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Women in the Web of Secondary Copyright Liability and Internet Filtering

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WOMEN IN THE WEB OF SECONDARY COPYRIGHT LIABILITY AND INTERNET FILTERING

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I. INTRODUCTION

This Essay suggests possible explanations for why there is not very much legal scholarship devoted to gender issues on the Internet; and it asserts that there is a powerful need for Internet legal theorists and activists to pay substantially more attention to the gender-based differences in communicative style and substance that have been imported from real space to cyberspace. Information portals, such as libraries and web logs, are “gendered” in ways that may not be facially apparent. Women are creating and experiencing social solidarity online in ways that male scholars and commentators do not seem to either recognize or deem important. Internet specific content restrictions for the purposes of “protecting copyrights” and “protecting children” jeopardize online freedoms for

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cyberspace policies likely to account for differences between women and men as they use and experience online communications.

The late Sam Kinison found comedy in the chronic famines experienced by places like Ethiopia, and the subsequent recurring relief efforts raised and publicized in response, and he humorously posed one stark question to starvation victims: "Can't you people just move to where the food is?" Economist Amartya Sen has, with decidedly less hilarity, argued that famines can result from political rather than agricultural failures. Famine, he has asserted, is a consequence of the distribution of income within a political subdivision, and the allocation of entitlements to food. The actual food supply is certainly not irrelevant, but a nation experiencing a famine can have adequate food within its borders that is inequitably distributed. Countries that lack an effective press or mass media lack information about where the food is, how it got there, and what efforts, if any, are being made to redistribute it. That the press can have a profound impact on the well-being of a nation was explained quite powerfully by economist Peter Griffiths, who described how a man named Steven Lombard prevented a famine in Tanzania in part by leaking information about the impending disaster to the BBB World Service, which in turn informed the Tanzanian people. This focused public scrutiny upon Tanzanian politicians, who otherwise stood too reap enormous personal profits by controlling the dispersal of emergency famine aid.

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9 Id.
10 Id.
12 Wars not only lead to massacres and associated horrors, they also destroy crops and other economic resources, undermine traditional patterns of livelihood, discourage economic investment and capital formation, and also disrupt the normal operations of trade and commerce. They also help consolidate the grip of the military on civil life and tend to disrupt civil liberties, including the freedom of the press, which - as I shall presently discuss - is an important safeguard against famines and other man-made catastrophes. The 'peace dividend' in Africa can stretch well beyond the saving of financial and economic resources on which the discussion in the West has tended to concentrate.
13 Id.
14 See generally PETER GRIFFITHS, *THE ECONOMIST'S TALE - A CONSULTANT ENCOUNTERS HUNGER AND THE WORLD BANK* (2004) (illustrating the political corruption resulting from a secret ban imposed by the World Bank on governmental imports or food subsidies and the consequences of one man's fight to expose this corruption).
15 Id.
Even in developed countries with large media entities, smaller political subdivisions may lack home grown information sources.\textsuperscript{14} Local governments may not be subject to much in the way of investigative media scrutiny, and local news can be underreported.\textsuperscript{15} A community press can be a very powerful tool for community advancement,\textsuperscript{16} and the Internet can be tremendously useful to publications with small circulations, supplementing or even substituting for expensive ink, paper, and delivery in the physical world. Web logs (or "blogs") can supplement community newspapers to make local information more accessible,\textsuperscript{17} to the extent the Internet is available, but only if pertinent technologies remain unfettered and are profitable to maintain and develop. A community press, or list-serv, or web log, cannot realize its distributive or democratic potential\textsuperscript{18} if it is forced to comply with a regime of high-barrier intellectual property protections, nor if it asserts such protections for itself.

The Internet offers interconnection, a series of links with which one can move from one web page to another, seamlessly crossing the borders that cabin the computers and servers that created the pages and keep them available.\textsuperscript{19} A person could access the average daily rainfall of a small village in a nation half a world away almost instantly.\textsuperscript{20} This assumes, however, that someone has posted this information to a website somewhere. If the person posting the data collected it from a local weather report, and then reposted at her own site, potentially there is an intellectual property problem. The weather reporter cannot in most nations own the individual historical temperatures, but a compilation of them is likely to be protected as a database or by copyright.\textsuperscript{21} If the person posting the

\textsuperscript{14} See generally C. Edwin Baker, Media, Market and Democracy (2002) (arguing that free press and the will of the people cannot prevail absent government regulation); C. Edwin Baker, Advertising and a Democratic Process (1994) (arguing that the more newspapers depend financially on advertising, the more they favor the interests of advertisers over those of readers).


\textsuperscript{17} E.g., Boing Boing, Bloggers in SE Asia Cover Quake and Tsunami Disaster (Dec. 27, 2004), at http://www.boingboing.net/2004/12/27/bloggers_in_se_asia_.html. But see Elayne Riggs, On Getting Local Breaking News (Jan. 26, 2005), at http://elayneriggs.blogspot.com/2005/01/on-getting-local-breaking-news-our.html. ("Our modern telecommunications era can be a frustrating thing; I can find out what's happening in close to real time in so many spots in the world, you'd think I'd be able to find out with a couple mouse clicks or channel flips why there were helicopters circling around our area for hours").


\textsuperscript{21} See generally Henry V. Barry, Information Property and the Internet, 19 Hastings Comm. & Ent. L.J. 619, 623 (Spring 1997) (arguing that states will be able to protect facts compiled on the
measurements actually ascertained them herself, no one else may have a claim to this data, but she herself may raise intellectual property rights challenges to later "downstream" users of her climatic information, linkers as well as posters. Such disputes, because the monetary stakes are small, are likely to be resolved short of litigation. They may, however be forcibly mediated by technological blocking or filtering undertaken by governments, or by business entities. In other words, online information flow about rainfall data could be dammed.

These observations appear on the surface to be gender neutral, with general applicability to anyone using or studying the Internet, and many cyberspace law scholars have largely declined to probe beneath this deceptive façade of online equality. The purpose of this Essay is twofold: to suggest possible explanations for why there isn't very much legal scholarship devoted to gender issues on the Internet; and to assert that there is a powerful need for Internet theorists and activists to pay substantially more attention to the differences between women and men that have been imported from real space to cyberspace. On the Internet it may be true that no one knows you are a dog, but as one commentator has asked, "[w]hat is wrong with being a dog?" Women should not have to hide their genders or feel pressured to conform to male mores or behaviors to take full advantage of cyberspace.

III. FILTERING AND FEMINISM

A. No One Goes to Public Libraries Any More Because They Are Too Crowded.

In Bowling Alone, author Robert Putnam expressed concern about what he termed "single stranded interactions," in cyberspace, which he worried could lead to focused virtual homogeneity in online communities, and the "cyberbalkanization" of an Internet in which informal contacts and

Internet, which will include things such as satellite weather images and even sports scores); cf Robert P. King, "Fed's Weather Info Could Go Dark, Palm Beach Post, 4.21.05 "http://www.palmbchpost.com/news/content/news/epaper/2005/04/21/m1a_wx_0421.html (A Senate bill, introduced last week by Sen. Rick Santorum, R-Pa., would prohibit federal meteorologists from competing with companies such as AccuWeather and The Weather Channel, which offer their own forecasts through paid services and free ad-supported Web sites.)

22 Id. at 629.

26 WEBSTER'S NEW INTERNATIONAL DICTIONARY 166 (3d ed. 1964).
communications were restricted to people who shared precise interests. Putnam is somewhat vague about the definition of "precise interests" in this context, but one can deduce it is far narrower than simply a shared gender. Though he did an admirable job of discussing differences between women and men with respect to real space social connectedness in this book, he did not address them specifically within the cyberspace realm.

In Republic.com, Cass Sunstein suggested that it was possible and even likely that without government intervention socially undesirable cyberbalkanized communication patterns would come to dominate Internet discourse. This, Sunstein avowed, could lead to group polarization, increased extremism, and deleterious cascades of false information. He argued that the Internet might threaten democracy if it allowed people to isolate themselves within groups that shared their political views, and thus cut themselves off from any information

27 ROBERT D. PUTNAM, BOWLING ALONE 177-78 (2000); see also http://www.inc.com/magazine/20000515/18987.html ("The Internet is about communication, and communication is central to community, not just etymologically but substantively. You don't get community without communication. The Internet certainly provides an opportunity to build what I would call social capital - connections among people and, possibly, a deeper sense of reciprocity and trust. That's the fundamental case for cyberoptimism. I think, however, there are four important obstacles to the Internet's becoming a way of solving the problem of the decline of community. The first, and the one that is most widely discussed, is the digital divide. Insofar as access to the Internet is class biased or racially biased or biased in terms of education, it tends to exacerbate the decline of bridging social capital. In a certain sense, it's easy to fix. It's just money. It's money for computers and hand-holding and so on. That problem ought to be the top item on the list because it's the one we do know how to solve. The second obstacle is bigger, and that's the difference between face-to-face and text-based communication. It's pretty clear that there's a lot that cannot be communicated with words alone. Talking face-to-face is quite important. Particularly, with respect to issues of trust. Enabling face-to-face communication is fundamentally a bandwidth problem, and it won't be fixed quickly or easily. The third hurdle is one that is even higher, and it goes under the heading of cyberbalkanization. It's intrinsic to the attractiveness of the Internet in that it enables us to connect with people who have exactly our interests and not futz around with people who don't. So it's not BMW owners, but red-BMW owners, and if you want to talk about your blue BMW, you risk being flamed for being off topic. By contrast, in a bowling league, you're almost never flamed for being off topic. You can talk about whatever you want. The ability to confine our communications to people who share our exact interests has a powerful potential for decreasing connections on more broadly shared interests. And that is not a technological problem. It goes to the core of what is attractive about the Internet and therefore is even harder to fix. Finally, and I think most fundamentally, the jury is still out on whether the Internet will come to be a really nifty telephone or a really nifty television. By that I mean, Will it come to be primarily a means of communication and interchange or primarily a means of passive entertainment?").

28 Id. at 177.
29 Id. at 177-78.
30 See generally PUTNAM, supra note 27 (discussing social connectedness with regard to the workplace and informal settings).
31 See generally CASS SUNSTEIN, REPUBLIC.COM (2001) (discussing the general trend towards the balkanization of cyberspace [i.e., viewers reading only sites and posting by socially and politically like-minded individuals] and recommending increased government regulation to promote the existence of government sponsored and mandated public media fora to foster the free exchange of ideas).
32 Id.
that might challenge their beliefs. It relied in part on a belief in the possibility of "perfect filtering." Perfect filtering, Sunstein asserted, undercut the formation of a pool of shared information and experiences that is crucial to the common understandings and social cohesiveness necessary for true deliberative democracy.

While Sunstein never made the overt assumption that simply being female constitutes membership with a group, he did seem to assume that feminism is some kind of unitary special interest. Writing in a later article that, with respect to the Internet, like-minded groups of people "will end up thinking the same thing that they thought before—but in more extreme form," he specifically asserted that, "[a] group of moderately profeminist women will become more strongly profeminist after discussion."

Sunstein declined to contemplate in any significant way the possibility that differences between the ways women and men interact and communicate in real space might be replicated in cyberspace. Some social science research suggests that women are more socially engaged than men are in real space. They attend religious services, volunteer in communities, and participate in social organizations at far higher rates than males. That large numbers of women might form cohesive groups around shared interests and concerns, such as contraception, pregnancy, childbirth, or breast cancer, for examples, that

33 Id.
34 Id.
35 Id.
36 Id.
38 SUNSTEIN, supra note 31.
39 See generally Louise Mailoux et al., Motivation at the Margins: Gender Issues in the Canadian Sector (Mar. 31, 2002), at http://www.vsirisbca/eng/knowledge/motivation_margins/index.cfm (discussing the results of a research brief to outline some of the challenges women volunteers and paid staff in the voluntary and community sector face; to identify both gaps in research and indications of progress toward gender equality to advance in that direction; and to make recommendations on how to move toward gender equity in the voluntary sector).
40 Salman Haq, A Lamentable Step Backward (Nov. 2003), at http://www.ultravires.ca/nov03/editorial_qq.html. "Women continue to predominate in associations related to traditional female roles, such as religious groups and social welfare organizations." Id.

During the September 2001-September 2002 reference period, women volunteered at a higher rate (31.1 percent) than did men (23.8 percent), a relationship that held across age groups, education levels, and other major demographic characteristics. The gap between the volunteer rates of men and women tended to be greater among groups with relatively high rates, such as whites and the more highly educated.

