipedia, *Wikipedia:CheckUser*, http://en.wikipedia.org/wiki/Wikipedia:CheckUser (last visited Dec. 22, 2009) ("On Wikipedia, CheckUser is a tool allowed to be used by a small number of users who are permitted to examine user IP information and other server log data under certain circumstances, for the purposes of protecting Wikipedia against actual and potential disruption and abuse. CheckUser itself simply produces log information for checking; it can require considerable skill and experience to investigate cases even with the tool. On the English Wikipedia, CheckUser is entrusted to a restricted number of users who can both execute CheckUser inquiries subject to their own discretion and monitor and crosscheck each other's use of the function.").

[161] For example, see MediaWiki extension, WikiTrust, created by the University of California Santa Cruz Online Collaboration Lab, which implements a system for checking the author, origin, and reliability of wiki text. Wikipedia, *MediaWiki*, http://en.wikipedia.org/wiki/Mediawiki (last visited Dec. 22, 2009).

changes are first approved by the Wikipedia community.[162] (Some rejected features are in use on other wikis.) Other tools are stand-alone tools intended for use by individual users to complement the MediaWiki software; browser add-ons, command-line tools, and user interface skins all add features that enhance users' ability to view and interact with the site.[163]

Finally, users who have no desire to interact with the site itself also have a way of influencing changes. Wikimedia maintains a ticket-tracker system so that volunteers may answer incoming e-mail requests.[164] This is the primary way by which readers unfamiliar with Wikipedia's internal processes and site operation alert volunteers to problems with the site content, such as incorrect content, defamatory information, and violations of privacy.[165] Incoming requests are sorted by the type and sensitivity of the request, and then directed to a queue; volunteers are selected to handle their messages based on their experience, reputation, and customer-service skills.[166] Part of their task is to resolve issues to prevent them from developing into something that goes to the legal system; only when an action moves into the courts does the handling leave the hands of volunteers.[167]

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[162] MediaWiki, *Extension Requests*, http://www.mediawiki.org/wiki/Extension_requests (last visited Dec. 22, 2009).

[163]   Wikipedia,   *Wikipedia:Options   To   Not   See   An   Image*, http://en.wikipedia.org/wiki/Wikipedia:Options_to_not_see_an_image (last visited Dec. 22, 2009); Wikipedia, *Wikipedia:Tools*, http://en.wikipedia.org/wiki/Wikipedia:Tools (last visited Dec. 22, 2009).

[164] Wikimedia Meta-Wiki, *OTRS*, http://meta.wikimedia.org/wiki/OTRS (last visited Dec. 22, 2009) (describing the open-source ticket request system software used to handle queries, complaints and comment e-mails from the public). *See* Wikimedia OTRS, *Main Page*, http://otrs-wiki.wikimedia.org/wiki/Main_Page (last visited Dec. 22, 2009).

[165] Wikimedia Meta-Wiki, *OTRS/IRC Channel*, http://meta.wikimedia.org/wiki/OTRS/IRC_channel (last visited Dec. 22, 2009).

[166] Wikimedia Meta-Wiki, *OTRS/Info-En Recruiting*,   http://meta.wikimedia.org/wiki/OTRS/info-en_recruiting (last visited Dec. 22, 2009) ("OTRS volunteers handle incoming e-mail for the Wikimedia Foundation. This covers everything from complaints about simple vandalism to allegations of libel and bias in biographical articles. Volunteers have a number of "boilerplate" responses available for common questions, but they are also free to answer in their own (tactful!) words. Our info-en queue and its subqueues handle most e-mail written in English. They are some of the busiest queues in the OTRS system and serve as the "front lines" for most reader interaction.").

[167] *Id*. ("Answering the info-en tickets is stressful. There's no two ways about it. You'll be handling

III. LIMITS OF SELF-POLICING MECHANISMS

A. *The Seigenthaler Incident*

In late 2005, Wikipedia made national news when journalist John Seigenthaler Sr. reported that the Wikipedia article about him contained libelous statements.[168] Seigenthaler, who had actually been first an administrative assistant and later a pallbearer for Kennedy, was shocked.[169] From May 26 until September 23, 2005, Wikipedia's entry on Seigenthaler reported that he had been involved in the murder of John F. Kennedy.[170] His son discovered the error, emailing friends and colleagues, one of whom later replaced the entry. Seigenthaler contacted Jimmy Wales soon thereafter.[171] After finding a registered IP address on the website, Seigenthaler contacted BellSouth Internet for the identity of the contributor with little success. At Wales' request, a Wikipedia administrator removed the false content from public view

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messages from people who are upset, clueless, disrespectful, and who in many cases have a legitimate complaint. OTRS volunteers see Wikipedia at its worst, get caught in the crossfire between editors and article subjects, and make pointless expenditures of any political capital they may have accumulated for the cause. On a good day.").

[168] John Seigenthaler, *A False Wikipedia "Biography*," USA TODAY, Nov. 29, 2005, *available at* http://www.usatoday.com/news/opinion/editorials/2005-11-29-wikipedia-edit_x.htm (last visited Dec. 22, 2009).

[169] *Id.*

[170] On May 26, the article was created with the libelous statements. On September 23, a colleague replaced the erroneous article with a biography from the Freedom Forum, which happened to be copyrighted material. On September 24, a Wikipedia user named Chick Bowen deleted the copyrighted material and replaced it with original writing. See http://en.wikipedia.org/w/index.php?title=John_Seigenthaler&oldid=23944523 (last visited Jan. 13, 2010). On October 7, 2005, the deletion log shows a user named Essjay deleted all old versions containing the libelous information, including everything previous to Chick Bowen's rewriting. http://en.wikipedia.org/w/index.php?title=Special:Log&type=delete&user=Essjay&page=John+Seigentha ler+Sr. When a deletion of an article occurs, all revision history is deleted along with the page. This is why the Wikipedia log no longer shows revisions prior to September 24, 2005.

