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

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

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

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

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


5 For a timely extension of the development of self-regulation, consider the Facebook Community Council, which began testing in January 2010. Kit Eaton, FACEBOOK TURNS TO THE CROWD TO MONITOR THE CROWDIES, FASTCOMPANY, Jan. 5, 2010, http://www.fastcompany.com/blog/kit-eaton/technomix/facebook-turns-crowd-moderate-crowd (last visited Jan. 5, 2010) (reporting that the “Facebook Community Council” or “FCC” for short, is meant to "harness the power and intelligence of Facebook users to support us in keeping Facebook a trusted and vibrant community."). See also Eric Eldon, FACEBOOK BEGINS TESTING ADVANCED CROWD-SOURCED CONTENT MODERATION, INSIDE FACEBOOK, Jan.
providing transparency of edits on its content pages. Craigslist is another example of this hybrid: while only the original poster can change a posting, any user may flag it for the attention of moderators with an easy link at the top of the site.\footnote{\textit{Craigslist, Flags and Community Moderation}, http://www.craigslist.org/about/help/flags_and_community_moderation (last visited Dec. 15, 2009) ("Users may flag postings they believe to be in violation of craigslist guidelines, by clicking on one of the flagging links at the upper right corner of each posting: Miscategorized - wrong category/site, discusses another ad, otherwise misplaced; Prohibited - violates craigslist Terms of Use or other posted guidelines; Spam/Overpost - posted too frequently, in multiple cities/categories, or is too commercial…Millions of ads are removed through community flagging each month, of which the vast majority are in violation of craigslist terms of use or posting guidelines.").}

Contrast this to other sites, such as AutoAdmit and gossip forums, which require users to dig deeply to report problematic content, or actively tell complainers that they will not be cooperative with efforts to "censor" or alter content.\footnote{See Doe I and Doe II v. Anthony Ciolli, et al., No. 3:07CV00909 (D. Conn. 2009); Ciolli v. Heide Irvani, et al., No. 2:08-cv-0261, Complaint ¶ 129 (E.D. Pa. 2009) (AutoAdmit litigation) (describing features absent from the AutoAdmit forum: privacy policy, terms of service, deletion of postings at issue, request to Google to remove postings from search engine, logging of IP addresses of users on AutoAdmit website, creation of dispute resolution system, requirement that web operator respond to all emails related to AutoAdmit-related matters within 14 days). For relevant documents, see Citizen Media Law Project, \textit{AutoAdmit}, http://www.citmedialaw.org/threats/autoadmit (last visited Dec. 15, 2009).} The design decision to notify other users of a potential mistake, hazard, or misrepresentative comment provides a minimum level of quality control to an entire forum without centralized approval.\footnote{Value-enhancing collective action, by way of neighborhood watch programs, is described in homeownership scholarship. \textit{See generally} Lee Anne Fennell, \textit{Homeownership 2.0}, 102 NW. U. L. REV. 1047, 1099 (2008) (discussing traditional homeowner behavior to enhance fortunes of a community by participation in neighborhood watches, cooperation with police, and enforcement of behavioral and aesthetic norms). The neighborhood watch principle has also been extended to prevention of cybercrime in cyberspace. \textit{See} Benjamin R. Jones, \textit{Comment: Virtual Neighborhood Watch: Open Source Software and Community Policing Against Cybercrime}, 97 J. CRIM. L. & CRIMINOLOGY 601 (2007) (describing a model of community policing by individual computer users to combat cybercrime through open-source software); Jonathan A. Friedman & Francis M. Buono, \textit{Limiting Tort Liability for Online Third-Party Content Under Section 230 of the Communications Act}, 52 FED. COMM. L.J. 647, 664 n.102 (2000) (noting an early form of community standards in walled gardens through the America Online Neighborhood Watch program).}