Id.
form and function very differently from male dominated Internet assemblages is something he either did not consider, or did not consider important. 46

Dan Hunter passionately disagreed with Sunstein, but not because of his failure to substantively address gender issues. 47 In his review of Republic.com, entitled Phillpirc.com, 48 Hunter challenged virtually every contention made by Sunstein in Republic.com, and with quite a bit of spirit and vinegar, being faithful to his chosen title and rendering forth unto the discourse a true “speech of violent denunciation.” 49 Hunter particularly derogated the possibilities that the “perfect filtering” of the sort predicted by Sunstein was either technologically possible, or premised upon a realistic model of human behavior. 50

In the context of rejecting and criticizing Sunstein’s generalizations about the ways that humans typically behave, Hunter in part presented himself as the best evidence of errors in Sunstein’s analysis. 51 Hunter described how his tastes in literature have changed over the years, and how he doesn’t always like the books that his friends suggest, or that Amazon.com recommends to him. 52 To over-generalize fairly broadly, Sunstein offered an expansive theoretical critique of the Internet as a tool for societal engagement, and Hunter determined that because Sunstein’s predictive behavioral assumptions did not apply to his friends or him, Sunstein must be, as Hunter put it in an early draft of his screed, 53 “wrong!!” and “wrong again!!” 54

Anupam Chander also expressed concerns about the broad applicability of Sunstein’s analysis, but in a very different context (and significantly less pugnaciously), writing: “The problem with Sunstein’s claim is that the shared experiences of the republic he seeks to maintain are principally those by and for the majority. The shared experiences he champions tend to be assimilationist rather than multicultural. They elide the experiences and concerns of minority groups.” 55 While he allowed that Sunstein was generally correct about the social benefits of robust civic debate and exposure to diverse viewpoints, 56 he questioned whether an unregulated Internet could possibly do a worse job of

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44 Id.
46 SUNSTEIN, supra note 31.
48 Id. at 612.
49 Id. at 613-71.
50 Id. at 611-14, 618, 625-27.
51 Id. at 627-31.
52 Id. at 627.
56 Id. at 1481, 1484-85.
fostering deliberative democracy than other forms of mass communication. He compellingly illustrated the point by describing the homogenous terrain of primetime television, in which:

The poor and working class are almost invisible; Latinos are rare and Latinas are rarer; Asian-American families do not exist; immigrants appear occasionally, but only to drive cabs. A comprehensive study by a children’s advocacy group concludes that a youth watching primetime television would most likely see a “world overwhelmingly populated by able-bodied, single, heterosexual, white, male adults under 40.” When minority groups are depicted in the media, they are generally stereotyped, with Asian women, for example, cast as “China dolls” or “dragon ladies” and Asian men denied any positive sexuality. Latinos are commonly depicted as “criminals, buffoons, Latin lovers, or law enforcers.”

The Internet, he argued, actually empowers minority groups ignored or misrepresented in the mainstream information commons, by providing a communication tool through which likeminded individuals could discover each other, and potentially form cognizable, coherent communities fragmented by geography but unified by common interests or goals. The Internet has the potential to provoke a global cosmopolitanism that is the polar opposite of the insularity predicted by Sunstein, “in which common humanity takes precedence over national attachments.”

Chander expressed concern that the people most likely to be marginalized by pre-existing media mechanisms might be most likely to fall on the wrong side of the “digital divide” and lack physical access to the Internet. The Internet, he asserted, is a primary tool of citizenship that can enhance or even revolutionize citizenship if it is made more widely available. What he did not elaborate upon, however, was the importance of how the Internet as a “tool of citizenship” might be fabricated, operated or calibrated along gender lines, and these are critical considerations.

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57 Id. at 1485-86.
58 Id.
59 Id. at 1488-89.
60 Id. at 1495.
62 Id. at 1500.
63 Id.
Hunter is most likely correct that Sunstein overestimates the effectiveness and pervasiveness of consumer driven information self-selection, and Chander is probably right to assume that government intervention into the architecture of Internet access would maintain the marginalized status of minorities endemic in other mainstream communicative media. Neither Chander nor Sunstein addressed in much detail their visions of the likely evolution of the Internet in the absence of Sunsteinian interventionism.

Michael Froomkin has written that, among other requirements, "to achieve a Habermasian practical discourse, participants must come as close as possible to an ideal in which . . . all voices in any way relevant get a hearing." A practical discourse is defined as "a procedure for testing the validity of norms that are being proposed and hypothetically considered for adoption," and is central to "Habermas's vision of the collective formation of legitimate rules." Froomkin asserted that, "[H]is theory inevitably requires a fairly strong understanding of the community in which the discourse will take place." To the extent that the Internet is a giant electronic discourse, however, as Froomkin observed, it is a discourse that has been dominated by English speaking males. Few of these men seem to have the requisite strong understanding of the women in the community, at least as evidenced by the scholarship they produce.

The intersection of copyright laws and the technologies of cyberspace have generated a lot of legal friction and commentary. The substance of deliberations about the future of intellectual property controls and other content restrictions online may seem, on the surface, gender neutral. However, this is usually because no one has introduced the gendered implications of particular policies or practices into a given discussion, not because the issues do not exist.

In one real space academic debate over the future of nonprofit libraries in the wake of the Digital Millennium Copyright Act, several speakers suggested that once copyrighted works could be legally and technologically "secured," real

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64 See Hunter, supra note 47, at 654-58. “First, in arguing against consumer empowerment and in favor of a reduction in choice . . . Sunstein seeks to protect us against ourselves. Reared on rugged individualism and the invocation of personal liberties, an American audience is unlikely to appreciate this paternalism.” Id.


66 See generally Hunter, supra note 64 (addressing how the recent theories on how the Internet may bring an end to democracy are not based on fact); Chander, supra note 55, at 1481 (“Cyberspace helps give members of minority groups a fuller sense of citizenship—a right to a practice of citizenship that better reflects who they are.”).


68 Id. at 772.

69 Id. at 773.

70 Id.

71 Id. at 805.

72 Id. at 805-06.


space libraries would no longer be necessary because the collective printed wisdom of the universe would be accessible via the Internet.\textsuperscript{76} When it was pointed out that the number of library patrons and library visits had been increasing during the same interval that legal and technological copyright protections had been strengthened,\textsuperscript{77} the reply came, in slightly more sophisticated jargon, that no one went to libraries anymore because they were too crowded, filled with people seeking a communal public place in which to casually read and socialize, rather than to perform important text based research.\textsuperscript{78} Digital libraries would allow the people who counted, those for whom important information was intended, to access it from home,\textsuperscript{79} and avoid the teeming masses of library-frequenting riff raff.\textsuperscript{80} This, it was asserted, would improve information flow.\textsuperscript{81}

It was clear that the participants in the debate felt that important copyright questions needed to be framed solely around library uses of social significance, which did not include taking advantage of the library's air conditioning and comfortable chairs, checking e-mail without charge, or hosting a Harry Potter fan club.\textsuperscript{82} They viewed copyright controls as facilitators of information consumption, and libraries as vessels that were accorded special regulatory status that was becoming anachronistic and unnecessary in the digital age.\textsuperscript{83}

Unlike, say, French or German, English is not a language in which inanimate objects must be assigned genders, and yet often they are anyway. Ships\textsuperscript{84} and cars\textsuperscript{85} and airplanes\textsuperscript{86} are often referred to with feminine pronouns, because they are, for some reason, socially viewed as female in form or function.\textsuperscript{87} This seems

\textsuperscript{76} By "real space debate," I am referring to an open air discussion, i.e. people talking and debating, so no written record exists.
\textsuperscript{78} This reply came during the "real space debate." See supra note 76.
\textsuperscript{79} E.g., Bonita Wilson, About D-Lib Magazine (2005), at http://www.dlib.org/about.html.
\textsuperscript{80} Id.
\textsuperscript{81} This assertion came during the "real space debate." See supra note 76.
\textsuperscript{82} See supra note 76.
\textsuperscript{83} Id.
\textsuperscript{84} E.g., Bill Schanen, There "She" Goes-is it a Boat or a Farm Implement? (June 2002), at http://www.sailnet.com/sailing/02/02/bjun02.htm (discussing language differences).
\textsuperscript{85} E.g., Charles, Charles's Volkswagen, at http://www.cardomain.com/memberpage/549990 (last visited Feb. 27, 2005), "Everyone knows cars are female-pick a feminine name." Id.
\textsuperscript{87} Cf. UCANR Cooperative Extension: Agricultural Experiment Station, at http://ucanr.org/ internal/internalstories/styleguide.shtml (last visited Feb. 27, 2005).

Gender neutrality: Avoid gender-specific terms and titles such as chairman, foreman, mankind; instead, use chair, supervisor, humanity. Use the same standards for men and women when deciding whether to include specific mention of personal appearance or marital and family situation. Don't refer to cars, boats, aircraft or other inanimate objects as feminine.
particularly anachronistic when a ship habitually referred to as "she" has as its official name something along the lines of the "U.S.S. Abraham Lincoln." Our very planet is often referred to as "Mother Earth." Media outlets are feminized as well. The nickname of the British Broadcasting Corporation (BBC) is "Auntie Beeb." The New York Times is often referred to as "The Gray Lady."

Real space libraries are a feminine construct as well, community living rooms stocked with books and magazines and administered by a librarian, often female, who will help you find information and materials you need, but gently discipline you if you are loud or unruly. Library patrons are usually referred to as "visitors," which can complicate interactions between library professionals.

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89 Id.


94 Id.
and the public. By way of example, one librarian euphemistically cataloged patrons from her former library whom, she declared, she would not miss after changing jobs.44 The list included characters denominated “Creepy Prison Guard Guy,” “Sourpuss Newspaper Lady,” “Expressionless Video Vampire,” “Guy [She] Picked Out of A Line-up” (a.k.a. Mr. Weiner — the reader is invited to guess how he earned these appellations), “Guy Who Always Says ‘You’re Pretty - What’s Your Name?,’” and “Asked-[Her]-Out-While-On-Jury-Duty-And-Doesn’t-Understand-No-Means-No Man.”45 To facilitate access to information, librarians are friendly and helpful, but obviously, this can be mistaken for sexual interest or availability. One academic, arguably in need of a figurative and perhaps literal cold shower, wrote that “libraries are the sexiest places, and librarians the sexiest people, on earth,”46 and observed:

For people who are really interested in finding out about things and engaging ideas, the excitement of libraries is sensual and visceral as well as cerebral. Emerson, the greatest of all op-ed writers, and the most quotable of all the Victorian sages, says that “A man’s library is a kind of harem”. And if he dared to say it, I dare to quote it, even without the sort of prudent gender modification that might spare me a few emails. (Somehow “A person’s library is a kind of singles’ bar” just doesn’t cut it.) Emerson is not what you would call a lubricious writer, but he knew what excitement was and where to find the action.47

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45 Id.
46 Here is a list of patrons from my former library whom I shall not miss: Creepy Prison Guard Guy, Angry Mean Lady, Whose Eyes Pointed in Different Directions, Sourpuss Newspaper Lady, Google Guy (A condescending telephone patron whose tagline was, “Yeah, uh, you have a browser open?”), Full Moon Garbage Bag Guy, The Grandchild Smacker, Expressionless Video Vampire, 5-A-Day Criss-Cross Lady, Guy I Picked Out of a Lineup (aka "Mr. Wiener" - guess how he earned that moniker), Prison Girlfriend Man (or, Guy Who Always Says “You’re Pretty - What’s Your Name?”), and the patron I shall miss least of all: Asked-Me-Out-While-On-Jury-Duty-And-Doesn’t-Understand-No-Means-No Man.
47 Id.
49 Id.
Efforts to digitalize books and efficiently fulfill distributive functions via the Internet will lead to a more linear, masculine, and arguably less sexually charged library experience, because the transactions occur online. Online, librarians can choose to be genderless by using pseudonyms and otherwise declining to disclose their sex. The evolution of online libraries will further relegate the feminized real space library to that of downscale hospitality suite, welcoming lowly library patrons without suitable Internet access, the majority of whom are female, and those who are seeking free access to books, social contact, a children’s story hour, a comfortable chair in a climate controlled environment, a public restroom, or the company of females.

B. Bleeping Mothers

Many women gather informally on the Internet much as they do in real space, and the Internet can be used to facilitate meaningful socialization. Web logs, for example, allow the selective disclosure of deeply personal

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98 Helga Dittmar, Karen Long, & Rosie Meek, Buying on the Internet: Gender Differences in On-Line and Conventional Buying Motivations (March 2004), at http://www.findarticles.com/p/articles/mi_m2294/is_5-6/ai_n6079160. The computer environment is seen as “masculine,” which can lead women to feel disempowered and possibly excluded, whereas men feel at home online.

99 See generally Ann Bartow, Electrifying Copyright Norms and Making Cyberspace More Like a Book, 48 Villanova L. Rev. 13 (2003) (arguing that if analog copyright use norms are not electrified for Internet usage, individuals will lose some access to informational works and be deprived of familiar ways of using copyrighted works).


In my opinion, libraries have been doing exactly what they were supposed to — meeting the needs of their primary patrons. More likely to be working in the home and to have lower incomes, women predominate as public library patrons. It only replicates stereotypes to say that “men want auto repair” and “women want knitting;” a better question would be, are information needs being met within the community? The answer probably includes — for men with greater resources — many alternatives other than the library.

Women may not have those alternatives.


101 E.g., Rob Walker, Middle Age? Bring It On (Jan. 30, 2005), at http://www.nytimes.com/2005/01/30/magazine/30CONSUMED.html. Many informal gatherings of women are adjuncts of at least marginally formal organizations, such as book clubs, bunco groups, children’s play groups, and the Red Hat Society. Id.