[171] Seigenthaler, *A False Wikipedia "Biography*," *supra* note 170.

in article history almost immediately thereafter.[172] But for those four months, anyone who saw the article would have been left with the wrong idea.[173]

The New York Times can publish a retraction, and while it may not be read by everyone who saw the original piece of misinformation, the story and the retraction may both be ephemeral, intended to be consumed along with the day's news and then discarded. The audience should be the same for both: subscribers to the paper who read the first story are most likely to be in the group who will see the correction. As online newspaper archives become more popular, more stories gain wide circulation beyond their publication date, but they are still unlike Wikipedia entries, which are intended to be consulted as a reference. A user who reads an encyclopedia article once may never feel the need to consult it again. Wikipedia users cleaned up and rewrote the Seigenthaler article as soon as it was brought to their attention, leaving an entirely new and corrected entry in exactly as much a position of prominence as the original.[174] (More prominent, in fact, since the very problem with the original is that too few people had seen it.) But with Wikipedia, there's no guarantee or even likelihood that anyone who saw the original would ever read the corrected version.

Seigenthaler, an established luminary in the world of journalism, was well able to counter any possible damage done to his reputation simply by releasing more speech to combat the falsehood; this is a traditional tonic for misinformation, and the availability of such a cure is one of the justifications for the strength of the First Amendment.[175] His media blitz following the discovery ensured that far more people knew not only the truth about him, but about the whole sequence of events.[176] Most

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[172] *Id.*

[173] *Id.*

[174] Wikipedia, *John Seigenthaler*, http://en.wikipedia.org/wiki/John_Seigenthaler (last visited Jan. 9, 2010).

[175] *See* Abrams v. United States, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting) ("the best test of truth is the power of the thought to get itself accepted in the competition of the market").

[176] Wikipedia, *Wikipedia Biography Controversy*, http://en.wikipedia.org/wiki/John_Seigenthaler_Sr._Wikipedia_biography_controversy (last visited Dec. 22, 2009) (listing details of the incident and related news accounts).

who suffer damage to their reputation on Wikipedia are unable to respond in any forum more popular than the top-10 website. Seigenthaler appeared in national print and television media, talking about what had happened to him, and calling for greater accountability.[177] As founder of a center dedicated to the First Amendment and the freedom of the press, Seigenthaler had no wish to censor or restrict speech.[178] However, as the user who posted it was identified only by an IP address, and his identity was not known. Someone was responsible for the harmful speech, but Seigenthaler could not easily find the author to hold him responsible for his words. By December, Wikipedia critic Daniel Brandt contacted the owner of the IP address, a small shipping company in Nashville. He found that an employee had placed the entry as a joke, not realizing it would stick around. The employee resigned.[179]

If the user had logged in, he might never have been identifiable. Under Section 230, Wikipedia is treated as simply an information service provider, not responsible for the words that users post, and the victim is left with nowhere to turn. The site, a former media darling, was now subjected to a more critical scrutiny: what kind of thing is this, where some anonymous joker using the site as a graffiti wall can have a real effect on another person's life and reputation? The Seigenthaler article was the end of the honeymoon for coverage of Wikipedia; afterward, no journalist could write a story

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[177] *See Wikipedia to Require Contributors to Register*, National Public Radio Talk of the Nation, Dec. 6, 2005, http://www.npr.org/templates/story/story.php?storyId=5041077 (last visited Dec. 22, 2009) (featuring John Seigenthaler and Jimmy Wales); CNN Live From, Rush Transcripts, Dec. 5, 2005, http://transcripts.cnn.com/TRANSCRIPTS/0512/05/lol.02.html (last visited Dec. 22, 2009) (featuring John Seigenthaler and Jimmy Wales).

[178] First Amendment Center, *Brian J. Buchanan, Founder Shares Cautionary Tale of Libel in Cyberspace*, Nov. 17, 2006, http://www.firstamendmentcenter.org/news.aspx?id=17798 (presenting sixth of six "Conversations with John Seigenthaler" at the First Amendment Center).

[179] He also wrote a handwritten apology letter to Seigenthaler, who later contacted the company and urged them to rehire the employee; they did so. It was a fortunate resolution, but not a necessary one. Susan Page, *Author Apologizes for Fake Wikipedia Biography*, USA TODAY, Dec. 11, 2005, *available at* http://www.usatoday.com/tech/news/2005-12-11-wikipedia-apology_x.htm (last visited Dec. 22, 2009); Daniel Terdiman, *Newsmaker: In Search of the Wikipedia Prankster*, CNET NEWS, Dec. 15, 2005, http://news.cnet.com/In-search-of-the-Wikipedia-prankster/2008-1029_3-5995977.html?tag=st.num (last visited Dec. 22, 2009).

without mentioning the dark side of the site's openness.[180]

How did Wikipedia fail here? First, no one caught the misstatement to correct it. The edit was not immediately obvious as nonsense. Someone with no knowledge of Seigenthaler or his career would have no idea whether the statement was plausible or not. Change patrollers ought to follow a norm of checking any statements with such extreme and potentially harmful claims. Unfortunately, change patrollers do not do so consistently. It may be that this change, not containing profanity or nonsensical statements that were obvious as vandalism, slipped by without even a thought to question it.

Secondly, few people visited the article afterward.[181] At the time, Wikipedia did not store page access data, so there is no accurate way of knowing how many people saw the error.[182] But the article received only a handful of edits, none significantly altering the content; the small format and categorization changes the article received are often done via a semi-automated process by people who may not even read the text.[183] It is possible that no experienced Wikipedia editor ever read the article. Wikipedia page

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[180] A perhaps unintended effect of the intense media scrutiny was a dramatic increase in Wikipedia users, as people who had not been previously aware of the site learned about it and its open editing model. *See Survey: New Media, The Wiki Principle*, ECONOMIST, Apr. 20, 2006, *available at* http://www.economist.com/surveys/displaystory.cfm?story_id=6794228 (last visited Dec. 22, 2009).