Such self-policing and reporting mechanisms are a scalable, productive feature
for the creators of websites. Such self-policing features are especially important when content is user-generated. Not all speech is productive and valuable to society. In legal doctrine, the protection of freedom of speech granted by the First Amendment is not absolute. Some categories of speech, such as libel and fraud, are not protected: such speech has landed civil and criminal penalties. While Section 230 gives web site operators broad immunity from liability for third-party content, a sensible web site operator would know that harmful behavior on their web sites attracts the attention of law enforcement, discourages patronage by potential customers, and contributes to social harms to society. As a general principle, a libertarian model that limits government intervention in private ordering on the Internet depends upon the broad notion that reasonable people will regulate their own behavior, and avoid trampling on the rights of others.\footnote{H. Brian Holland, In Defense of Online Intermediary Immunity: Facilitating Communities of Modified Exceptionalism, 56 U. KAN. L. REV. 369, 377 (2008) (“Described by one scholar as “digital libertarianism,” and another as “cyberlibertarian[ism],” the vision was one of freedom, liberty, and self-regulation. Cyberlibertarians believed the Internet could and would develop its own effective legal institutions through which rules would emerge. These emerging norms would “play the role of law by defining legal personhood and property, resolving disputes, and crystallizing a collective conversation about online participants’ core values.”) (citations omitted).} When those rights come into conflict, it is the obligation of those involved to resolve the conflict themselves if they wish to preempt the blunt tool of legal enforcement. While a web site operator may be completely innocent of responsibility for the actions of one anti-social individual against another individual, the web site operator will still incur the costs of lost time and damaged public image due to the controversy in question. In a world where civic societies exchange resources, protect their own liberty interests, and pursue peace among citizens, the web site operator who maintains an interactive forum must necessarily consider the benefits of instituting self-policing and quality control mechanisms.

In order to preserve the public nature of interactive sites, operators would do well to encourage self-regulation. The benefits of self-regulation to Wikipedia spans much further than the Section 230 limits on liability protected by Congress. Much of
Wikipedia’s success today is a product of decentralized self-policing mechanisms that result in iterative quality control by devoted volunteers. An increase in self-regulation will not produce perfect quality control, the failures of Wikipedia’s mechanisms should make that clear. However, the results for Wikipedia have been better than the alternative of no regulation, or of completely centralized control. For libertarians and non-libertarians alike, part of the push toward further regulation comes when a particular incident spurs moral outrage such as the Seigenthaler incident, the AutoAdmit lawsuit. The law can be a blunt tool, having wide-ranging (perhaps overly broad) chilling effects. For example, an unintended consequence of a law that requires a minimum level of self-policing might be the winding down of smaller sites that cannot afford to police themselves adequately without expending a disproportionate amount of resources.

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

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

11 See supra note 5.

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

13 Id. But see David V. Richards, Note, Posting Personal Information on the Internet: A Case for Changing the Legal Regime Created by §230 of the Communications Decency Act, 85 TEX. L. REV. 1354-56 (2007) (discussing modest implementation costs from government intervention to require interactive websites to register users, while conceding resultant limitations on privacy and First Amendment freedoms).
of differences in media literacy and competency among Wikipedia users. Within the outer boundaries of Section 230, Wikipedia provides a model for web site operators to reap benefits from user-reporting mechanisms. Such user-driven self-policing may serve a broader aim to preempt government regulations that would formally require such mechanisms.

I. SECTION 230 OF THE COMMUNICATIONS DEENCY ACT

A. An Early History of Section 230

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

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


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

\textsuperscript{16} \textit{Id.} at 172, n.70 (describing Sen. Exon’s blue binder full of ‘disgusting material’ to show other senators).

\textsuperscript{17} \textit{Id.} at 172, 174. The new Communications Decency Act was signed into law on February 8, 1996, one week following the February 1, 1996 passage of the Telecommunications Act of 1996.
entirely by users of the service, even if the service providers exercised some power to moderate that content.\textsuperscript{18} Section 230 was tacked on to the Act, at the urging of free speech advocates,\textsuperscript{19} in response to a case where then-popular service provider Prodigy was found liable for user-posted content because of its small degree of moderation,\textsuperscript{20} while CompuServe, a comparable service that exercised no moderation power, was cleared of liability in a similar earlier case.\textsuperscript{21} Without this legislation, the crop of internet service providers that offered users a mediated Internet experience, supplementing the open web with their own forums, chat rooms, and content, would have had a difficult time staying in business.\textsuperscript{22} It was in the providers' interests to exercise \textit{some} control for the consumer experience, removing things that they deemed harmful.\textsuperscript{23} On these early platforms, consumers who wanted these services were paying a premium to have some degree of intervention by the ISP.\textsuperscript{24} But any provider that faced liability for all of the postings of all of its users would be forced to devote immense resources to monitoring and controlling content, or face liability for harmful content everywhere that users were allowed to post.\textsuperscript{25}