102 See, e.g., http://www.momsclub.org/; David Hochman, Mommy (And Me), N.Y. Times, Jan 30, 2005, Section 9, at 1.
information. Linguist Deborah Tannen has explained that jokes signify different things for men and women: Men joke to get status, while women joke to connect with others. If men think women have lower status than they do, they will not find women funny, but other women will. A few examples of bawdy, humorous blogging culled from the Internet follow, excerpted from web logs that purport to be written by women. No effort has been made to verify the truth of the represented gender. First:

As much as I wish I was a waif-like dainty pregnant lady, well, I’m not. And I blame that on my ass. (By the way, this post will make record-breaking use of the word Ass. Make yourself comfortable.) During pregnancy, my ass spreads out. In fact, this morning I had to loosen my maternity jeans—not because of my growing baby, but because of the spreading of my ass.

Me: “My ass is spreading. It won’t stop spreading. Sideways and up and down. Nonstop spreading for this ass of mine!”

Jeff: “I have no idea how to respond.”

A few nights ago, as I sat on the couch and knitted, I suddenly heard an operator asking me to hang up and try again. You guessed it. My ass had spread over the phone and was trying to make a call.

The blogger initially displayed a bit of playful self consciousness about her use of the word “ass” but did not retreat from it. She warned the reader about this, and also that she was not a “dainty pregnant lady,” literally or figuratively it turns out. In a similar voice, when contemplating the completion of an online informational “baby album” questionnaire, one new mother noted:

Third [question]: “The method of childbirth they chose was.” You know, I’m thinking that’s directed toward your crunchier moms who relish one more opportunity to brag about their

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104 Deborah Tannen, You Just Don’t Understand: Man and Women In Conversation (Ballentine 1991).
106 Id.
107 Id.
homebirths. I get no joy from filling in, “With as many painkillers as humanly possible.” I did, however, get great joy from the painkillers themselves — I’m just not sentimental about it.  

No cursing was involved in this posting, but it contains some humor-tempered hostility toward the idealized practice of natural childbirth, and can be read as an endorsement of drug use, which also runs counter to the mainstream cultural narrative about the wholesomeness and selflessness of the maternal instinct.

Another woman revealed deeply personal physical details via her web log, writing:

You’ve heard about my boobs. You’ve heard about poo and pee and spit up and all of the glamorous things that are Motherhood. You even heard a little about some critch itching. But you haven’t heard about THIS critch itching. WHAT IN ALL CREATION IS GOING ON DOWN THERE? My nether parts are so angry. Is it the PH change from getting my period back? Is it a yeast infection gone mad? I am in A G O N Y. And of course, it’s Saturday. My beautiful, beloved gynecologist who has lovely pink pills called Diflucan is out golfing or trying on women’s clothing. I don’t know, whatever he’s doing, he is far, far away from his office.

One might not guess that a person who refers to a health affliction as “critch itching” was a medical professional. However, extensive perusal of her web log reveals that prior to becoming a “stay-at-home mom,” she worked as a nurse, which might explain how she knew the name of the pill for which she so desperately sought a prescription.

Many bloggers refrain from talking specifically about their jobs, resulting in transparently opaque postings such as this: “For those interested in such things, our new undisclosed occupation requires us to interact with our employer’s customers, which means that we sometimes get emails like this: ‘I just want to

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109 Id.
say that your company suck.’ Sadly, being required to be somewhat polite
prevents us from replying with gems such as: ‘So do your English.’

Another woman at home with a baby of recent origin wrote about her travails
with infant colic, and the equipment she employed to try to moderate her baby’s
crying, noting:

On the advice of a commenter, and because I’m willing to try just about any solution that costs
less than $40, I went out and got a NoJo BabySling. Oh, how I hate that fucking sling.
It’s supposed to be SO WONDERFUL for the baby that on top of feeling thoroughly frustrated
by my inability to get the damn thing on and him in it at all, much less without hurting my back
and shoulder, I also end up feeling guilty that I’m denying my child this incredible
developmental experience. The only factor mitigating that guilt is that Austen so obviously
hates the sling, too. Of course, the knowledge that I’m causing his frantic screaming by trying
to wedge him into the freakish contraption brings on an even bigger tidal wave of guilt and
insecurity, not to mention a flop sweat.

The “instructional” video that came with the sling (which, like the chapter devoted to
babywearing in Dr. Sears’ Baby Book, is more promotional than instructional) says that with a
little patience, babywearing will become easy and enjoyable. I already suspected that I was too
impatient to be a parent, but thanks, Dr. Sears and NoJo for making me feel too stupid for the
job on top of it. Honestly, I’m trying, but I don’t know how many more chances I can give this
fucking piece of crap before I toss it into the fucking fireplace.

Her blogged, posted criticisms are quite specific, and they name names and
invoke trademarks. In addition, she makes liberal use of the work “fuck” in a

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115 Id.
speech context that I would argue is every bit as political in nature as the Cohen v. California jacket commentary about the draft.\footnote{Cohen v. California, 403 U.S. 15, 16 (1971).}

Another blogger humorously wrote about her own perceived deficiencies as a parent, especially in comparison to how she envisioned the parental performances of others:

I am the worst mother ever and here is why.

You know how people go on about how sweet a new baby smells, how satiny-smooth their pink cheeks are, how adorable their clean little outfits are? Not my baby.

Right now Charlie is tucked snugly into his co-sleeper, wearing a damp sleeper with spit-up on its feet, lying under a blanket stained with vitamin drops, on a sheet that’s splattered with coffee stains. (Mine, not his. He’s more careful with his sippy cup than his clumsy and bleary-eyed mom. And, no, I did not spill it in his bed while he was in it, so if you were picking up the phone to dial child protective services you can hang it right back up, yo.)\footnote{Julie, Snot Nose Brat (Jan. 20, 2005), at http://alittlepregnant.typepad.com/alittlepregnant/2005/01/index.html.}

Still another female web log author, this one with a toddler, reported the apparently profound angst she felt about deviating from the normative dietary behaviors of “good” mothers, observing:

Nora and I were at the dining room table, eating grapes. I was slicing the grapes in half for her, as per the current mandate. Actually, “mandate” is putting it lightly: most baby books go on and on about THE DANGERS OF UNSLICED GRAPES until you are scared to have a bunch of grapes in the same room as your child, because one could come loose, roll across the table under its own power, leap into your baby’s esophagus, and CHOKING WILL UNDOUBTEDLY ENSUE. I cannot find any information about when a kid can safely handle a DEADLY WHOLE GRAPE, but from the general terrified
tone of baby books and websites I would guess at around age seventeen.

I wanted some grapes for myself, and I made the error of simply picking one off the stalk and putting it in my mouth, you know, as humans do. Nora immediately wanted to eat a grape "that way," as she put it, and she repeated Nora eat grapes! That! Way! Like! Mommy! Nora do it! until I said fine, handed her a whole grape, and resisted the urge to kiss her goodbye and tell her I'd see her in heaven. She chomped up the grape just fine, asked for more, and handled those as well, and while I am still not completely comfortable with bucking the toddler-grape-slicing establishment, she is whole and healthy and unchoked. And now I have learned my lesson, which is to slice the fucking grapes in the kitchen, ahead of time and out of her sight. Cleaning up after our grapefest, I told LT, "I feel like we've cheated Death."[118]

Posting this account of her at least temporary rejection of the seemingly consensus based "safety norms" of modern parenting was a deeply subversive act, and the tone as well as the content of the narrative reflect her potent awareness of this.[119] She arguably invited readers to challenge common wisdom, but tempered the challenge with her expressions of remorse and expectation of engaging in normatively compliant behavior in the future.[120] In doing so she more subtly semaphored the same sentiment that the prior web log entry made explicit: "if you were picking up the phone to dial child protective services you can hang it right back up . . . ."[121]

A final example confronts romanticized views of the sacrosanct purity and innocence of young children:

Imagine, if you are able: Scott comes home; Henry and I are listening to music, as is our way at times (those times being when we are not making Playdoh pancakes or weeping into our fists).

Scott: What are you listening to, sport?

[119] Id.
[120] Id.
[121] Id.
Henry: It's a song about fucking.
Scott looks at me.
Me: That's not what he's saying! He's obviously saying something else!
Henry (delighted): It's about fucking! FUCKING!
Me: I know he's saying something else! I just can't identify what it is!
I waited for him to lie his dinosaur on top of Spider-Man and say, "Like that! Fucking!" But fortunately for me and sadly for this blog, no.
Now before I endure another onslaught of scandalized emails: PEOPLE. He was not saying that. He speaks in the charming but often baffling language of toddler-ese, where f's become s's and "puppies" becomes something obscene. He was probably saying "It's a song I enjoy very fucking much." Like that! You see!122

None of these web log entries seem linearly directed toward any particular goal oriented objective. This is not academic or intellectual discourse, but rather is one of humorous, self-deprecating personal revelation. It is a raucous, informal meta-commentary that would likely be perceived as lacking the weighty seriousness of purpose Sunstein would have wired into discursive Internet portals, or that Chander would explicitly deem a "democratic tool of citizenship." Nor are the representative entries likely the sort of unfiltered exchanges Hunter typically shares with his Phillipic.com-referenced friends (though that assumption could certainly be mistaken, and sexist as well).123 These web log entries employ vulgar language to bawdily discuss pregnancy, childbirth and motherhood, topics generally sanitized and sanctified by top down, intermediated communicative media. Something about motherhood seems to inspire these web loggers to generously pepper their postings with thoughts and words that others might deem as scandalous, offensive or even immoral. Consequently, the referenced web logs, and many more just like them, are probably filtered or blocked wherever blocking or filtering software is employed.124

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There are three kinds of filters that can be used to restrict Internet access. Content on the world wide web is posted
As it happens, thanks in large part to the Children’s Internet Protection Act (CIPA), one place other social-solidarity-seeking mothers are unlikely to be able to access these web logs is at their local public libraries. As written, CIPA requires only that covered libraries block or filter “Internet access to visual depictions that are; (I) obscene; (II) child pornography; or (III) harmful to minors . . . .” In theory, “the blocking or filtering technology need not affect text, whatever the content, and setting a browser to ‘text only’ would satisfy this requirement.” In reality, however, blocking and filtering software uses automated text-based content analysis to determine which websites are likely to contain objectionable visual images, and that should therefore be blocked. As on websites that have addresses called URLs (uniform resource locators). Each posting (whether of one or more “pages”) usually has its own specific URL. The content of any URL, meanwhile, can change dramatically from day to day. Internet filters may be characterized as either blacklists, “whitelists,” or word-rule blocking. Blacklists block access to a specific list of “inappropriate” URLs, as compiled by individuals who evaluate them based on a specific standard. They leave access open to all else. Whitelists - also known as “go lists” - only permit access to a selected list of “appropriate” URLs, blocking entry to all else. Word-rule filters block URLs that fit some rule, such as those for websites that display the letter combinations “sex,” “breast,” or “xxx.” They leave all other URLs unblocked. The Word-rule filters may also sort URLs based on a website’s self-ratings according to the industry’s “PICS” standard or based on “fuzzy logic.” These three methods might be used separately or in combination. For example, a software vendor could design a filter to block out URLs according to a word-rule standard, but provide an automatic override that unblocked any URLs that were on a specific whitelist.

Id. at 1120; see also CIPA Questions and Answers (July 16, 2003), at http://www.ala.org/ala/washoff/WOissues/civil liberties/cipaweb/advice/resources/CIPAQA.pdf. Under the plain language of the statute, libraries must have safety policies that include the operation of blocking or filtering technology “with respect to any . . . computers with Internet access that protects against [even theoretical] access through such computers to visual depictions that are . . . . obscene,” etc. Id. The statute requires that libraries receiving E-rate discounts or LSTA or ESEA funds for computers or Internet access adopt a policy for minors and adults that includes blocking or filtering technology, even if minors are unlikely to use their computers. Id.

127 Id.
a result, over-blocking is a substantial and persistent problem. In addition, portions of the CIPA focus on the topics that must be addressed in an "Internet safety policy" other than in Internet filtering per se. Under CIPA, libraries and schools must "adopt and implement" policies that address, among other things, "access by minors to inappropriate material on the Internet and World Wide Web." The definition of "inappropriate material" is specifically left to local determination under N-CIPA Sec. 1732(2), which reads:

Local Determination of Content — A determination regarding what matter is inappropriate for minors shall be made by the school board, local educational agency, library, or other authority responsible for making the determination. No agency or instrumentality of the United States Government may — (A) establish criteria for making such determination; (B) review agency determination made by the certifying school, school board, local educational agency, library, or other authority; or (C) consider the criteria employed by the certifying school, school board, educational agency, library, or other authority in the administration of subsection (h)(1)(B).

It seems bizarrely ironic that library Internet filters aimed at protecting children would have the effect of filtering the web logs written by mothers. This is just one example of the ways in which cyberspace laws and policies may impact women in unexpected and under-analyzed ways. Consider also the amount of de facto "self censorship" that occurs when women voluntarily use filtering software on their home computers. Their children may be "protected"

necessary) real time analysis of the content of a web site and filters out content sources that fit some algorithm." Id.; ALA v. United States, 201 F. Supp. 2d 401, 431 (E.D. Pa. 2002); Marjorie Heins & Christine Cho, Internet Filters: A Public Policy Report (Fall 2001), at http://www.fepproject.org/policyreports/filteringreport.html ("[O]n May 2, 2001, AOL announced that Parental Controls had integrated the RuleSpace Company's 'Contexion Services,' which identifies 'objectionable' sites 'by analyzing both the words on a page and the context in which they are used.").