[181] *See*, *e.g.*, Wikipedia, *John Seigenthaler: Difference Between Revisions*, http://en.wikipedia.org/w/index.php?title=John_Seigenthaler%2C_Sr.&diff=94456920&oldid=94215560 (last visited Jan. 11, 2010) (showing the ease with which a casual viewer can see content changes by graphically comparing edits with Wikipedia technology similar to Microsoft Word Track Changes).

[182] "[Page View Statistics] is very much a beta service and may disappear or change at any time." *Wikipedia Article Traffic Statistics*, http://stats.grok.se/en/201001/John_Seigenthaler (last visited Jan. 11, 2010) (describing the page view statistics data available under the history tab for each Wikipedia article); Wikipedia, *Revision History of John Seigenthaler*, http://en.wikipedia.org/w/index.php?title=John_Seigenthaler&action=history (last visited Jan. 11, 2010).

[183] *See* Wikipedia, *File:IRCM.png*, http://en.wikipedia.org/wiki/File:IRCM.png (last visited Jan. 11, 2010) (displaying a screenshot of an IRC monitor that is stylized like an email inbox. The application provides a Wikipedian with an automated list of recent article changes of interest, with data columns showing the name of the article, the username or IP address of the user who made the change, the number of edits for each user, and the content of edits. The application provides a one-click option to see the diff view of pages, to load the article page, to load the user page, and to whitelist or blacklist the user).

accesses tend to follow a power-law distribution,[184] with the handful of most popular articles getting the vast majority of the page views and edits, and the millions of articles in the long tail getting vanishingly few apiece.[185]

"My fear is that we're going to get government regulation of the Internet as a result," Seigenthaler stated in an interview about the incident.[186] It was not an unreasonable fear where incidents involving living people are more politically likely to invite proposals for regulation. Many at Wikipedia, too, believed that some additional layer of self-regulation needed to happen to prevent living people from being harmed, if not because of the threat of government regulation, then because the alternative was neither moral nor just.[187]

B. Living Persons, Living Reputations, and Trade-Offs

Over 10 percent of articles on Wikipedia are about people currently alive.[188] Many of the rest are about active organizations, current events, contemporary ideas, or otherwise include information about living people and their histories and activities.

Articles about living people present particular challenges to Wikipedia.[189] As of late 2009, a trial version of a more stringent flagged revisions policy for biographies of

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[184]   *See*   Wikipedia,   *Does   Wikipedia   Traffic   Obey   Zipf's   Law*, http://en.wikipedia.org/wiki/Wikipedia:Does_Wikipedia_traffic_obey_Zipf%27s_law%3F (last visited Jan. 9, 2010).

[185] *Id*. (suggesting that the least popular Wikipedia page gets 0.0015 times less traffic as the page with rank 6 in search results).

[186] *See Author Apologizes*, USA TODAY, *supra* note 181.

[187] *See Wikipedia to Require Contributors to Register*, *supra* note 179.

[188] This is a conservative number. At the time of writing, 371,000 articles out of 2,877,800 are tagged with the category "living people;" a small percentage of articles remain untagged or are about people whose status is unknown. *See generally* Wikipedia, *Changes Related to "Category:Living People*," http://en.wikipedia.org/wiki/Special:RecentChangesLinked/Category:Living_people (last visited Dec. 22, 2009) (displays a list of recent changes to living people pages).

[189] *See* Farhad Manjoo, *Jimmy Wales Quietly Edits Wikipedia's New Edit Policy*, TIME, Sept. 30, 2009, http://www.time.com/time/business/article/0,8599,1926826,00.html (last visited Jan. 9, 2010).

living persons has gained attention[190] and is expected to be deployed in 2010.[191] Flagged revisions would require a trusted editor to accept changes made by a new user to an existing living persons biography page.[192] This proposed policy has been controversial to some, as being more strict than Wikipedia has otherwise operated.[193] Most of the site works according to an "eventualist" process: facts may be incorrectly stated for a short amount of time, but eventually someone will come and fix it.[194] As a general matter, the site exhorts its users to verify material found on Wikipedia in an external reference.[195] Getting factual information wrong about a town or a novel may be embarrassing and hurt the site's reputation, but does little damage. Mistaking a fact about a person no longer alive may be similar.

But along with every living person is a living reputation. The Supreme Court recognized this principle in *Rosenblatt v. Baer*, stating that "[s]ociety has a pervasive and strong interest in preventing and redressing attacks upon reputation."[196] Today's information society has approached the delicate balance of privacy and reputation where web publishing can quickly impact a person's reputation among a private group of individuals and the public at large. Daniel Solove's recent book, *The Future of*

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[190] *Id.*

[191] [cite Erik mailing list]

[192] Manjoo, *New Edit Policy*, *supra* note 192.

[193] *Id.*

[194] *See* Padraig Reidy, *Do Wiki's Work?*, THE GUARDIAN, Jan. 29, 2009, http://www.guardian.co.uk/commentisfree/2009/jan/29/wikipedia-internet-publishing (last visited Jan. 9, 2010) ("The essential problem with a venture like Wikipedia is that people will get stuff wrong: that's where the community correction element comes in. But as events move on, more edits can be made, more information, right and wrong, put out. While a newspaper article's life effectively ends in the recycling bin, there is no endpoint to the internet."). *See also* L. Gordon Crovitz, Opinion, *Wikipedia's Old-Fashioned Revolution*, WALL ST. J., Apr. 6, 2009, *available at* http://online.wsj.com/article/SB123897399273491031.html (last visited Jan. 10, 2010).

[195] Wikimedia Foundation, *Resolution:Biographies of Living People*, Apr. 2009, http://wikimediafoundation.org/wiki/Resolution:Biographies_of_living_people (last visited Dec. 18, 2009) ("The Wikimedia Foundation Board of Trustees urges the global Wikimedia community to uphold and strengthen our commitment to high-quality, accurate information, by: 1. Ensuring that projects in all languages that describe living people have policies in place calling for special attention to the principles of neutrality and verifiability in those articles…").