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

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\item[^{18}]Id. at 178. See also Carafano v. Metrosplash.com, Inc., 339 F.3d 1119, 1122 (9th Cir. 2003) (Section 230 was meant “to promote the free exchange of information and ideas over the Internet and to encourage voluntary monitoring for offensive or obscene material.”).
\item[^{19}]Id. at 173 (describing the Cox-Wyden Amendment).
\item[^{22}]See Friedman & Buono, supra note 8, at 665 (“[Online service providers] have found that it makes good business sense to police their services. Indeed, in the highly competitive online services marketplace, an OSP’s refusal to act responsibly in these areas could have devastating commercial consequences, particularly given the ease with which users can, through chat rooms and message boards, quickly and broadly publicize such irresponsible OSP behavior.”).
\item[^{23}]Id.
\item[^{24}]Id.
\item[^{25}]See Holland, supra note 9, at 395 (2008) (“The costs of these indirect intermediary liability schemes could be great. Under traditional liability rules, intermediaries may be forced to adopt a least-common-denominator approach, resulting in overly broad restrictions on expression and behavior.”).
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CompuServe and AOL, but also interactive websites such as Wikipedia, MySpace, Yahoo, and Craigslist. In particular, the massively-collaborative, highly-interactive sites considered part of "Web 2.0" are included under this definition. And, even more so than the traditional ISPs, Web 2.0 sites depend on this immunity to continue existing.

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

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

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26 See, e.g., Zeran v. America Online, Inc., 129 F.3d 327 (4th Cir. 1997).
27 Plaintiffs typically concede the first prong of analysis under Section 230 that the defendant is a “provider or user of an interactive computer service.” See Myers, Wikimmunity, supra note 14, at 179, n.106 (cases where defendants concede or the court takes judicial notice of status as “interactive computer service”); id. at 179 n.107 (cases where websites that permit information posting considered within “interactive computer service” definition).
29 Wikipedia deals with more than defamation claims, primarily copyright issues. Scholars have questioned the policy decision to completely immunize ISPs from liability for violations of copyright, computer viruses, and cybercrime. See Doug Lichtman & Eric Posner, Holding Internet Service Providers Accountable, 14 SUP. CT. ECON. REV. 221 (2006). See generally Matthew Schruers, Note, The History and Economics of ISP Liability for Third Party Content, 88 VA. L. REV. 205 (2002) (describing the economic costs from notice-based liability and strict liability regimes, compared to statutory immunity under the CDA).
33 47 U.S.C. § 230(c)(1) (2000). “Interactive computer service” is defined as “any information...
It is Section 230(c)(1) that online services and interactive websites rely on today, which states that "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." Section 230(e)(3) provides for this immunity to apply to not only federal, but also state and local causes of action.

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

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

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

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34 Id.
35 47 U.S.C. § 230(e)(3) (2000) (“Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.”).
38 Id. at *5.
40 Id. at *4.
the information services developing on the internet "represent an extraordinary advance in the availability of educational and informational resources," offer users a great degree of control over the information that they receive, as well as "a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity." The report goes on to state that as a matter of policy it was desirable to "remove disincentives for the development and utilization of blocking and filtering technologies" and protect "'Good Samaritan' blocking and screening of offensive material." Most of the CDA was struck down by the Supreme Court as unconstitutional under the First Amendment in 1997. In *Reno v. ACLU*, the court held that the standards were unconstitutionally vague and the restrictions on speech the provisions overbroad. Section 230, however, was left intact, as it had no such unconstitutional restrictions. Furthermore, Section 230 was still useful, promising ISP immunity for not only the content proscribed by the struck indecency provisions, but any other illegal material posted by users.

**B. Societal Implications of Section 230**

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

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42 Id.
43 Id.
44 Id.
45 Id.
47 Id.
48 Id.
difficult to engineer, and faces a greater population of those able to affect it.

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

The safe harbor is a bargain struck between the legislators and the services that enable the free flow of information on the internet, granting them immunity from claims that would limit their ability to give access. Without this immunity, it is doubtful that the wide range of information services existing today would have been able to function.