132 Id.
133 Id.
from the web logs referenced and quoted above, but these women have foreclosed their abilities to access and participate in online web log communities, often without recognizing that they have done this, or realizing what they are missing.

C. On “Getting It”

One of the section headings in Phillipic.com is entitled, “What Cass Doesn’t Get.” Hunter explained in a footnote that he chose this title because, “[t]here is now a convention within debates on cyberspace regulation that any attack by a liberal on a libertarian, or vice versa, will be entitled ‘What X Doesn’t Get.’” He stated that:

This can be traced back to a debate between the liberal Lawrence Lessig and the libertarian Declan McCullagh, where Lessig entitled a chapter of his book, ‘What Declan Doesn’t Get.’

So, when libertarian David Post sought to criticize Lessig, his article was called, “What Larry Doesn’t Get.”

He further observed: “It seems that the convention now extends to any criticism within cyberlaw, even those where a liberal criticizes a liberal,” pointing to an article by Marc Rotenberg entitled: Fair Information Practices and the Architecture of Privacy: (What Larry Doesn’t Get).

The history of the above referenced, personally focused, gladiator-styled theoretical legal analysis of cyberspace explicitly adopted by Hunter is even richer than Hunter suggested. In 1996 Judge Frank Easterbrook published Cyberspace and the Law of the Horse, which elicited The Law of the Horse: What Cyberlaw Might Teach from Larry Lessig. Thereafter David Johnson and David Post penned Law and Borders—The Rise of Law in Cyberspace. Jack Goldsmith took issue with aspects of this article in Against

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135 Id. at 654 n.184.
136 Id.
137 Id.
138 Id.
139 Id.
140 Id.
141 Dan Hunter, supra note 47, at 654 n.184.
Cyberanarchy,\textsuperscript{144} to which David Post responded in the otherwise seemingly redundantly titled Against 'Against Cyberanarchy.'\textsuperscript{145}

In his book Code and Other Laws of Cyberspace,\textsuperscript{146} Lessig indeed titled Chapter 17 of the tome "What Declan Doesn’t Get,"\textsuperscript{147} in reference to Wired News writer Declan McCullagh.\textsuperscript{148} In riposte, as Hunter observed, David Post titled a review of the work, What Larry Doesn’t Get: Code, Law and Liberty in Cyberspace,\textsuperscript{149} and, as noted above, Marc Rotenberg penned, Fair Information Practices and the Architecture of Privacy: (What Larry Doesn’t Get).\textsuperscript{150} Rotenberg appended a "good sportsmanship" footnote which stated: "In offering this title, I am following the convention that is appropriate for this genre. Responses in the spirit of ‘What Marc Doesn’t Get’ are welcome and should be sent to rotenberg@epic.org."\textsuperscript{151} In addition to these law review articles, the online publication ReadMe published an interview with McCullagh entitled “What Larry Doesn’t Get,"\textsuperscript{152} that provided Declan a direct platform for getting or not getting it, and imputing same to others.\textsuperscript{153}

Well, there is something this author gets, but almost wishes she didn’t, which is that the tone of the discourse is one reason for the relative lack of women publicly involved in this particular debate.\textsuperscript{154} If the article you are reading was intended for a less formal, different sort of publication, the author might wonder in more colloquial language why certain cyberspace law scholars didn’t simply line up, drop their trousers, and with unambiguous finality resolve their fundamental interpretative differences with a yardstick.\textsuperscript{155}

\textsuperscript{145} David Post, Against 'Against Cyberanarchy', 17 BERKELEY TECH. L.J. 1365, 1365 (2002).
\textsuperscript{147} Id. See also Lawrence Lessig, Entry Archive (Jan. 27, 2004), at http://www.lessig.org/blog/archives/001696.shtml.
\textsuperscript{150} Marc Rotenberg, Fair Information Practices and the Architecture of Privacy: (What Larry Doesn’t Get), 2001 STAN. TECH. L. REV. 1, 1.
\textsuperscript{151} Id.
\textsuperscript{152} Steve Bryant, What Larry Doesn’t Get (May 4, 2003), available at http://journalism.nyu.edu/pubzone/ReadMe/article.php?id=141.
\textsuperscript{153} Id.
\textsuperscript{154} Id.
\textsuperscript{155} This is not to suggest for even a moment that there aren’t women writing in this area; simply that they are not overtly accusing other academics of "not getting it" or the like in this particular set of scholarly exchanges. Explicitly feminist critiques of cyberspace law, however, are difficult to locate. See Linda Mulcahy, Feminist Perspectives on Law: Project Description, at http://www.rdg.ac.uk/law/femlegalnet/ (last visited Mar. 23, 2005). The Feminist Legal Network website has as its stated aim "to identify key publications for use by those academics and students interested in studying law from a feminist perspective." Id. It lists these publications for many areas of the law, but neither cyberspace law or intellectual property law are among them. Id.
\textsuperscript{156} Perhaps a simple ruler would be adequate. The author makes no assumptions about this and harbors no interest in conducting empirical research on the matter.
After I began teaching Cyberspace Law as a regular part of a law school curriculum, with an astounding degree of hubris even by law professor standards, I felt sure I had something interesting to contribute to the existing literature on a variety of topics. Yet every time I thought about writing legal scholarship on a cyberspace law topic, I wondered what my tenure prospects might be if someone prominent in the field who disagreed with my perspectives titled a negative response to my writings, “What Ann Doesn’t Get,” and whether I’d even be able to get my sorry self out of bed the morning after such a publication appeared. While I’ve long recognized that I cannot confidently generalize my own thoughts and experiences to those of others in the legal academy, I imagine I am not the only female law professor who reacted this way. Most women I know enjoy rigorous intellectual challenges, but we would just as soon avoid pointless duels to the death.

While in the parlance of the playground it might be fair to say “Larry started it,” so he also deserves some credit for recognizing and regretting the rhetorical dynamic he helped create. In the context of an exhortation to have in the cyberspace law field “an ‘enterprise zone’ of free thought” that is “untaxed by ordinary politics” he wrote:

I have been guilty of the sin I condemn. The last chapter in my book - “What Declan Doesn’t Get” is a wonderful example of this sin. My stupidity here is on many levels. Let’s take the most obvious first. How stupid must you be not to see that a chapter like that will just inspire a litany of responses of the form “What Larry Doesn’t Get.” My friends at Chicago would say controversy is great success, but of course I left my friends at Chicago, and would love to leave controversy as well. But a back-firing title is not the real problem. The real problem is the effect such rhetoric has - on debate, and on understanding. For its effect is to end thought. To push the anti-Declan button - to push the pro-/anti-libertarianism button - is simply to categorize the argument, to put it into a box, and to give readers an excuse not to read.

While I’d agree with his characterization of titling a book chapter “What [Distinctive and Easily-Recognizable-In-Context First Name] Doesn’t Get” as a mistake, I’m less enthusiastic about the vision he expressed of the appropriate


scope and tenor of cyberspace law dialectic, particularly his statement: "[O]ur debates in cyberspace are not debates about feminism." As a matter of observation that is inarguably correct, but he seemed to assert that as a normative matter, notions of equality raise substantially different questions in cyberspace than have been, or should be, addressed by feminism. I disagree. Both the theoretical construction of cyberspace and the actual architecture of the Internet need to account for gender issues, and for differences in the ways in which men and women communicate in real space and online.

Susan Herring's research into gender differences in computer mediated communications supports Deborah Tannen's theory of gendered communication styles. Herring observed that men use adversarial styles of communication, which employ strong assertions, sarcasm, and insults, and dominate online discussions. She concluded that: "[T]hese circumstances represent a type of censorship, and thus that an essential condition for democratic discourse is not met." Women have never been positioned to define or dictate significant aspects of the social or cultural orders, so male domination of cyberspace is not unexpected, but neither should it go unobserved or uninterrogated. In many disciplines, feminism in cyberspace has been a topic of research and commentary to a greater extent than it has in law. One of the reasons for this may be the chilling effect of the fierce tenor of the pioneering cyberspace law discourse.

Additionally, some sectors of the Internet are either inhospitable to women, or project an atmosphere that encourages the women present to keep very low profiles. Consider online gaming. Jack Balkin has written that: "massively multiplayer online games are evolving into something much more than mere entertainment. They are a remarkably important front in the evolution of cyberspace generally." If this is true, the absence or invisibility of women in these online games is important as well. Balkin's essay entitled "Virtual Liberty" discusses "some of the legal problems of virtual worlds, and, in particular, how to

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158 Id. at 1001.
159 Id.
162 Id.
preserve free speech rights and deal with real world commodification,"165 and also "several different models of regulation of virtual worlds, including the model of consumer protection, the virtual world as company town, and virtual worlds as places of public accommodation."166 It is a fascinating and thought-provoking piece of work about what he describes as the "freedom to design, and freedom to play, in virtual worlds."167 However, Balkin either does not notice, or chooses not to discuss, any gendered aspects of these issues. The otherwise excellent article doesn't even use the words "woman," "women," or "female."168 Online games169 are susceptible to the same sorts of feminist critiques that have been directed toward the real space cultural and recreational activities that segregate the sexes or exclude women, such as most organized sports,170 fraternities and sororities,171 and other social organizations.172

In discussing the use of avatars in "The Laws of the Virtual Worlds," Greg Lastowka and Dan Hunter noted: "[M]any [online gamers] take advantage of the opportunity to engage in 'identity tourism,'" and observed:

The avatar masks, however, both conceal and embody real-world individuals who often use the ability to dissemble to achieve social objectives they consider important. In LambdaMOO, for instance, some individuals fashion their avatar masks to project standard stereotypes of sex appeal, perhaps attempting to tantalize others into virtual relationships: 'Lirra is a short young woman with long blonde hair, an impish grin and a curvaceous figure. Her clear blue eyes sparkle as she looks back at you. She is wearing a short red skirt, a white t-shirt, black fishnet stockings, and black leather boots

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165 Id.
168 See generally id. (making no references to females).
171 See generally Journal of College and Character, Does Segregation in Campus Fraternities and Sororities Constitute Endorsement of Discrimination by Colleges and Universities? (Sept. 11, 2001), at http://www.collegevalues.org/ethics.cfm?id=572&ea=1 (noting that the University of Alabama is seeking to desegregate its campus fraternities and sororities).
172 See generally Inter-American Development Bank, About Social Exclusion (Oct. 11, 2004), at http://www.iadb.org/sds/SOC/site_3094.e.htm (noting that social exclusion in Latin America and the Caribbean affects predominantly indigenous peoples, afro-descendants, women, the disabled, and those living with HIV/AIDS).
and jacket.’ Of course, IRL, who knows what Lirra’s controller looks like? . . . Given the chance to be anyone, who wouldn’t want to be sexually attractive, powerful, and strangely mysterious?\textsuperscript{173}

One might reasonably, given the context in which it is raised, view the query, “Given the chance to be anyone, who wouldn’t want to be sexually attractive, powerful, and strangely mysterious?” as rhetorical.\textsuperscript{174} Intentionally or not, however, a few paragraphs later, Lastowka and Hunter answer their own question, writing:

For some male players of EverQuest, however, the choice of ‘presenting female,’ as avatar gender-swapping is called, can be a strategic decision. Female avatars often receive more favorable treatment from other avatars, including free gifts and help from male avatars. On the other hand, presenting female may also lead to an eye-opening understanding of virtual sexual harassment. For some female users, the challenge of dealing with sexual harassment is reason enough to use male avatars.\textsuperscript{175}

If all women participating in an online game chose to employ male avatars, this might raise interesting legal as well as social science questions. Could a game in which all players used avatars of a single sex be the basis for a real space gender discrimination suit? And what would the legal implications be if the rules of a publicly accessible game specifically excluded female avatars? Lastowka and Hunter did not address these possibilities.\textsuperscript{176}

In the absence of law, the norms of an online community prevail. What might the behavioral norms of an online gaming community be? One female gamer reported the following at her blog:\textsuperscript{177}

A female player logged into her female character and was greeted by a male who told her she had

\textsuperscript{174} Id.
\textsuperscript{175} Id. at 67. See also K.K. Campbell, Attack of the Cyber-Weenies, 1 WAVE 5, 5 (May 5, 1994), at http://kumo.swcp.com/synth/tech/cyberweenies.html (noting that the author, a male, after entering a female name and biography on a chat page, was immediately hit on by many men).
\textsuperscript{177} http://www.utopianhell.com/ (last visit Mar. 18, 2005).
a nice chest. She doesn’t say exactly what he says, but it offended her, so she told him to knock it off and that she was reporting him. He went on to scold her about how her doing that would ruin the game for everyone else, and that it was just good fun.

Now, granted, she over-reacted a little bit (she said she never wanted to play the character again because of the comment), but it wasn’t necessarily the original poster’s upset about the avatar having big tits that got me riled, either. It was the responses of other people in the community. Apparently, if you don’t just roll over and take it, you’re just a big stick in the mud. Oh, and didn’t they tell you that video games are a boy’s world, and you should just deal with it? Read on, my friend . . .