[196] Rosenblatt v. Baer, 383 U.S. 75, 86 (1966).

Reputation, discusses the many ways in which the digital era has changed how we think about and manage reputation, and how we, as general Internet users, have not changed our thinking about it yet.[197] A bit of gossip once made the rounds only among a small social group.[198] The same information posted on a popular message forum may quickly be e-mailed to thousands, appear on several web sites, and reside in multiple caches of web content so that they are effectively deathless.[199]

Though nearly all of us have some embarrassing or shameful events in our personal history, few of us are forced to confront it as the primary thing the world sees when they want to know who we are. Arguably, those who make it so that this is true have committed an injustice against us. But who is responsible when this happens? Is this sort of harm an acceptable trade-off for enabling interactive, user-generated sites like Wikipedia?[200]

Following the Seigenthaler incident, Wikipedia further adapted its policies, requiring special handling of biographies of living people in recognition of these harms.[201] Along with this legalistic remedy came a social shift: users of Wikipedia were becoming more aware of the problem and that their actions (or omissions) could

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[197] DANIEL J. SOLOVE, THE FUTURE OF REPUTATION (2007) (exploring the shortcomings of pre-Internet privacy law when applied to Web 2.0 with examples of shaming, rumors, gossip).

[198] *Id.* at 74 ("In the past, gossip occurred backstage; it was fleeting and localized…But today details about people's private lives are increasingly migrating to the Internet.").

[199] *Id.* at 8 ("[Dog poop girl] will not be forgotten. That's what the Internet changes. [N]ow her image and identity are eternally preserved in electrons . . . . forever, she will be captured in Google's unforgiving memory.").

[200] *Id.* at 37 (discussing the benefits from rapid error-correction machinery available on the Internet with the costs of refuting false rumors or highly private true information). For an excellent analysis of the difficult aspects of protecting private persons from Internet shaming, *see id.* at 94 (discussing shaming downsides as lack of proportionality in punishment, lack of due process, bullying, and vigilantism or retaliatory self-help). *See generally* Daniel J. Solove, *A Taxonomy of Privacy*, 154 U. PA. L. REV. 477 (2006); Daniel J. Solove, *A Taxonomy of Privacy*, Concurring Opinions, Mar. 21, 2006, http://www.concurringopinions.com/archives/2006/03/a_taxonomy_of_p.html (last visited Jan. 6, 2010).

[201] *See Resolution:Biographies of Living People*, *supra* note 197 ("As our popularity has grown, some issues have become more prominent: Many people create articles that are overly promotional in tone…People sometimes vandalize articles about living people. …Some articles about living people contain small errors, are poorly-written or poorly-sourced. … People sometimes make edits designed to smear others. This is difficult to identify and counteract, particularly if the malicious editor is

have effects on the world outside Wikipedia.[202] This sort of self-adaptation in response to problems is one of the justifications for the open model: though it cannot prevent all problems at the outset, it can continue to enable finding a balance between pure openness and protection of others' legitimate interests.[203]

C. Anonymity or Accountability

Part of the reason that Section 230 was possible was that excepting unusual circumstances, someone, somewhere, could track down the person responsible for any anonymous posting.[204] Search engines and ISPs collect data on all their subscribers even if people do not sign names to their posts, for purposes including charging accounts, troubleshooting, developing targeted advertisements and many others.[205] In the model of ISP that existed in the 1990s, anyone knowing the IP address or "screen name" of a user could be sure that user's ISP could trace it back to a real identity. Though a user might be anonymous to the rest of the internet, an ISP could respond to a subpoena and be able to identify the user so an injured party could seek the real tortfeasor rather than the ISP.[206]

But in the present era, many interactive websites don't make this simple. A website may be able to trace a particular post to a particular IP address and time through its server logs, or perhaps even through automatically attaching such information to any

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persistent.").
    [202] *Id*. ("As the popularity of the Wikimedia projects grows, so does the editing community's responsibility to ensure articles about living people are neutrally-written, accurate and well-sourced.").
    [203] *Id*. ("Increasingly, Wikimedia articles are among the top search engine results for just about any query. That means that when a potential employer, a colleague, friend, neighbor or acquaintance looks for information about a person, they may find it at the Wikimedia sites.").
    [204] *See* Ira S. Rubenstein, Ronald D. Lee & Paul M. Schwartz, *Data Mining and Internet Profiling: Emerging Regulatory and Technological Approaches*, 75 U. CHI. L. REV. 261, 272 (2008).
    [205] *Id*.
    [206] *Id*. at 274.   *See* 18 U.S.C. § 2703(c)(2)(2006) (describing required disclosure of customer communications or records); Ashley I. Kissinger & Katharine Larsen, *Protections for Anonymous Online Speech*, 987 PLI/Pat 711 (Nov. 12-13, 2009); Nathaniel Gleicher, *Note, John Doe Subpoenas: Toward a*

postings made.[207]   But this may not be sufficient when IP addresses are assigned to residential users on a dynamic basis.[208]   Furthermore, IP addresses may not uniquely identify users (particularly in public areas such as libraries, cybercafes, and school labs).[209]   More sophisticated users may use multi-layered proxy services such as TOR,[210] which hide users' originating addresses in such a way that no one knows where to seek the original user.

   Many sites don't even keep logs, or only keep them for a short time. In addition to the storage and infrastructure requirements, sites prefer to get rid of logs because it makes them vulnerable to fishing expeditions by law enforcement and enables potential breaches of user privacy.[211]   However, as the web has become more mature, sites have

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Consistent Legal Standard, 118 YALE L.J. 320 (2008).

[207] *See*, *e.g*., U.S. v. Perrine, 518 F.3d 1196, 1200-01 (10th Cir. 2008) ("[T]he senior compliance paralegal at Yahoo!, testified that Yahoo! tracks dates, times, and IP addresses for log-in attempts on a Yahoo! account and maintains that information for approximately thirty days. She further testified that Yahoo! records showed that the IP addresses 68.103.177.226 and 68.103.177.146 belonged to 'stevedragonslayer.'").