When the Cubby lawsuit was filed against CompuServe, a shock wave echoed across the net. Digital communities began to consider the future of what they had built and come to expect; if service providers became strictly liable for carrying speech by unmonitored individual users, unmonitored individual speech was no longer going to happen. The expenses were too great and the risks too much for any but a foolhardy or judgment-proof defendant. Users treated the emerging communities of the Internet like any other public forum, and spoke freely because of it, not giving thought to the reality that their posted words were published just as surely as if they were in The New York Times. The Internet itself may not be regulated, but if anyone who could grant you

51 See Myers, Wikimmunity, supra note 14, at 172.
53 Peter H. Lewis, The Executive Computer: On Electronic Bulletin Boards, What Rights Are At Stake?, N. Y. Times, Dec. 23, 1990 ("'We have 240 forums, containing hundreds of thousands of messages at any time,' Mr. Kissler said. 'Forums are central to the nature of the on-line environment, really the lifeblood of what the communications service provides. Part of that is the lively exchange of opinions on a variety of topics.' The lines get fuzzy when, in the course of that lively exchange, the sender's language or sentiment gets overheated... 'There is some debate in legal circles on the extent to which videotex service providers must screen publicly posted messages,' said Benjamin Wright, a lawyer in Dallas who specializes in electronic communications law. 'If the law sees the provider as more like a newspaper, then the duty to screen is higher. But if the law sees the provider as more like a telephone..."
access to it would be responsible for your actions using their service just as if they were publishing a newspaper, it would create a chilling effect.\footnote{See, e.g., Brock N. Meeks, As BBSes Mature, Liability Becomes an Issue, INFOWORLD, Jan. 22, 1990 (explaining the breadth of potential, and uncertain, legal liability to systops of electronic bulletin board systems (BBSes) implicating rights of privacy, common carrier obligations, the Fourth Amendment, the First Amendment, copyright, libel, and pornography).} Even those who controlled their own internet access, able to speak freely, would have few to speak to.\footnote{See generally GODWIN, CYBER RIGHTS, supra note 51; JONATHAN WALLACE & MARK MANGAN, SEX, LAWS, AND CYBERSPACE: FREEDOM AND CENSORSHIP ON THE FRONTIERS OF THE ONLINE REVOLUTION (1996); Book Review, Sex, Laws, and Cyberspace: Freedom and Censorship on the Frontiers of the Online Revolution, 10 HARV. J.L. & TECH. 715 (1997).}

The opinion in Cubby was remarkable for its long-range view of what Internet communication was and would be.\footnote{Cubby, see supra note 54.} In the opinion, Judge Leisure compared the ISP not to the publisher of a newspaper but to the owner of a bookstore, and like the owner of a bookstore, it was not expected to read and monitor every word of every piece of material passing through it.\footnote{Id. at 140 (“A computerized database is the functional equivalent of a more traditional news vendor, and the inconsistent application of a lower standard of liability to an electronic news distributor such as CompuServe than that which is applied to a public library, book store, or newsstand would impose an undue burden on the free flow of information.”).} The ISP was merely storing and passing on the information that others had published and should be responsible for.\footnote{Id. (“While CompuServe may decline to carry a given publication altogether, in reality, once it does decide to carry a publication, it will have little or no editorial control over that publication’s contents.”)} The opinion held that CompuServe was not to be held liable for the material posted by its users unless it had reason to know about it.\footnote{Id. at 140-41 (“Given the relevant First Amendment considerations, the appropriate standard of liability to be applied to CompuServe is whether it knew or had reason to know of the allegedly defamatory Rumorville statements.”).} Any other rule “would impose an undue burden on the free flow of information.”\footnote{Id. at 140.}

In 1991, when the Cubby opinion was drafted, the ISP as provider of a complete, mediated online experience for the user was still a common scenario. Services such as AOL, Prodigy, and CompuServe provided email, forums, chat, featured content, news,
and shopping; a typical user might subscribe to one of these services for years and never leave the walled garden of the service to explore the wider web, and might not even know the rest of the web existed.\textsuperscript{61}