Sounds to me like you’re a touchy broad who has a weight problem and spends too much time at home.
- Mariousmoo

I’m a woman as well, get over it. Seeing as the game was created by men, as is evidenced by the female Night Elf avatar and her dance, just deal with it.
- Absalom

/ignore is there. Use it and stop making a big deal out of what some doofus said to your avatar ingame. Please try to act like an adult (even if you’re not one - it’s good practice.) and just forget that idiots like whoever was bugging you even exist. Yesterday in Darnassus somebody came up to one of my female alts and said “I’ll give you 10s to strip.” I did the /boggle emote, /ignored him and walked away. Simple as that.
- Usdachoice

In public, if a perfect stranger walks up, says some remark about your breasts and then walks away, there’s really nothing you can do about it. He didn’t harm you and is not continuing to harrass you so the cops will not do anything. So
what he did is more like my example and nothing like yours . . . Get over it. People are 
jerks . . . grow a thicker skin. 
- Rotaerc

you need some sex and quick . . . 
- Darkseeker

Are you friends with the Kobe Bryant 
Accuser? Also, nice butt. 
- Kressa

You fail life. What is it that ever single species 
in the known universe has in common? 
Reproduction in some way shape or form. If 
your a lony overweight woman and you live off 
of twinkies and icecream and no one loves you 
is no reason to be all grumpy. Put down the 
Rocky Road and pick up an apple. Stop sitting 
around and feeling sorry for yourself and go out 
and move a little. 
- Dozimar

All women characters should never get any gear 
to wear, walk around in the nude, should be 
created as well endowed blondes, and do 
nothing but bounce around for everyone else 
because no women play online games. And 
every dwarf should get three broads cuz we be 
that good lassie! Have I ticked off the feminists 
yet? Play sims online. 
- Jouphan

Jack Balkin has predicted “that both game designers and game players will 
repeatedly invoke freedom of speech and freedom of association as defenses 
against attempts by the state to regulate virtual worlds.” For this feminist, 
Balkin’s descriptions of disputes to come in the sphere of online games evoked 
images of the private dining clubs of Princeton, which women are now able to 
join, and golf clubs such as Augusta National, which they remain excluded

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178 Id.
179 Jack M. Balkin, Writings Available Online: Virtual Liberty, at http://www.yale.edu/law 
web/jbalkin/writings.html#virtualiberty (last visited Mar. 18, 2005).
180 Princeton University Eating Clubs (Jan. 18, 2002), at http://libweb.princeton.edu/libraries 
/firestone/rbso/finding_aids/eat-club.html.
from based on gender. When Princeton University began admitting female students, not all of its cultural amenities were open to women. Sally Frank sued the all male dining clubs of Princeton while she was still an undergraduate there. Her efforts lead to her being insulted, threatened, spat on, mooned, and showered with beer. "If looks could kill, I would not have survived my junior year," she reported. Ms. Frank graduated in 1980, but did not completely succeed in opening up the clubs to women until over a decade later. In 1987,

In 1969 the admittance of women into Princeton University caused some controversy in the Clubs, but many allowed women to join immediately. In the spring of 1979, a third-year student Sally Frank had tried to gain membership into Ivy Club, Tiger Inn, and Cottage Club. Upon not gaining admittance, Frank filed a lawsuit with the New Jersey Division of Civil Rights. In 1992 a final verdict was announced, Ivy Club and Tiger Inn were forced to admit women into the clubs, though they had been admitting women since the spring of 1991.

Id. Mike Grabell, *After a Century, Eating Clubs Continue to Define Social Scene* (Feb. 4, 2000), at http://www.dailyprincetonian.com/archives/2000/02/04/news/65.shtml (noting that the club membership has declined and that the future of the eating clubs relies to an extent on whether the University values the club system and wishes to sustain it).


Staff Profiles at Drake, at http://www.law.drake.edu/facStaff/profiles.aspx (last visited Mar. 18, 2005) (noting that today Sally Frank is a law professor at Drake).


Jeff Milgram, *A Bittersweet Homecoming* (Mar. 3, 2003), at http://www.pacpubserver .com/new/news/3-3-03/sallyfrank.html (noting years later when Ms. Frank returned to the Princeton campus, where she was treated like an honored guest, a role model to a new generation of undergraduates and a pioneer in the women’s movement).

Id.


During her junior year, Frank filed a legal complaint claiming that though the clubs said they were private, they were public accommodations that would be required to include females. Otherwise, they would be practicing gender discrimination. Cottage—which settled with Frank in 1986—began to accept female members that year after paying her $20,000 in damages for legal fees. Ivy went coed in 1990 when the New Jersey Supreme Court ruled in Frank’s favor. Tiger Inn, however, held out and asked the U.S. Supreme Court to hear the case twice but was denied both times. The case was heard in the Federal Circuit Court, which upheld the New Jersey Supreme Court’s
the Princeton administration began supporting the view that the dining clubs should be co-ed, and in 1990, Frank was given an award for service to the University. A year later the last hold out dining club began allowing women to "bicker" for admission.

In contrast, consider Augusta National. Augusta National is an elite golf club in Augusta, Georgia that hosts the prestigious Masters Tournament each year. The club membership was all white until 1990, and remains all male. Efforts to make it possible for females to join have been described by an opponent as "exploitive," with an allegation that the "actions by a media-starved gang of women's rights activists are not based upon the law, but on a politically correct crusade to force the private club into accepting women members out of so-called 'moral obligation'".

According to one survey, "among the public, 60% of women and 55% of men agreed that Augusta National should accept women... [a]mong golfers, 63% of women and 41% of men say that Augusta National should accept women." If there were equal numbers of male and female golfers, a small majority of all golfers (52%) would favor the acceptance of women by Augusta National, perhaps generating sufficient pro-equality momentum to effect change. However, the majority of golfers are male, so the prevailing view


Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.

Id.
among golfers (unlike the public generally) favors continued gender segregation. In consequence, the internal norms of the golfing community as currently constituted are not likely to result in Augusta National admitting female members. At the 2004 Masters Tournament, it was reported that “men hawked “Hootie hats” . . . to celebrate William “Hootie” Johnson’s victory over Martha Burk’s tenacious campaign to open the prestigious Augusta National Golf Club to women.”

Within the context of online gaming, substantive norm shifts concerning the sexism female players encounter may also be precluded by the inadequate numerical presence of women in the games in which there is the most gender-linked hostility. To the extent there is sexist abuse, it will drive a number of women gamers away (at least the ones who identify themselves as female), and the remaining female participants, if few in number, may find it difficult to mount effective opposition to the objectionable practices. The forms that effective opposition could take would depend upon the rules and norms of any given online game, if no real world legal relief is available.

D. Censorship, Copyrights, and a Culture of Commodification

I. Filtering Women World Wide

Laws and technologies that regulate distribution of content on basis of copyright will regulate content on other bases as well. The same controls that “protect” copyrights from unauthorized access or use will be used to “protect” people from information that is deemed harmful or illicit by any entity in a position from which to censor it. These are, on the surface, gender-neutral observations with equal consequences for all similarly situated Internet users. However, men and women are not necessarily similarly situated in cyberspace. One feminist scholar trenchantly observed:

[T]he majority of the world’s women (and men) have no access to the Internet, have no money to

198 Id.
200 Severine Dusollier et al., Copyright and the Access to Information in the Digital Environment. A Study Prepared for the Third UNESCO Congress on Ethical, Legal and Societal Challenges of Cyberspace, Paris (Jul. 17, 2000), at http://www.droit.fundp.ac.be.Testes/study UNESCO.pdf (“Copyright is expanding, not only as regards to the items protected, but also as regards to the areas of protection.”).
buy things on the Internet or anywhere else, have no telephones, let alone modems, and don't get surveys emailed to them, faxed to them, or snail mailed to them. One of the most striking things I took back from an international conference I attended in 1998 on "women's information services," is that the only technology that can reliably reach the majority of women in the world today is the radio, and the conference platform called for more informational radio programming for poor women.\(^{201}\)

One important and productive venue of research about women and cyberspace would obviously be targeted at ways to provide many more of them with Internet access. To simply aim these efforts at "people" may fail to account for the special needs, conditions, and restrictions upon females in any given culture. For those for whom cyberspace entrée is available, women and men on the privileged side of the digital divide experience the Internet differently.\(^{202}\)

\(^{201}\) Phyllis Holman, Cyberjanes and Cyberjitters: Myths and Realities of Gender Differences and the Net, Weisbord WAAL Spring Conference Talk (Apr. 12, 2000), at http://www.library.wisc.edu/libraries/WomensStudies/Talks/waaltalk.htm.

\(^{202}\) R.C. Sherman et al., The Internet Gender Gap Among College Students: Forgotten but not Gone?, 3(5) CYBERPSYCHOLOGY & BEHAVIOR 885, 894 (2000).

The Internet has been a male-dominated technology since its beginnings in the late 1960's. A number of studies have reported that the gap between the numbers of men and women online has narrowed in recent years. However, broad definitions of usage have often masked important differences in how much the technology is used in specific ways, as well as qualitative differences in men's and women's experiences in using the Internet. One area in which such differences might be particularly important is in higher education, where Internet activities are increasingly a central feature of the curriculum in a variety of departments. We investigated the Internet gender gap among college students by comparing the usage patterns and attitudes of three cohorts of students in 1997, 1998, and 1999. In addition, we examined longitudinal changes from 1997 to 1998 in a subsample of our participants. The cohort comparisons revealed gender differences in five Internet activities (E-mail, WWW, Usenet, MUDs, and chat groups) with no significant lessening of these differences over time. Attitudes toward the technology also differed between men and women and these differences also did not change over time. The longitudinal data showed similar patterns. In general, our investigation suggests that differences continue to exist between college men and women in how they experience Internet technology and assessments that the Internet will soon be gender neutral are perhaps premature.
a result, the legal and technological environments of cyberspace are inherently gendered. As one commentator observed, "Technology is part of our culture; and, of course, our culture, which is male dominated, has developed technologies that reinforce male supremacy." Realistically, women are not likely to have much input into or control over the future of legal regulation of information across the Internet. Instead, as we do in every society in which we lack political power proportionate to our numbers, we will learn to function as best we can to meet our own needs within whatever cyber-constraints are imposed by the people in power, who will mostly be men. Some blocking and filtering will be rooted in copyright "protections," while other restrictions will constitute substantive censorship of content more straightforwardly. It is largely men who will decide whether and how filters that block content will be "deployed," a word with appropriate militaristic connotations.

In the United States, male judges have historically treated information about issues directly pertaining to sexuality and marsital status as "unsuitable" for women. In 1875, for example, the Supreme Court of Wisconsin denied the petition of women to practice before it, stating: "It would be shocking to man's reverence for womanhood and faith in woman . . . that woman should be permitted to mix professionally in all the nastiness which finds its way into courts of justice." The court then listed a string of subjects arising in court that were expressly deemed wholly unfit for the attention of women, including rape, pregnancy, prostitution, abortion, and divorce. From 1873 through the 1930s

Id.

203 Id.

204 Ruth Hubbard, MACHINA EX DEA: FEMINIST PERSPECTIVES ON TECHNOLOGY vii (1983).

205 Get the Facts: Woman in Elected Office, at http://www.voter-unlead.org/facts/women_electedoffice.cfm (last visited Mar. 23, 2005) (stating that there are only eight women governors, a decrease from the record nine women governors who served before the 2004 election; Washington is the first state to have a woman governor and two women senators all serving simultaneously; and five states, New Hampshire, Delaware, Iowa, Mississippi, and Vermont, have never sent a woman to Congress).

206 See Virginia Drachman, SISTERS IN LAW: WOMEN LAWYERS IN MODERN AMERICAN HISTORY 169-214 (1998) (stating the few women that became lawyers were not permitted to practice law in the courtroom but instead were generally given administrative type duties or office duties such as drafting wills).

207 In re Goodell, 39 Wis. 232, 245 (1875).

208 Id.

It would be revolting to all female sense of the innocence and sanctity of their sex, shocking to man's reverence for womanhood and faith in woman, on which hinge all the better affections and humanities of life, that woman should be permitted to mix professionally in all the nastiness of the world which finds its way into courts of justice; all the unclean issues, all the collateral questions of sodomy, incest, rape, seduction, fornication, adultery, pregnancy, bastardy, legitimacy, prostitution, lascivious cohabitation, abortion, infanticide, obscene publications, libel and slander of sex, impotence, divorce: all the nameless
the "Comstock Law" and similar state statutes were employed to prevent the dissemination of information about birth control, venereal diseases and other subjects related to female reproductive health and well being.209

The same sorts of topics continue to be censored today around the world,210 sometimes with the articulated goal of protecting children,211 other times as a means of promoting some construction of "decency."212 Still, even in widely filtered Internet space,213 a lot more information for and about women is generally available. Yet evidence of the female presence on the Internet is often presented through gendered narratives, as it is in real space. For example, Yahoo publishes a "Buzz Log" that chronicles trends in online searching, providing substantive information about Internet information-seeking. One entry reported in pertinent part:

Searches on "prom" were up 47% over the past week, and unsurprisingly, girls 13-17 account for the majority of angst-filled searches on the social event of their year, with 58% of queries coming from this relatively tiny demographic niche. But searches on the generic "prom" pale in comparison to the desperate search for the perfect dress. Girls nationwide are looking to

catalogue of indecencies, la chronique scandaleuse of all the vices and all the infirmities of all society, with which the profession has to deal, and which go towards filling judicial reports which must be read for accurate knowledge of the law.