[208] *See id*. at 1201 ("the Cox Communications Customer Escalations Coordinator, testified that residential account IP addresses can change because they are leased for twenty-four hours at a time. Cox Communications residential account IP addresses release and renew every twenty-four hours; when an IP address releases, if the same IP address is available, it reattaches within a few seconds.").

[209] *See* Frederick Lah, *Note, Are IP Addresses "Personally Identifiable Information"?*, 4 I/S: J.L. & POL'Y FOR THE INFO. SOC. 681, 690 (2009) ("Historically, most Internet users have been assigned dynamic IP addresses, with static IPs being used primarily for servers, but some cable and most new broadband connections also use static IPs.") (footnotes omitted).

[210] *See* Rubenstein et al., *supra* note 207, at 275-76. *See generally* Roger Dingledine, Nick Matthewson & Paul Syverson, *Tor: The Second-Generation Onion Router*, Aug. 2004, http://freehaven.net/svn/tor/trunk/doc/design-paper/tor-design.pdf (last visited Jan. 7, 2010); Electronic Frontier Foundation, *EFF Joins Forces with TOR Software Project*, Dec. 21, 2004, http://www.eff.org/press/archives/2004/12/21-0 (last visited Jan. 7, 2010).

[211] *See* Henry L. Judy, et al, *Privacy, Information Security, and Data Breaches,* Information Technology Law Institute 2009: Web 2.0 and the Future of Mobile Computing: Privacy, Blogs, Data Breaches, Advertising, and Portable Information Systems, 962 PLI/PAT 199, 254 (2009) ("Don't collect data if you cannot protect it."); Wikimedia Foundation, *Privacy Policy*, http://wikimediafoundation.org/wiki/Privacy_policy (last visited Jan. 8, 2010) ("Consistent with its Data Retention Policy, the Foundation collects and retains the least amount of personally identifiable information needed to fulfill the Projects' operational needs."). *See also* Google, *Privacy FAQ*, *Why Are Logs Kept Before Being Anonymized*, http://www.google.com/privacy_faq.html#toc-protect (last visited Jan. 7, 2010) ("We strike a reasonable balance between the competing pressures we face, such as the privacy of our users, the security of our systems and the need for innovation. We believe anonymizing IP addresses after 9 months and cookies after 18 months strikes the right balance.").

leveraged user information to assist with technological and business development. In the case of commerce, verifiable user information often safeguards buyers and sellers when payment is required.[212] For social networking, e-mail addresses from a broader range of users suffice, for example, Facebook which once required an active college e-mail address, but no longer.[213]

Other sites, such as Wikipedia, don't require a login at all for a user to edit existing pages, though it does collect typical data such as the IP address; the page editing history originating from a particular IP address is publicly visible for users without a login, and available to a small group with IP checking privileges, for users with a login.[214] In Wikipedia's case, this policy is consistent its goal of having a low barrier to entry so than anyone can participate easily.[215] In the ideal, Wikipedia doesn't care who you are, only what you know and what you can contribute. To that end, Wikipedia does not aim to collect personal information about its users.[216] Contributors are encouraged to create a login and supply an email address, but this is not required.[217] Users are also given the option of creating "user pages," which can contain as much or

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[212] eBay, *eBay Launches the Most Comprehensive Trust and Safety Upgrades to the World's Largest Person-to-Person Trading Site*, Jan. 15, 1999, http://pages.ebay.com/aboutebay98/releases/9901.html#2 (last visited Jan. 8, 2010) ("Currently, when a person joins the eBay community, they submit contact information that is verified at the time of registration and periodically updated to confirm its validity. In March '99, a new voluntary program, Verified eBay User, will encourage users to supply eBay with additional information for online verification. By offering their social security number, driver's license number and date of birth, users will, at an introductory price of $5, qualify for the highest level of verification on eBay. Verified eBay User status with accompanying icon means other eBay members can conduct transactions with added confidence in the identity of the user. All users' information will be protected under the eBay Privacy Policy and used exclusively for verification purposes.").

[213] Facebook, *Facebook Expansion Enables More People to Connect with Friends in a Trusted Environment*, Sept. 26, 2006, http://www.facebook.com/press/releases.php?p=69602#/press/releases.php?p=618 (last visited Jan. 8, 2010).

[214] Wikimedia Foundation, *Privacy Policy*, http://wikimediafoundation.org/wiki/Privacy_policy (last visited Jan. 8, 2010).

[215] *Id*. ("Anyone with Internet access (and not otherwise restricted from doing so) may edit the publicly editable pages of these sites with or without logging in as a registered user.").

[216] *Id*. ("The Foundation limits the collection of personally identifiable user data to purposes which serve the well-being of its projects, including but not limited to the following…[t]o enhance the public accountability of the projects… [t]o provide site statistics … [t]o solve technical problems.").

as little personal information as the user wishes, and are not verified.[218]

There are many reasons why a person might wish to remain anonymous online. On a site such as Wikipedia, a user may not wish his unusual areas of knowledge or expertise to become common knowledge to his neighbors or close associates; some fear their edits would make them socially or politically unpopular. On some forums, people wish to ask for advice for confidential problems; on others, they wish to leak information in the public interest without losing their jobs or their access to the source of that information.[219] Recognizing that there are many legitimate reasons for speakers to prefer anonymity, the right to anonymous speech in the print medium has been long protected in First Amendment jurisprudence.[220] However, where identification of the speaker serves some compelling state interest, identification has been required.[221]

Contrary to expectations, it is those referred to as "anonymous users" on Wikipedia whose identities are least-protected, by default. Logged-in users' IP addresses are not visible to the public, but only to particular users entrusted with technical tools for policy enforcement, and only under limited circumstances.[222] For a limited period of time, their IP addresses are stored in server logs, but these are deleted after a certain time has elapsed, and only revealed where necessary to prevent abuse of the site.[223] Users who wish to remain truly anonymous, by virtue of hiding their true IP

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[217] *Id.* ("Users are not required to list an email address when registering.").