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

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

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\item \textsuperscript{61} Barnaby J. Feder, \textit{Toward Defining Free Speech in The Computer Age}, N.Y. TIMES, Nov. 3, 1991 ("Computer networks like Prodigy and CompuServe offer a wide range of services to owners of personal computers via telephone lines. They offer news, weather reports, reviews of books, movies and restaurants, home shopping and banking, games, instruction, private electronic mail and public bulletin boards.").
\item \textsuperscript{63} \textit{Id.} at 169-81. Ciolli presents a comprehensive history tracking the ubiquity of free America Online CDs to the fallout of subscribers in 2003 by the rise of broadband. America Online ended the walled garden proprietary content service for $14.95 per month in January 2004. \textit{Id.} at 173.
\item \textsuperscript{64} \textit{Id.} at 178 ("The creation of such websites and services that circumvented America Online’s walled garden would hasten the demise of proprietary networks and eventually usher in a world where Internet users would obtain their interactive content from a wide variety of different sources, most of whom would not have any affiliation or special agreement with their Internet service provider.").
\item \textsuperscript{65} \textit{Id.} at 179 ("[T]he typical Web 2.0 website specializes in community and allows its users to interact with each other in some way through its service…Because a Web 2.0 service is typically just a regular website, and not an Internet service provider, users are able to migrate freely from one Web 2.0 service to
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C. Recent Developments in Limits of Section 230

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

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

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

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

\(^{67}\) Id.

\(^{68}\) Id.


\(^{70}\) 570 F.3d at 1098.
opinion. However, Barnes contacted Yahoo! customer service to try to resolve the problem. A representative assured her that the content would be removed. However, Yahoo failed to follow through within two months, and Barnes filed suit in Oregon state court. The Ninth Circuit held that "[i]nsofar as Yahoo made a promise with the constructive intent that it be enforceable, it has implicitly agreed to an alteration in such baseline. . . . insofar as Barnes alleges a breach of contract claim under the theory of promissory estoppel, subsection 230(c)(1) of the Act does not preclude her cause of action." On remand, the District Court for Oregon denied Yahoo’s motion to dismiss the promissory estoppel claim.

II. WIKIMEDIA AND WIKIPEDIA

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

71 Id. at 1102-03 (treating Yahoo as a “publisher or speaker” with immunity under Section 230 despite plaintiff’s characterization that Yahoo owed a higher duty than a publisher through its “negligent undertaking”).
72 Id. at 1098.
73 Id. at 1099.
74 Id.
75 Id. at 1108-09 (distinguishing between contract and tort obligations of Yahoo to remove material from publication under a promissory estoppel claim).
78 Wikimedia Foundation, Mission Statement, http://wikimediafoundation.org/wiki/Mission_statement (last visited Dec. 18, 2009) (“The mission of the Wikimedia Foundation is to empower and engage people around the world to collect and develop educational content under a free license or in the public domain, and to disseminate it effectively and globally.”); Wikimedia Foundation, Values, http://wikimediafoundation.org/wiki/Values (last visited Dec. 18, 2009) (“Though US-based, the organization is international in its nature.”).
the nation’s borders.\textsuperscript{79} Several user associations exist in other countries which have no formal association with the foundation.\textsuperscript{80}

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

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

\textsuperscript{80} Wikimedia Foundation, \textit{Mission Statement}, http://wikimediafoundation.org/wiki/Mission_statement (last visited Dec. 18, 2009) (“In collaboration with a network of chapters, the Foundation provides the essential infrastructure and an organizational framework for the support and development of multilingual wiki projects and other endeavors which serve this mission.”); Wikimedia Foundation, \textit{Local Chapters}, http://wikimediafoundation.org/wiki/Local_chapters (last visited Dec. 18, 2009) (“Local chapters are self-dependent organizations that share the goals of the Wikimedia Foundation and support them within a specified geographical region.”).
\textsuperscript{84} See also Wikipedia, Wolfgang Werle and Manfred Lauber, http://en.wikipedia.org/wiki/Wolfgang_Werle%C3%A9_and_Manfred_Lauber (last visited Jan. 9, 2010).
world, each representing a single country or sub-national region.\textsuperscript{85} These chapters organize local activities such as holding educational workshops, developing relationships with local institutions, and handling requests from local press; they also function as social organizations.\textsuperscript{86} However, all of these chapters are independently structured and run, kept legally and financially separate from the Wikimedia Foundation itself.\textsuperscript{87} They raise funds for their own activities and develop their own bylaws.\textsuperscript{88}

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

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


\textsuperscript{86} Id.

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

\textsuperscript{88} Id. (“The Chapter shall supply to the Foundation a copy of its bylaws and or incorporation documents together with a certified translation into English if not already in that language.”).