_id.


211 E.g., Children's Internet Protection Act ("CIPA") and Neighborhood Internet Protection Act (NCIPA), available at http://www.ala.org/ala/washoff/WOissues/civil liberties/washcipa/legislationb/legislation.htm (last visited Mar. 23, 2005) (reporting that the Act places restrictions on the use of funding that is available through the Library Services and Technology Act, Title III of the Elementary and Secondary Education Act, and on the Universal Service discount program known as the E-rate and that these restrictions take the form of requirements for Internet safety policies and technology which blocks or filters certain material from being accessed through the Internet).


213 See, e.g., Bennett Haselton, What is Stealth Blocking? (Mar. 21, 2004), at http://www.peacefire.org/stealth/ (reporting that "stealth blocking" refers to the practice of Internet service providers that do not advertise that their Internet service is "filtered," but block their users from reaching certain Web sites).
make a fashion statement, and they'll search far and wide to find the right gown for a formal evening out.\footnote{214 See The Buzz Log, Spikes and Trends: Prom Searches Peaking (Jan. 14, 2005), at http://buzz.yahoo.com/buzz_log/entry/2005/01/14/1800/.}

What the account fails to explain is how the search engine distinguishes between "angst-filled" and "desperate" searches for prom dresses, and perfectly matter-of-fact prom dress pursuits, and how it digitally distills the profoundly heated fashion-statement-making desires of "girls nationwide" from the likely comparatively mundane search terms they enter.\footnote{215 Id. On a personal note I want to thank Michele White for this observation. See also Greg R. Notess, The New Yahoo Search, ONLINE (July/Aug. 2004), at http://www.infotoday.com/online/jul04/OnTheNet.shtml (explaining to some degree the actual workings of the Yahoo! search engine).}

Internet filtering offers those configuring the filters a chance to elevate the discourse to a level that "ladies and gentlemen" engage in.\footnote{216 See BERNARD W. BELL, FILTH, FILTERING AND THE FIRST AMENDMENT: RUMINATIONS ON PUBLIC LIBRARIES' USE OF INTERNET FILTERING SOFTWARE 195 (Mar. 2, 2001), at http://www.law.indiana.edu/fclj/pubs/v53/no2/bell.pdf. "The demand for filters mostly stems from concerns about sexually explicit material." Id.} While filters may constrain the use of particular words, the ideas themselves can be still be expressed, though perhaps differently and more eloquently articulated. Describing the scatological or perverse in filtered cyberspace might require a sophisticated vocabulary and flexibility of syntax, while comprehending the scatological or perverse will require literacy and a good imagination.\footnote{217 See Richard J. Peltz, Use the Filter You Were Born With: The Unconstitutionality of Mandatory Internet Filtering for the Adult Patrons of Public Libraries, 77 WASH. L. REV. 397, 410 (2002). "Not only are they incapable of applying peculiarly human legal definitions in content analysis, they are too easily circumvented by intelligent, determined users and content providers." Id.}

To avoid automated filters or blocking, one might, for example, discuss someone "experiencing a cranial-rectal inversion problem," instead of saying he "has his head up his butt." However erudite, though, the former expression lacks some of the earthly gestalt and immediate, almost universal recognizability of the latter.

To the extent men control the levers of content control, it is they who, for example, will determine the language with which the contents of diapers can be discussed in cyberspace. One can predict a filtered discourse in which "poop" is allowable but "shit" deemed offensive, although of course both describe the same essential substance. And then there is the indeterminate "turd," a word not at all suited for polite discourse but lacking any powerful heuristic of vulgarity. Perhaps more creative online speakers intimately familiar with diapering would invoke tsunamis, or diapers of mass destruction, invoking cultural references as metaphors and confusing any applicable censoring software in the process, especially if the software was designed by people without firsthand diaper experience.
Filters and blockers are unlikely to be sophisticated enough to divine the intent of a speaker in using a particular word or phrase. My late maternal grandmother218 was very conversationally demure, and the phrase “Oh dumb it!” represented the closest thing to a string of expletives I ever heard her utter. Even a sentient e-mail or web log filterer therefore would have been rather surprised one day to read her description of a complicated and confusing family situation as “all balled up,” because within the male interpretive framework the word “balls” signify male gonads. What the writer would have been referencing, however, invoked her background in knitting and crocheting, wherein an intractably tangled skein of yarn is aptly and innocently described as “all balled up.”219

In many contexts women and concepts or things associated with women are trivialized by linguistic distinctions. For example, while certain male undergarments are generally denominated “underwear,”220 the corollary clothing items for women are commonly referred to as “panties”221 or “lingerie,”222 or “knickers.”223 How filters and blocking software will account for these differences, if at all, is not clear, and these sexist distinctions are likely to be unthinkingly reinforced.

Filters and website blocking techniques can be configured to affirmatively restrict the flow of information to reflect or stifle political view points. For example, the advocacy group Peacefire224 created four web pages on free servers that contained anti-gay quotes copied from four conservative Web sites: Dr. Laura,225 Concerned Women for America,226 the Family Research Council227 and Focus on the Family.228 Then, using anonymous e-mail accounts, the group then sent the URLs of the Peacefire-created pages to

218 Catherine Rowell McIntosh (1908 - 1990).
219 In addition, consider this post from the Bitch Has Word blog: Quote of the Week: “You going ballin' today?” Spoken by one of my writing students to me yesterday, at the start of class. Now, it took me a minute to figure out that he was referring to my Knicks sweatshirt, and therefore basketballing, not my after-class sexual activities. But I swear, I was stunned for a minute.


companies that sell filtering software, recommending that they block the newly created pages as "hate speech."229 After the companies had agreed to block the webpages specially created by Peacefire, they were informed that all the quotes on those pages had been taken from the four conservative Web sites listed above.230 Peacefire recommended that they block those Web sites as well.231 However, according to Peacefire, the blocking companies did not block those Web sites, and did not respond to Peacefire’s inquiries about this inconsistency.232

Entities that do not want to bother with actual blocking software can use a psychological rather than technological approach. They may publicize a policy under which accessing particular types of content (e.g. copyrighted, or pornographic) will be punished, and further announce that all web traffic to websites containing objectionable material will be logged. Significant technological expenditures would be unnecessary, and users would not have to put up with the over and under inclusive limitations of blocking and filtering software, because people would proactively filter themselves. Those intuitively most likely to self-filter are people lacking the political power and financial resources with which to access and secure unfiltered cyberspace.

229 Bennett Hazelton, Project Bait and Switch (May 21, 2002), at http://www.peacefire.org/BaitAndSwitch/. "Bait and Switch" is an experiment to find out whether small, personal home pages and Web sites of large organizations get identical treatment from blocking software companies in deciding what to block. Id.

230 Id.

231 Id.

232 Id.
2. Copyright Controls

The Hollywood depiction of pirates is often romantic on film. Handsome, heroic swashbuckling pirates lay claim to beautiful, objectified women, shiny, precious jewels (that are sometimes used to decorate the beautiful, objectified women), and treasure chests brimming with gold doubloons. In reality, the Motion Picture Association of America has no such romantic illusions about "copyright piracy," and casts it as an evil from which beautiful, shiny, objectified content must be protected. Copyright piracy is framed as the taking of intellectual property from rightful owners by violent means such as "ripping" and "burning." Like the attractive women of the movies, copyrighted materials are characterized as possessions that must be aggressively protected from pirates.

Under the guise of this "copyright protection," information can be censored or restricted. As a practical matter, it may be impossible to squelch technologies such as peer-to-peer file sharing. Ed Felten wrote "TinyP2P," a


234 John Healey, Bills to Thwart Piracy Falter, LA TIMES, Dec. 9, 2004, at C1. "Recording Industry Assn. of America Chief Executive Mitch Bainwol said 'the industry's lobbying raised awareness of the enormous theft out there that is compromising the vitality of important American industries.'" Id. He added that "there is a consensus that there is a problem. We broke down on how you define an answer." Id.

235 See, e.g., Tom Spring, Music Labels Target CD Ripping, PCWORLD.COM (Nov. 5, 2001), at http://www.pcworld.com/news/article/0,aid,69504,00.asp. Jive Records has implemented the technology to prevent you from playing the 'Celebrity' CD on your PC. That also means no burning or ripping tracks so you can listen to 'Celebrity' on your portable MP3 player. The move is an example of a get-tough trend being adopted by record labels that say they are losing profits to digital music pirates.

236 See generally, e.g., Neil Weinstock Netanel, Copyright and a Democratic Civil Society, 106 YALE L.J. 283, 347-52 (1996) (noting that copyright provides an incentive for authors and publishers to contribute to the store of knowledge, "[b]ut if drawn too broadly, it can also inhibit access and unduly burden transformative uses of existing works, thereby impeding public education"); Yochai Benkler, Free as the Air to Common Use: First Amendment Constraints on Enclosure of the Public Domain, 74 N.Y.U. L. REV. 354, 401-08 (1999) (arguing that the movement towards greater intellectual property protection poses a risk to the diversity of information and abridges the freedom of speech); Neil Weinstock Netanel, Locating Copyright Within the First Amendment Skein, 54 STAN. L. REV. 1, 27 (2001) (arguing that limitations to copyright do not adequately protect First Amendment values); C. Edwin Baker, First Amendment Limits on Copyright, 55 VAND. L. REV. 891, 938-39 (2002) (noting that copyright allows infringer's speech to be suppressed).

functional peer-to-peer file sharing application, in fifteen lines of code, “to illustrate the difficulty of regulating peer-to-peer applications,” and noted that, “Peer-to-peer apps can be very simple, and any moderately skilled programmer can write one, so attempts to ban their creation would be fruitless.” However, if use of a peer-to-peer file sharing program is illegal or perceived as such, risk-adverse people will forgo its use.

If digital rights management (DRM) worked, in the sense that it prevented unauthorized copying and distribution, content owners wouldn’t need to restrict new technologies. As Cory Doctorow has pointed out, “DRM isn’t protection from piracy. DRM is protection from competition.” The Internet itself functions as a giant P2P platform. P2P programs like Napster are simply tailored mechanisms for using file sharing capabilities hardwired into the architecture of the Internet itself. In California, legislation has been introduced that would fine, or imprison for up to one year, any person who “sells, offers for sale, advertises, distributes, disseminates, provides, or otherwise makes available” software that allows users to connect to networks that can share files, unless that person takes “reasonable care” to ensure that the software is not used illegally. It defined P2P as follows:

“[P]eer-to-peer file sharing software” means software that once installed and launched, enables the user to connect his or her computer to a network of other computers on which the users of these computers have made available recording or audiovisual works for electronic dissemination to other users who are connected to the network. When a transaction is complete, the user has an identical copy of the file on his

238 Id.


241 Id.

242 See Bradley Mitchell, Introduction to Peer to Peer (P2P) Networks and Software, at http://compnetworking.about.com/od/p2pertopeer/a/p2introduction.htm (last visited Mar. 23, 2005). In peer-to-peer networks, computers will typically be situated physically near to each other and will run similar networking protocols and software. Id. Home computers, for example, are normally configured in P2P workgroups to allow sharing of files, printers and other resources. Id. Although one computer may act as the file server or FAX server at any given time, any home computer can normally handle those responsibilities on short notice, and that is the essence of peer-to-peer networking. Id.

243 Id.

or her computer and may also then disseminate
the file to other users connected to the
network.\textsuperscript{245}

Ed Felten observed that this definition "clearly includes the web, and the
Internet itself, so that any software that enabled a user to connect to the Internet
would be covered.\textsuperscript{246} And note that it's not just the author or seller of the
software who is at risk, but also any advertiser or distributor.\textsuperscript{247} Web links and
web hosting are therefore potentially criminalized.\textsuperscript{248} Felten further opined:
The bill provides a safe harbor if the person
takes 'reasonable care' to ensure that the
software isn't used illegally. What does this
mean? Standard law dictionaries define
'reasonable care' as the level of care that a
'reasonable person' would take under the
circumstances, which isn't very helpful . . . . I
would argue that trying to build content blocking
software into a general-purpose network app is a
fruitless exercise which a reasonable person
would not attempt. Presumably Mr. Murray's
backers would argue otherwise. This kind of
uncertain situation is ripe for intimidation and
selective prosecution.\textsuperscript{249}

Yochai Benkler has suggested that strengthening intellectual property rights
does not broadly advance the interests of all creators, but rather advantages large
vertically integrated content providers while disadvantaging small scale firms
and individual creators.\textsuperscript{250} Consider again the women's personal web log entries
reproduced and discussed above. Like almost all web loggers, the authors
engaged in liberal amounts of linking, and made unauthorized fair uses of
copyrighted works. Though no actual litigation that generated a judicial opinion
has been ascertained, scrutiny of web log entries suggests clashes occur between
those who would monetize the online fellowship of lonely women with small
children, and mothers who resist such practices. For example, one curse-verseant
blogger noted:

\textsuperscript{245} Id.
\textsuperscript{246} Ed Felten, My Morning Pick-Me-Up, FREEDOM TO TINKER (Jan. 19, 2005), at http://www.
\textsuperscript{247} Id.
\textsuperscript{248} Id.
\textsuperscript{249} Id.
\textsuperscript{250} See, e.g., Yochai Benkler, Free As the Air to Common Use: First Amendment Constraints
I’ve been meaning to give you all an update on the MOMS Club® situation. The situation is: it appears to remain true that anyone can link anyone they feel like linking. Even if a large organization threatens you with legal action and says, they ‘will consult’ their attorneys if you do not comply with their demands. Then, they’ll change their story when you refuse to comply and will say something annoying like, ‘It’s unfortunate you won’t comply with my request. I’ll be turning this matter over to the president of the MOMS Club® and it will be up to her if legal action will be taken.’ Because, really, the truth is . . . the person who contacted you was just really pissed off you had the nerve to say unpleasant things about people she likes and she had nothing better to do but email you with empty threats. Also, she never turned anything over to the ‘President’ because the entire thing was a big fat ball of annoying bull shit! Weeeeee!251

This level of courage in the face of potentially chilling threats is encouraging, but not every blogger can be as heartily fearless. Another wrote, with apparent angst and trepidation:

I’m trying to find something light hearted to post about, but even Jake announcing that his little brother’s favorite food is dog food [which is totally true, by the way] to the entire library at story hour has ceased to re-awaken the funny ha ha banter I normally try to write. All I’ve got is funny not so ha ha & that’s really not very fun to read.