[218] Wikipedia, *Wikipedia:User Page*, http://en.wikipedia.org/wiki/User_page (last visited Jan. 8, 2010).

[219] *See* Wikileaks, http://wikileaks.org/wiki/Wikileaks (last visited Jan. 8, 2010).

[220] SOLOVE, THE FUTURE OF REPUTATION, *supra* note 199, at 148 (*quoting* McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 342 (1994) ("an author is generally free to decide whether or not to disclose his or her true identity")).

[221] *See* Lyrissa Barnett Lidsky & Thomas F. Cotter, *Authorship, Audiences, and Anonymous Speech*, 82 NOTRE DAME L. REV. 1537, 1547 (2007) (*citing* McConnell v. Federal Election Comm'n, 540 U.S. 93 (2003) (no violation of free speech rights when closely drawn to government interest in preventing corruption among federal candidates)).

[222] Wikimedia Foundation, *Privacy Policy*, http://wikimediafoundation.org/wiki/Privacy_policy (last visited Jan. 8, 2010) ("Logged in users do not expose their IP address to the public except in cases of abuse, including vandalism of a wiki page by the user or by another user with the same IP address.").

[223] *Id.* ("A user's IP address is stored on the wiki servers for a period of time, during which it can be seen by server administrators and by users who have been granted CheckUser access.").

address, then, log in.[224]   In contrast, users who choose not to log in, so-called "anonymous" users, are publicly identified by IP address, which is then visible and permanently recorded in the public history of the page.[225]   An IP address provides the world much more personally identifiable information to the general public, given the search capabilities of IP address location, compared to a user-generated alias. Wikipedia provides reverse incentives to balance the trade-off between registration and identification among its users in a minimalist fashion.

However, this leaves a would-be plaintiff in an unfortunate position. For the plaintiff who has suffered from an anonymous third-party's harmful speech, his only recourse is to pursue the anonymous user directly. A lawsuit against Wikipedia for hosting the tortious statement will likely be dismissed in summary judgment under Section 230. When such incidents occur, one danger to sites like Wikipedia is that they raise moral outrage from the public who are discovering the consequences of the freedom and permanent nature of information.[226]

D. *Media Literacy and the Particular Problem of Wikipedia*

For society to keep pace with technology, internet users need to become media literate: aware of the sources of information they rely upon, and knowledgeable about what degree of trust to put in them. Many of Wikipedia's particular problems come from the public perception that it is an authoritative source. The responsibility for educating users, then, should fall on the operators of Wikipedia and other such sites to

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[224] *Id.*

[225] *Id.* ("Editors who have not logged in may be identified by network IP address. Depending on one's connection, this IP address may be traceable to a large Internet service provider or more specifically to a school, place of business or home. It may be possible to use this information in combination with other information, including editing style and preferences, to identify an author completely.").

[226] SOLOVE, THE FUTURE OF REPUTATION, *supra* note 198, at 17 ("We're heading toward a world where an extensive trail of information fragments about us will be forever preserved on the Internet….How and why is this happening? How can the free flow of information make us more free yet less free as well?").

counteract this failure mode.[227]

The Seigenthaler incident revealed one aspect of the disconnect between users' intuitions about the social web and the reality.[228] Many assume that a website anyone can edit, without credentials, demonstrated expertise, or even identification, cannot be a serious effort, thus, it must be a joke. But to much of the web-using world, Wikipedia is a standard reference website, and what is said there is perceived as true; Wikipedia articles often appear as the first result on general reference web searches, adding to its authoritative appearance.[229]

When Wikipedia was first launched in 2001, it was run on the older UseMod wiki software.[230] The design looked sparse and unfinished, lacking the polish of a professionally-designed, professionally-run site.[231] The markup available was unsophisticated, unable to produce complicated layouts and embedded objects; the site looked like a work in progress.[232] (Some wiki sites still retain the same software and aesthetic.[233]) In 2002, a team of volunteer developers rewrote the software and in the process redesigned the site to take on a more polished feel.[234] Users have continued improving the new MediaWiki software so that a site run on a new installation can look presentable with no customization required.[235] Other users contributed to the increasing

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[227] The need for user-education has also been described as a symptom of nascent social norm development for the Internet. *Id*. at 195-96 ("With so many different bloggers, and with so many new ones joining the ranks each day, the norms of the blogosphere are not stable. The law can help shape norms in the blogosphere, however, by threatening to become involved if such norms don't evolve."

[228] *See John Seigenthaler, supra note* 170 and accompanying text.

[229] As an anecdotal example, three major keyword search engines, Google, Yahoo!, and Bing provide the Wikipedia article for "tort," see http://en.wikipedia.org/wiki/Tort, as the first and most relevant search result in response to a keyword search for "tort law."

[230] *See* Wikipedia, *Wikipedia:UseMod Article Histories*, http://en.wikipedia.org/wiki/Wikipedia:Usemod_article_histories (last visited Jan. 9, 2010).

[231] *See* Wikipedia, *Nostalgia Wikipedia Home Page*, http://nostalgia.wikipedia.org/wiki/HomePage (last visited Jan. 9, 2010) (displaying a copy of the English Wikipedia database from December 20, 2001).

[232] *Id*.

[233] *See* UseMod, *UseMod Wiki: SiteList*, http://www.usemod.com/cgi-bin/wiki.pl?SiteList (last visited Jan. 9, 2010).

[234] *See* Wikipedia, *MediaWiki*, http://en.wikipedia.org/wiki/MediaWiki (last visited Jan. 9, 2010).