\textsuperscript{91} Wikipedia, Wikipedia:Frequently Asked Questions, http://wikimediafoundation.org/wiki/Frequently Asked Questions (last visited Dec. 18, 2009) (“The Wikimedia Foundation has a staff of 33, led by the Executive Director, Sue Gardner. The staff supports the work of the hundreds of thousands of volunteers who contribute content to the Wikimedia communities. It is also supported by countless volunteers participating through committees, as interns, or on an ad hoc basis.”).
1,437 pages were added per day in 2008, some as "stubs" only a sentence or two long, others as nearly fully-formed multiple-page articles; roughly the same number are created and then quickly deleted, primarily for being nonsense or garbage. Thousands of new edits are made to existing pages in the same span of time. And they don't stop when office hours end. The site is edited by people around the world, by early birds and insomniacs, by students and professionals of all stripes. Simply monitoring those pages for plainly obvious nonsense and garbage would be a full-time job for several people. To additionally check every new edit for false or misleading statements, plagiarized content, or anything else that simply doesn't belong, would require the round-the-clock efforts of a skilled research team.

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

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94 Id.
98 Wikipedia, Wikipedia:Advertisements, http://en.wikipedia.org/wiki/Wikipedia:Advertisements (last visited Dec. 18, 2009) (“The issue has been the topic of ongoing discussion. Revenue generated from advertisements could improve the website and help achieve its goals. On the other hand, advertising may
income stream comes from individual donations, primarily from donors giving under $50 each. A small part of its budget comes from licensing the brand name to carefully-selected products such as books and DVDs, and another portion comes from foundational grants (both restricted and unrestricted). None of this is lucrative enough to allow for the hiring of a sufficient force of paid content screeners. Even if it were, Wikimedia is hesitant to offer payment to supplement project-based tasks currently done by volunteer efforts: volunteer motivation and goodwill often decreases when volunteers become paid, to the point that turning volunteers into paid editors may actually reduce the total amount of work done.

But most of Wikipedia's content is perfectly unobjectionable. A fair amount is well-cited and well-written. Studies in Nature, c't, Stern, and The

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


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

To accomplish this level of utility, Wikipedia relies on the efforts of its thousands upon thousands of volunteers. Most of the essential functions of the site can be performed by any user, even someone who has never registered: adding text, removing text, checking citations, copyediting, developing organizational structure, participating in policy creation. A few seconds to create a username and password unlocks a few more functions: the ability to create an entirely new page, upload photographs and media, edit partially-locked pages, set personal interface preferences,
and e-mail other users.\footnote{Id. ("Nevertheless, creating an account is quick, free, and non-intrusive, and it is generally considered a good idea to do so for a variety of reasons.").}

Over a thousand users, however, have a few extra tools, and are called "administrators" ("admins", for short).\footnote{Wikipedia, Wikipedia:Administrators, http://en.wikipedia.org/wiki/Wikipedia:Administrators (last visited Dec. 18, 2009); Wikipedia, Wikipedia:Administrators’ How-To Guide, http://en.wikipedia.org/wiki/Wikipedia:Administrators%27_how-to_guide (last visited Dec. 18, 2009) (including contents like, "# 1 Blacklisting persistent spam," "# 4 Dealing with abusive editors," "# 14 Unblock a user, IP or range," "# 16 Using rollback," or "# 17 Being useful").} Admins on Wikipedia have some additional technical abilities: they can delete pages entirely, "protect" pages by locking down editing from users who have not logged in, or all (non-admin) users, and they can block IP addresses or user accounts from making any edits to the site.\footnote{Id.} Officially, this is it; the role is not particularly powerful or glamorous.\footnote{Wikipedia, Wikipedia:What Adminship is Not, http://en.wikipedia.org/wiki/Wikipedia:What_adminship_is_not (last visited Dec. 18, 2009) ("** 2.1 Adminship is not a trophy * 2.2 Adminship is not an entitlement * 2.3 Adminship is not diplomatic immunity * 2.4 Adminship is neither compulsory nor necessary to aid Wikipedia * 2.5 Adminship is not a game * 2.6 Adminship is not for sale * 2.7 Adminship is not a big deal").} Unofficially, these users tend to be the most active on the site as well as those with the most thorough knowledge of its policies, procedures, and guidelines.\footnote{For the importance of social norms and expectations, see also Village Stocks, infra note 117, What Wikipedia is Not, infra note 120, Do’s and Don’ts of WikiWar, infra note 156. The importance of social norms for self-regulation is underscored by Daniel Solove’s scholarship on the future of reputation and privacy, see infra note 198 and accompanying discussion.} A project run with so little official hierarchy relies heavily on social norms and buy-in to the goals and mission by the most socially powerful participants;\footnote{See Wikipedia, Wikipedia:Administrators’ Reading List, http://en.wikipedia.org/wiki/Wikipedia:Administrators%27_reading_list (last visited Dec. 18, 2009); Wikipedia, Wikipedia:List of Policies, http://en.wikipedia.org/wiki/Wikipedia:List_of_policies (last visited Dec. 18, 2009).} on Wikipedia, the volunteer admins are largely filling this
role.\footnote{In the culture of the site, a great deal of effort is spent trying to acculturate administrators into this dual role: little extra official power, but significant social influence and expectations. The new administrators' how-to guide is a good jumping-off point for those interested in reading further. \textit{See Wikipedia:Administrators' How-To Guide, supra note 113.}}