Instead of enjoying the 4 day mini-holiday with my family in Utah this week, where I would actually be playing with my children instead of half parenting them from behind my laptop, I get to meet with my lawyer to discuss exciting things like patent laws, copyright infringement, and intellectual property theft! I get to fill out

paper work and sign checks! All because people can't seem to abide by that good old rule of thumb, "Do unto others..."

As a cultural matter, many women may conceptualize copyright laws somewhat differently than men. There are activities in real space which, while open to participants of any gender, tend to be predominantly female pursuits both perceptually and in reality. These include quilting and other needlework, scrapbooking, fiction reading, and cooking.


253 See Mary Anne C. Case, Disaggregating Gender from Sex and Sexual Orientation: The Effeminate Man in the Law and Feminist Jurisprudence, 105 YALE L.J. 1, 33 (1995). "Numerous scholars have noted the following phenomenon in a variety of contexts: virtually all societies draw strong distinctions between things, behaviors, activities, and jobs gendered masculine and those gendered feminine." Id.


I am an accomplished needleworker. As embarrassed as I have been to say it, there it is. Back in my days as a graduate student, I made the mistake of talking about attending needlework classes and was teased as a result. I was reminded of this when I reviewed The Subversive Stitch: Embroidery and the Making of the Feminine, a feminist analysis of needle arts from the Middle Ages to the present. In Roszika Parker’s book, a feminist scholar interested in handwork reflects that she too soon learned never to tell people I embroider. (Annmarie Turnbull, interview with the author, 1981; qtd in Parker, 214.) This sociology professor and I both experienced a hangover from Victorian times: things relegated to the ‘feminine sphere’ cannot easily be reconciled with professionalism. That is, even though femininity is no longer as associated with rigidly defined gender roles, embroidery is, and thus it is difficult to reconcile with ‘real work.’

Id.


Quilting, to take up the first example, is not a good fit with intellectual property law. Quilting isn’t typically recognized as an art form because it is often the product of an indefinite group, such as a “Stitch and Bitch,” or “Batting and Chatting.” quilt club in which at each monthly meeting, the entire membership works on one member’s quilting project. Many quilts feature the repetitive use of traditional designs, or the designs are derived from natural objects. Although there are exceptions, quilts are ordinarily used quite mundanely on beds in private homes. They are not something to drop quotes from into conversation, or to display publicly as if they were paintings or works of sculptures. One is in fact well advised not to display a quilt publicly if, for example, a depiction of Mickey Mouse has somehow been incorporated into the design without the permission of the aggressively litigious Disney Company.

Communal web logs offer a text based cyberspace homology to quilting. Though most are contrived to allow authorship indicia for each individual posting, it is together that the postings form the useful whole. Individual web logs may in turn form intersecting web circles, an image that is evocative of a common quilting pattern. Blog rolls, “hot link” lists of other web logs that host sites recommend, often overlap and repeat as well, constructing informal web rings that interconnect to form an online community.


255 See Shelley Wright, A Feminist Exploration of the Legal Protection of Art, 7 Canadian J. Women & L. 59, 90-94, 96 (1994) (describing decisions denying protection to women's sewing craft productions and noting the marginalization of women under the myth of an artist as a romantic hero). See also First paper assignment for college course by Finke, Paper # 1 Gender Norm Violation, at http://www2.kenyon.edu/Depts/WMNS/Courses/Syllabus/violation.htm (last visited Mar. 23, 2005) (stating in order to experience gender norms, students need to violate a gender norm and assess your own feelings and the reactions of others and write about it).


262 Id.

263 Id.


One recent study of the demographics of web loggers found that women are slightly more likely than males to create blogs. Another academic study of the demographics of blogging ascertained:

An initial consideration of the demographics of blog authors reveals an apparent paradox. Quantitative studies report as many (or more, depending on what one counts as a blog) female as male blog authors, and as many (or more) young people as adults, suggesting a diverse population of bloggers as regards gender and age representation. At the same time, as will be shown, contemporary discourses about weblogs, such as those propagated through the mainstream media, in scholarly communication, and in weblogs themselves, tend to disproportionately feature adult, male bloggers.

As Jessica Litman has observed, clothing and recipes do not generally receive copyright protection, and yet we do not go naked and hungry, nor do we typically observe or experience vacuums of creativity with respect to fashion, or food. Though both sewing and cooking can be social activities, generally they tend to be relatively individualized domestic pursuits. While the distribution of sewing patterns is somewhat commercial and monetized online, as it is in real space, the free sharing of recipes over the Internet is quite common. Some recipe sites feature corporate sponsorship and large amounts of advertising, while others contain exhaustive lists of foods in noncommercial formats, and

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266 Perseus Blog Survey, at http://www.perseus.com/blogsurvey/thebloggingiceberg.html #demographics (last visited Mar. 23, 2005). “Females are slightly more likely than males to create blogs, accounting for 56.0% of hosted blogs.” Id.
268 JESSICA LITMAN, DIGITAL COPYRIGHT 105-06 (2001).
appear to be public interest oriented in nature.\textsuperscript{272} Still others seem devised largely for the amusement of the authors and their friends, such as Knife-wielding Feminists,\textsuperscript{273} a "recipe spot for feminist foodies."

3. Commodification and Culture

Scholars such as Martha Woodmansee,\textsuperscript{274} Peter Jaszi\textsuperscript{275} and Rosemary Coombe\textsuperscript{276} have argued that the creativity incorporated into arts and crafts, or into inventive useful items, relies on the underlying works and teachings of others, often reflecting contributions distilled across cultures and nations. The "author principle" that predominates in the copyright and patent law of industrialized countries, however, pretends that some particular individual may take full credit for the whole. On a global basis this orientation privileges the claims of the intellectual property regimes of Western nations over those of non-Western cultures by withholding intellectual property status for folkloric works, or for cultivated (but not genetically modified) agriculture products.\textsuperscript{277} Propertization of cultural attributes via Western copyright and patent principles therefore effectively allows some individuals to usurp the rewards from the labor and intellectual creativity of others.\textsuperscript{278}

When an intellectual property framework is imposed, cultural information takes on the appearance of a natural resource. Consider an information-as-water metaphor.\textsuperscript{279} Essential to life, water derives strength from repetition and


\textsuperscript{273} http://feministfoodies.blogspot.com/ (last visited Mar. 23, 2005).


\textsuperscript{277} See Rosemary Coombe, \textit{The Several Futures of Prosperity: of Cyberspace and Folk Tales, Emission Trades and Ecosystems,} 83 MINN. L. REV. 129, 151 (1998).

\textsuperscript{278} Id. at 152.

\textsuperscript{279} Cf. Mark Lemley, \textit{Place and Cyberspace,} 91 CALIF. L. REV. 521, 538 (2003). Physical resources are also subject to different rules depending on their nature. We have different sets of rights for air, minerals, land, and water. Water is a particularly interesting analogy to the electrical charges that are at issue in the Internet trespass cases, as both flow according to the
relentlessness in small amounts (picture the endless drops that form stalactites, or trickling streams that slowly carve canyons) and can be quickly destructive and wholly uncontrollable in large quantities. Water both creates and crosses borders, and can be dammed, diverted and polluted. While the sources of water can be indeterminate and the individual molecules identical and interchangeable, individual tributaries can be identified and credited. Moreover, water can be solid, liquid or gas depending upon the temperature of its environment.

Information, like water, can build or destroy seemingly solid institutions, and move without regard to geopolitical border constraints. It may be sourced, controlled, reconfigured, repackaged, contaminated, and also filtered. Inaccurate or pointless information can be disparagingly analogized to steam (“hot air”), and asserting stringent copyright controls over an informational work can effectively put its distribution “on ice.” Scarcities of both potable water and of useful information privilege those in control of distribution, and disadvantage those with limited or nonexistent financial or political power.

In several contexts information is commodified to an extent that one can fairly easily conceptualize it in an exploitive way, much as a nation’s physical natural resources such as water (or oil, or minerals) can be appropriated. Consider the use of public domain folkloric stories as the basis for copyrighted laws of physics. As Blackstone put it, water “is a movable, wandering thing, and must of necessity continue common by the law of nature so that I can only have a temporary, transient, usufructuary property therein: wherefore, if a body of water runs out of my pond into another man’s, I have no right to reclaim it.” On one view, the Internet trespass cases are all about chasing down electronic “water” in order to reclaim it.

Id.


281 Id.

282 Id.

283 Id.


Efforts to control the flow of electronic information across physical borders – to map local regulation and physical boundaries onto Cyberspace are likely to prove futile, at least in countries that hope to participate in global commerce. Individual electrons can easily, and without any realistic prospect of detection, “enter” any sovereign’s territory. The volume of electronic communications crossing territorial boundaries is just too great in relation to the resources available to government authorities. United States Customs officials have generally given up.

Id.

movies. When someone creates a fresh adaptation of a folktale, the only things protectable by copyright strictures are the altered and added parts.286 Everything that existed before the new version was made remains in the public domain, for all to use, assuming one can confidently discriminate between the two sets of components.287 Thus, folktales cannot doctrinally be copyrighted out of general circulation.288 However, copyrights do compromise the iterative folklore process: stories morph and expand as they are told and retold, and as they filter through different cultures. The narrative evolutionary process comes to an abrupt halt if every time someone changes a folk story, the alterations are copyrighted, and thereby inaccessible to everyone else for the entire term of a copyright without a complicated authorization or licensing procedure and monetary exchange. Enforcing such an intellectual property right will not likely increase the quantity of existing “public domain” folklore, but will surely decrease the quantity of products that are derived from the extant folklore because of fears of infringing upon other derivative works.289 "Useful" (as opposed to "creative") indigenous knowledge is also vulnerable to commodification. Pharmaceutical companies are known to use folk remedies and traditional healing practices as bases for researching medical treatments that they often patent.290 Iron ore might be mined from one country, turned into steel

286 Paul Kuruk, Protecting Folklore Under Modern Intellectual Property Regimes: A Reappraisal of the Tensions Between Individual and Communal Rights in Africa and the United States, 48 AM. U. L. REV. 769, 821-22 (1999) (noting that folklore is protected by general copyright concepts of rights to derivative public domain works). See also Paul J. Herald, Reviving the Rhetoric of the Public Interest: Choir Directors, Copy Machines, and New Arrangements of Public Domain Music, 46 DUKE L.J. 241, 248 (1996) (discussing how the derivative work protection "extends only to the material contributed by the author of such work, as distinguished from the preexisting material").

287 Id.

288 Id.

289 See, e.g., Ann Bartow, Copyrights and Creative Copying, 1 U. OF OTTAWA LAW AND TECH. J. 75, 77 (2004). "It seems highly probable that authors can be negatively affected by the spectre of copyright infringement suits in a manner that burdens and chills the creative process."

in a second nation, the steel into a toaster in a third, and then the toaster exported back to the very geopolitical entity in which the iron ore was extracted from the earth in the first place. Patentable information makes same sort of “round trip” as physical goods, potentially returning in “value added” form when, as would also be the case with the toaster, consumers in the “source” nation possess the interest and capital to make the requisite purchases.

The collection and use of personal financial and demographic data from domestic citizens, by extraterritorial marketers who will use it to compete with local businesses in the provision of goods and services, can also look like appropriation of natural resources, and lead to depletion of local economies. While certainly observable in real space, this sort of information-based commodification is particularly well facilitated by the Internet. 291

Another sort of commodification also bears discussion. Human trafficking involves moving people from one place to another and placing them in conditions of forced labor such as prostitution, domestic servitude, unsafe agricultural labor, sweatshop labor, construction or restaurant work, and other forms of modern-day slavery. 292 It is a global phenomenon that occurs within countries and across borders, regions, and continents. 293

Human trafficking, whether of factory workers, domestic servants, brides-by-mail, or sex slaves, disproportionately involves women who have been rendered objects of commerce. 294 Human trafficking and cross-border information flows are inextricably linked. Operation of a market in humans requires information exchanges between buyers and sellers, 295 and analysts and policy experts assert

291 Ann Bartow, Our Data, Ourselves: Privacy, Propertization and Gender, 34 U.S.F.H. REV. 633, 633 (2000). “Cyberspace has become fertile ground for the harvesting of consumer data, and consumers have very little ability to keep their personal information private, especially online.” Id.