[235] *Id*.

slickness by designing templates and graphics to lend the site a consistent, professional look and feel.[236]

And finally, the content of site began to look more authoritative. In 2001, most articles, of the relatively small number that existed, were generally brief, largely incomplete, and often contained glaring errors such as poor spelling and grammar.[237] Articles selected as "brilliant prose"[238] and the precursor to what is today called a "Featured Article,"[239] could be barely a page long and contain no citations to reference material, no pictures or multimedia elements, no links to galleries of even more media, no navigational elements to help you find other articles in a thematic group. Today even a moderately good article has all of those features. On most mainstream topics, an article will have several screens of text, possibly with links to separate articles on sub-topics that editors split off after the detail began to overwhelm the main article. The glaring typos and formatting errors have been fixed, many by casual users, many more with the aid of "bots" and other automated tools.[240] Pictures and other media are framed in templates and captions.[241]

The site looks as good as many sites with large content-production budgets and professional maintenance staff. Many casual users may not even be aware that they too

[236] *Id*.

[237] *Compare* Nostalgia Wikipedia, *Postage Stamp*, http://nostalgia.wikipedia.org/wiki/Postage_Stamp (last visited Jan. 9, 2010), *with* Wikipedia, *Postage Stamps*, http://en.wikipedia.org/wiki/Postage_stamps (last visited Jan. 9, 2010). *Compare* Nostalgia Wikipedia, Nostalgia Wikipedia, *Dilbert*, http://nostalgia.wikipedia.org/wiki/Dilbert (last visited Jan. 9, 2010), *with* Wikipedia, *Dilbert*, http://en.wikipedia.org/wiki/Dilbert (last visited Jan. 9, 2010).

[238] Nostalgia Wikipedia, *Brilliant Prose*, http://nostalgia.wikipedia.org/w/index.php?title=Brilliant_prose&oldid=4431 (last visited Jan. 9, 2010).

[239] *See* Wikipedia, *Wikipedia:Wikipedia Signpost/2008-07-21/Dispatches, Dispatches: History of the Featured Article Process*, http://en.wikipedia.org/wiki/Wikipedia:Wikipedia_Signpost/2008-07-21/Dispatches (last visited Jan. 10, 2010).

[240] *See* Wikipedia, *Category:Wikipedia Bots by Name*, http://en.wikipedia.org/wiki/Category:Wikipedia_bots_by_name (last visited Jan. 10, 2010) (providing a list of available Wikipedia bots by name and functionality); *see also supra* note 162 and accompanying discussion.

[241] *See* Wikipedia, *Category:Infobox Templates*, http://en.wikipedia.org/wiki/Category:Infobox_templates (last visited Jan. 10, 2010) (providing templates for standardized infoboxes as specific as mathematical formulas or zodiac signs).

can edit pages.   And there's the problem.   In the effort to obtain an aura of respectability, Wikipedia has perhaps done too well. The site looks comparable to a bastion of mainstream media, if the casual observer overlooks the clues that invite users to "edit this page." Many users do not edit pages, and if a user is not looking for those clues, why would he notice?[242] Contributors joke that the site should go back to 1996-style design, complete with the once-ubiquitous animated image of a construction worker, just to make sure readers know the site is a work in progress.[243]

Many other Web 2.0 sites don't share this problem: sites like Facebook do not have the dual aims of trying to encourage participation while becoming a direct substitute for a traditional reference resource.   Most Web 2.0 properties can be categorized into one of two categories: interaction-oriented and goal-oriented. The sites that have the most problematic content are interaction-oriented, focusing on personal expression and social connections, sharing in and of itself, and emphasize the user-created aspect of the site. Other goal-oriented sites such as WikiHow and WikiTravel have a more limited scope and utility than a generalist encyclopedia, though they are growing in popularity, and have fewer areas that present obvious challenges for monitoring site content.[244]

Wikipedia is an attractive target for people seeking to cause trouble for many reasons. The first is its overwhelming popularity. The website currently is the sixth

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[242] North America Wikipedia attracted approximately 75 million unique visitors in November 2009. *Wikimedia Report Card - November 2009*, http://stats.wikimedia.org/reportcard (last visited Jan. 10, 2010).   English Wikipedia has 40,000 active editors with over five edits per month. *Id.   See also Wikipedia Statistics – Tables*, http://stats.wikimedia.org/EN/TablesWikipediaEN.htm (last visited Jan. 10, 2010) (providing visitor data in tabular form with ability to isolate data by language).

[243] *See generally Please Be Patient – This Page is Under Construction!*, http://www.textfiles.com/underconstruction (last visited Jan. 11, 2010) (collecting relics of 1990s era graphics notifying readers that websites were under construction).

[244] WikiTravel, *Free Worldwide Travel Guides*, http://wikitravel.org/en/Main_Page (last visited Jan. 10, 2010) ("Wikitravel is a project to create a free, complete, up-to-date, and reliable worldwide travel guide. So far we have 22,930 destination guides and other articles written and edited by Wikitravellers from around the globe."); WikiHow, *The How-To Manual That You Can Edit*, http://www.wikihow.com/Main-Page (last visited Jan. 10, 2010).

most visited site on the web and seventh most visited site in the United States,[245] and it
is rare that a web search does not bring up a Wikipedia page in the first few hits.[246] The
site's easily-accessible nature creates risk that agents will abuse their editing privileges
by pushing a message out or simply stirring up trouble.   Second, as a generalist
reference work, Wikipedia contains articles about many controversial subjects:
politicians, corporations, writers, current events, religions, celebrities, and websites,
among others.[247] Though Wikipedia's ideal is neutrality,[248] the subjects that most drive
passions get the most editing activity and are magnets for those who have an agenda to
advance;[249] even when the slanted copy is quickly edited out by another user, someone
else with an equally insistent voice pops up to edit again.[250]   Finally, because
Wikipedia's scope is so broad, many articles in it are only interesting to a small segment
of the population, none of whom may be active editors knowledgeable about site
policy.[251]

   After they learn that anyone can edit, people often contact Wikipedia wondering

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[245] Alexa, *Site Info from Alexa: Wikipedia.org*, http://www.alexa.com/siteinfo/wikipedia.org (last visited Jan. 10, 2010).