293 Id.


that effectively addressing human trafficking will rely in large part on a variety of structured "information campaigns."\footnote{See Trafficking in Person: An Analysis of Afghanistan, International Organization of Migration, Publications Now (Jan. 2004), at http://www.iom.int/iomwebsite/Publication/Servlet SearchPublication?event=detail&id=2992 (noting that an estimated 800,000 to 900,000 people are trafficked each year); Bridget Anderson & Julia O'Connell Davidson, Trafficking – a Demand Led Problem, at http://www1.rb.se/Shop/Archive/Documents/2486%20%20Trafficking.pdf (reporting on the trafficking of children) (last visited Mar. 18, 2005).}

A book by Tom Standage entitled The Victorian Internet provides a colorful history of the telegraph and the impact it had on global communications.\footnote{Id.} The only chapter in which women figure prominently is Chapter 8, "Love Over the Wires."\footnote{Id. at 134.} After recounting the details of an "on line wedding" that enabled a woman to marry the man she loved rather than the man her father had chosen for her, Standage related several anecdotes of romantic relationships in which the telegraph played a role, after noting that "[w]omen were regarded as 'admirable manipulators of instruments' well suited to telegraphy (since it wasn't too strenuous), and they could spend the quiet period reading or knitting."\footnote{Id. at 134.}


For those who doubt that psychological immersion occurs in virtual worlds, the best riposte is virtual sexual activity, or "tinysex." Tinysex is a popular activity in text-based social worlds like LambdaMOO, which has set aside an entire suite of rooms for tinysexual encounters. In some MUDs, sexuality seems to permeate the entire environment. One study has revealed that even among players of EverQuest, which does not readily lend itself to sexual simulation, nearly half of participants who are female in real life have had virtual romantic relationships with EverQuest partners. Online relationships often have significant real-life effects on those who engage in them. There are, by now, numerous accounts of real-life marriages formed out of romantic encounters that were initiated online. Equally prevalent are tales of real-life relationships endangered or ruined by virtual betrayals. The most interesting cases have involved male avatars falling in love with (or having a tinysexual encounter with) a female avatar, only to discover that another male user controlled the female avatar. Those who build intimate relationships with gender-swapped avatars generally report feeling, at the
once spent a very long plane trip seated next to a friendly and talkative but rather
dull woman who treated me to a droning monologue about her apartment,
including location, lay out, rent, expected rent increases, furnishings, average
daily temperature, and her parents' medical situations, including their various
symptoms, diagnoses, surgeries, medications and future prognoses. It wasn't
until the flight was almost over and she suddenly disclosed the reason she was
traveling that the conversation became interesting. She was going to meet face to
face, for the first time, a man she had been "Internet dating" for five months,
after meeting him through a for-profit online dating service.

It was upon learning this that, for the first time, I actually affirmatively
solicited some information from her, asking if she had family or friends who
knew where she was going and when she was expected back, for safety purposes.
She assured me she had, and I watched with some fascination at the baggage
carousel as she introduced herself to a man who awkwardly hugged her and then
picked up her suitcase. Hopefully, he ultimately found her more interesting in
person than I had. Presumably after five months of exchanging e-mails, he
understood and accepted her conversational tendencies. While she herself did
not appear to have been "commoditized," it was a commercial vendor operating
over the Internet that initiated and facilitated the relationship.

At least one MMORPG\(^\text{301}\) (to use the seemingly favored acronym) has
overtly attempted to solicit female gamers, with the hope that the presence of
women would, in turn, lure male players, improving the financial prospects of the
game. Greg Lastowka and Dan Hunter have reported:

> In the nonleveling genre, the major competitor
to The Sims Online is probably There.com's
There, which is currently still in beta testing.
According to its promotional materials, There will be "the first online getway that gives you
the freedom to play and talk naturally while
having fun and making friends." There has
video game elements (e.g., virtual paintball,
hoverboarding, and dune- buggy racing), but it is
targeted primarily to those interested in hanging
out and chatting with friends. Some design
features of its interface are explicitly reminiscent
of chat rooms. Interestingly, There.com is being
marketed primarily to women, with the belief

\(^{301}\) Massive Multiplayer Online Role Playing Games, at http://www.MMORPG.com.
that if the world builders can attract them, men will follow.\textsuperscript{302}

The commodification of information affecting women, and the commodification of women themselves intersect in many ways that bear scrutiny as the law of cyberspace continues to develop.\textsuperscript{303}


D. Unfiltered Feminism and Democratic Discourse

Websites can function somewhat like small circulation newspapers, which can play important roles in distributing information, and thereby fulfilling the goals of the press clause of the First Amendment. Given the reach of the web, the size of the readership would be correlated to interest levels rather than geographic accessibility. Some websites will attract an audience primarily comprised of friends, family, and other acquaintances. This may have unexpected consequences in terms of framing or cabining conversation, and provoking insightful self-awareness. As one blogger wrote:


When newspapers received their revenue primarily from their audience, their economic incentive was to provide the product that the audience most wanted. The diversity in the audiences meant that they could be best served by different, competing papers. Those were the days both of the partisan press and of most towns have competing daily newspapers. In 1880, Leadville, Colorado, a town of 15,000 people, could support six competing daily newspapers. However, when advertisers become the dominant source of revenue, the incentive became less in serving unique audiences and more in serving advertisers. From the advertisers point of view, audiences were not diverse (as long as they were potential purchasers). While previously a paper could profit most by selling a unique product to a particular audience, now it could profit most by a undifferentiated audience to advertisers. Partisanship, as trade journals in the late nineteenth century pointed out, runs the risk of alienating a large portion of the potential audience and inviting a competing paper to serve that alienated portion. "Objectivity" is the name of the journalistic style best designed to alienate no one even if objective journalism pleased most people less than the partisan papers had. Thus, objective journalism is the obvious solution for a paper that wanted to monopolize a diverse population in a given locale. Since objectivity decreased product differentiation, communities found less need for more than one paper. Thus, beginning late in the nineteenth century, as advertising began steadily to increase as a source of revenue, the number town's with competitively owned and operated daily newspapers began a long decline, from 689 in 1910 to around two dozen now. Today, there are no Leadvilles.
Lunch was lovely but I realized while we chatted, if someone I am talking to reads my website... we have very little to talk about because I only have about 5 stories to tell at any given time and I usually tell them on this website first. So conversation is seriously limited. But then on the way home from our lunch date I thought to myself, ‘Why don’t you do more listening asshole?’ Ha!  

Web logs can also assist in the fomentation of political action. A Virginia lawmaker withdrew a bill he drafted from consideration by the Virginia Legislature that would have required women to report fetal deaths after he received more than 500 blistering e-mails from people concerned that the measure would punish women who have miscarriages. E-mail opposition to the bill was apparently generated largely by bloggers. According to one account:

“Del. John A. Cosgrove, R-Chesapeake, was shaken by the speed and volume of the response as word of his bill traveled across the country via the Internet. “I’ve never been blogged before,” he said. “The tone of the e-mails has been disgusting... if it’s, ‘you’re a horrible person’... ‘you ought to be crucified’... those were the nice ones.”

Id.  
307 Smallish Whoopie Cushions, SUBURBAN BLISS (Jan. 01, 2005), at http://www.suburbanbliss.net/suburbanbliss/2005/01/i_had_lunch_today.html.
310 John Cosgrove H.R.B. 1677, Fetal Death, Report by Mother, Penalty, at http://leg1.state.va.us/cgi-bin/legp504.exe?ses=051&t= bill&val=hb1677 (proposing to make mothers responsible to report when a fetal death occurs without medical attendance to the proper law-enforcement agency within 12 hours of the delivery and violation of the section was to be punishable as a Class 1 misdemeanor).
312 Id.
He may never have been "blogged" before but he has probably made inflammatory proposals previously, he just didn't get the immediate feedback that web logs facilitated in conjunction with e-mail.

After the appearance of commentary on Fox News inquiring whether feminism has "gone too far" because, purportedly, men aren't sure if they should open the door for women or not, several blogs gave people a forum for their reactions, which included multiple assertions that feminists needed to get laid and/or shave their moustaches. After Harvard President Lawrence Summers gave a lecture at which he made remarks about why women did not succeed in math and science careers in numbers comparable to men, the blogosphere discussed the matter extensively. Some bloggers pondered whether rigorous scientific research could support Summers' claims while others debated whether Summers was more accurately described as an "asshole" or a "prick." Michael Berube provided my favorite satiric blog entry on the topic, writing:

"... and I'm just going to start with some of the commenters. First is Pinko Feminist Hellcat, who writes:

"I see that you're on HuffPost, where you have said that you oppose letting a woman have an abortion, while in fact you fostered a gay rights movement that includes a right to abortion as a human right. "(January 11, 2005)

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‘Traditionally, presidents of Harvard have been men,’ said Harvard geneticist Charles Kinbote, the study’s designer and principal investigator. ‘Now, after almost 400 years, we know why. To coin a phrase, it’s in the genes.’

According to Kinbote, the presidency of Harvard University requires a unique array of talents and dispositions which, statistically, only a small handful of women possess.319 For one thing, it has long been one of the president’s tasks to deny tenure to promising female scholars—personally, without stated cause, and after a department, a college, and a battery of external referees has approved her. My study shows that the X chromosome contains material that, in combination with another X chromosome, inhibits a person’s ability to do this.320

These are just a few examples of varied feminist-oriented discourses enabled by the Internet, predominantly occurring within the United States. Recall that the plots of many movies and television shows in the 1960s, 1970s and even through much of the 1980s involved the smuggling of “important information” out of the Soviet Union, from behind the “Iron Curtain.” Sometimes the information was a microdot embedded with the plans for some new and nefarious weapon of mass destruction, but other times it was simply a collection of poems or essays critical

‘asshole’. Often one doesn’t need to specify: ‘Did you hear what the asshole said?’ or ‘I had a meeting with the asshole. You wouldn’t believe what he said to...’ Which leads to the Crooked Timber-worthy question: is there an important difference between a prick and an asshole? Could we do an ordinary language analysis? To me, prick is more superficial; asshole is deeper (yeah, yeah, it’s intentional). A prick is above all annoying, but it’s often localized and a social defect; you can say, ‘yeah he’s a prick, but he’s really a good guy.’ Can you say that about an asshole? An asshole strikes me as a fundamental personality assessment. I’ve even heard Summers’ assholosity referred to, I’m not kidding, as a genetic inheritance. But we should not neglect environmental factors. It does seem that at this particular historical juncture economics is particularly productive of assholes. But then, his parents were both economists. The nature-nurture debate goes on . . . .

of the totalitarian government in power, which sought to repress this "illegal" and "harmful" information.

Today there are efforts to prevent trafficking in "bad information" around the world. Saudi Arabia, a nation in which women do not have citizenship rights equal to those of men, engages in heavy Internet filtering. China aggressively filters the Internet within its borders as well. Whether particular types of information can be spirited through these filters will, like so many issues in cyberspace, be largely determined by men but will tremendously impact women.

The English-speaking Internet presence (which regrettably is all the author is familiar with) of women from other nations can be educational and inspiring. For example, the organization RAWA, the Revolutionary Association of the Women of Afghanistan, was established in Kabul, Afghanistan, in 1977 by a group of female Afghan intellectuals as an independent political and social organization of Afghan women fighting for human rights and for social justice in Afghanistan. Among other activities, RAWA publishes several ink and paper magazines. When it was formed, it opposed the Soviet occupation of Afghanistan, and when the Taliban took over, it opposed the anti-women policies and practices of the Taliban. The organization continues to push for a more democratic and women-friendly society in Afghanistan.

Alternatively, the weblog Baghdad Burning is the work of one individual, "Riverbend," who blogs about her life as an Iraqi living in Baghdad, as the war affects her and her friend and family members. She discusses the deprivations, the fear, and the rumors she hears about the war and the actions of the U.S. military. One also learns unexpected things, such as the widespread availability and consumption of the drug Valium in Iraq since the United States invaded.

Websites and weblogs devoted to feminism specifically, or women's issues generally, or simply carrying women's voices around the globe, are

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328 *id.*

329 *id.*

encouragingly numerous. Whether such Internet resources thrive or merely survive will depend on many variables, outside of the control of those who are most effected by them.

IV. CONCLUSION

When differences between women and men are ignored in real space, the consequences are generally unfavorable to women. When, for example, the results of medical studies that used only male subjects are generalized to women, women’s health and welfare suffers. In similar ways, women in cyberspace will be disadvantaged if they are not considered independently within the realm of cyberspace. Differences in the ways women and men use and communicate over the Internet need to be recognized, studied and accommodated by those who would theorize cyberspace law and advocate directions for its evolution. Affirmatively encouraging more women to actively participate in Internet-related fields could help facilitate this involvement. Doing nothing will further entrench a status quo in which women are assumed to be men, or need to attempt to pass as men, or must aspire to be treated like men online, and are functionally powerless and invisible.

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