[246] *See* supra note 243 for a discussion of "tort law" search results.

[247] *See* Wikipedia, *Wikipedia:List of Controversial Issues*, http://en.wikipedia.org/wiki/List_of_controversial_articles (last visited Jan. 10, 2010); Wikipedia, *Wikipedia:Controversial Articles*, http://en.wikipedia.org/wiki/Wikipedia:Guidelines_for_controversial_articles (last visited Jan. 10, 2010).

[248] Wikipedia, *Wikipedia:Neutral Point of View*, http://en.wikipedia.org/wiki/Wikipedia:Neutral_point_of_view (last visited Jan. 10, 2010) ("Neutral point of view (NPOV) is a fundamental Wikimedia principle and a cornerstone of Wikipedia. All Wikipedia articles and other encyclopedic content must be written from a neutral point of view, representing fairly, and as far as possible without bias, all significant views that have been published by reliable sources. This is non-negotiable and expected of all articles and all editors.").

[249] *See*, *e.g.*, Wikipedia, *Fox News Channel:View Source*, http://en.wikipedia.org/w/index.php?title=Fox_News_Channel&action=edit (last visited Jan. 10, 2010) ("This page is currently semi-protected and can be edited only by established registered users. Semi-protection is sometimes necessary to prevent vandalism to popular pages. Most articles can be edited by anyone.").

[250] *See*, *e.g.*, Wikipedia, *Fox News Channel:Revision History of Fox News Channel*, http://en.wikipedia.org/w/index.php?title=Fox_News_Channel&action=history (last visited Jan. 10, 2010).

[251] *See*, *e.g.*, Wikipedia, *Wikipedia:Unusual Articles*, http://en.wikipedia.org/wiki/List_of_unusual_articles (last visited Jan. 10, 2010).

how the site survives under the constant onslaught of garbage: schoolchildren or pranksters editing pages to contain profanity, jokes, or complete nonsense. But obvious, clearly-recognized nonsense is one of the least of Wikipedia's worries. Even with a continual stream of irrelevant edits, nonsensical edits are easily recognized. A person patrolling new edits can reverse these changes in a single click, with far less effort and time than the creator invested to make the change.[252] A reader stumbling across the change will easily recognize something wrong and correct the page. If a reader recognizes the change and is not aware of their ability to correct the site, he often writes in to notify the staff that the site has been hacked!

The most difficult problem, however, is misinformation that looks legitimate, even plausible. In contrast to other interactive websites, Wikipedia at least provides the best opportunity for users to repair damage in a decentralized manner. When edits are clearly in violation of site policy and seen through a neighborhood watch attitude, the particular article becomes more heavily patrolled with the aide of automated bots to notify users of the incident. But for users to be able to correct information, they must first notice that something is wrong.

Most of the big players know to self-regulate. Craigslist self-polices its ads (if imperfectly) to ensure that illegal content is not allowed to remain (and now keeps a closer eye on adult services as well),[253] as does eBay, which operates under a sophisticated and well-established ratings system for sellers and buyers.[254] In contrast,

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[252]   *See*   Wikipedia,   *Wikipedia:Rollback   Feature*, http://en.wikipedia.org/wiki/Wikipedia:Rollback_feature (last visited Jan. 10, 2010).

[253]   Craigslist,   *About: Help: Flags   and   Community   Moderation*, http://www.craigslist.org/about/help/flags_and_community_moderation (last visited Jan. 10, 2010) ("[C]raigslist users enjoy free and nearly instantaneous self-publishing of tens of millions of postings each month, subject only to craigslist Terms of Use and posting guidelines. Users may flag postings they believe to be in violation of craigslist guidelines, by clicking on one of the flagging links at the upper right corner of each posting: miscategorized - wrong category/site, discusses another ad, otherwise misplaced; prohibited - violates craigslist Terms of Use or other posted guidelines; spam/overpost - posted too frequently, in multiple cities/categories, or is too commercial.").

[254]   eBay,   *Seller   Performance   Standards*,   http://pages.ebay.com/help/policies/seller-non-performance.html (last visited Jan. 10, 2010) (describing the minimum performance standards through

some interactive social websites exist for the purpose of satire or anonymous jokes with little incentive to self-regulate. The users of gossip site Encyclopaedia Dramatica may only create more insulting articles about you, should you dare to complain publicly on the website,[255] and on anonymous message board 4chan, there is no public record of changes to threads and posts with no guarantees of quality of content, where the site looks like the free-for-all that it is.[256]

CONCLUSION

An interactive computer service like Wikipedia with such expansive influence and breadth has incentives to self-police beyond the legal liability regime anchored by Section 230. This article shows that websites can harness the energy of Good Samaritan fact-checkers in order to promote a quality product and to preempt regulatory scrutiny that may arise from situations that arise at the borderland of Section 230 immunity. Areas that may warrant acute regulatory liability may be prevented by self-policing that protects living reputations, protects victims of anonymous predators, and protects consumers with low media literacy. Web sites would do well to create features that allow users to communicate potential errors, misinformation, and notice. Feedback loops from users to the web site and back to other users that function as self-policing regimes are a win-win for all parties.

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ratings required to maintain seller status).
  [255]   Encyclopaedia   Dramatica,   *Encyclopaedia   Dramatica:General   Disclaimer*,
http://encyclopediadramatica.com/Encyclopedia_Dramatica:General_Disclaimer (last visited Jan. 10, 2010) ("We take no responsibility for any of this. It's a wiki. That means that anyone with internet access can create, change, modify or delete any of the pages herein…. If you feel as though someone has committed harassment or defamation against you, please pursue your remedies against that poster as encyclopediadramatica.com is not responsible for their words.").
  [256] 4chan, *Frequently Asked Questions*, http://www.4chan.org/faq#what4chan (last visited Jan. 10, 2010) ("I never see proof of moderation! Why? ...Why would you? There is no public record of deletion, and since threads are frequently pruned, there is no way of knowing which have been removed by the staff.").