Noticeably absent in mechanisms of creation and control of content are Wikimedia staff and officers.\footnote{This is excepting intervention during ongoing litigation: on occasion, the general counsel will direct the removal or alteration of content. \textit{See generally Wikipedia, Wikipedia:What Wikipedia is Not, http://en.wikipedia.org/wiki/Wikipedia:CENSOR#Wikipedia_is_not_censored (last visited Dec. 22, 2009) ("Obviously inappropriate content (such as an irrelevant link to a shock site, or clear vandalism) is usually removed quickly. Content that is judged to violate Wikipedia's biographies of living persons policy, or that violates other Wikipedia policies (especially neutral point of view) or the laws of the U.S. state of Florida where Wikipedia's servers are hosted, will also be removed.").}} Not a single one is dedicated to site content creation or quality control issues as part of her duties.\footnote{\textit{See Wikimedia Foundation, Values, supra note 80 ("We are a community-based organization. We must operate with a mix of staff members, and of volunteers, working together to achieve our mission. We support community-led collaborative projects, and must respect the work and the ideas of our community. We must listen and take into account our communities in any decisions taken to achieve our mission.").}} The site is intended to be self-regulating by its community of volunteers, and its policies and guidelines as well as its practices reflect that.\footnote{47 U.S.C. § 230 (2000).}

A. Section 230's Applicability to Wikipedia

A finding of immunity under Section 230 depends on a service that claims to be a qualifying information service provider meeting all three parts of a three-prong test: first, whether it is a "provider or user of an interactive computer service", second, whether any complaint brought would rely on treating Wikipedia as the "publisher or speaker", and third, whether potential liability would be for "information provided by another information content provider."\footnote{Ken Myers has written a definitive analysis} Ken Myers has written a definitive analysis
on whether Wikipedia meets this definition. His analysis examined how a scenario where Wikipedia is sued would fall under each part of the test, and concluded that Wikipedia does qualify. Short analyses by other legal scholars, including Anita Ramasastry and Daniel Solove, have come to the same conclusion.

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

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

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122 Id. at 178-79.
of the injurious material. These include "defamation, negligence for failure to prevent defamation, or negligence for failure to remove defamatory information after notification" and potentially other claims arising under state or local laws.

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

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

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130 Id.
133 Rosenthal II. See also Myers, Wikimmunity, supra note 14, at 181.
135 Myers, Wikimmunity, supra note 14, at 187.
136 Id. at 188.
137 Id. at 188, citing Carafano v. Metrosplash.com, Inc., 339 F.3d 1119, 1124 (9th Cir. 2003); Barnes v. Yahoo!, Inc. (D. Or. Nov. 8, 2005).
B. Wikipedia's Self-Regulation

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

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

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

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

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

141 Wikipedia, Wikipedia:No Original Research, http://en.wikipedia.org/wiki/Wikipedia:No_original_research (last visited Dec. 22, 2009) (“Wikipedia does not publish original research or original thought. This includes unpublished facts, arguments, speculation, and ideas; and any unpublished analysis or synthesis of published material that serves to advance a position. This means that Wikipedia is not the place to publish your own opinions, experiences, arguments, or conclusions. Citing sources and avoiding original research are inextricably linked... "No original research" is one of three core content policies, along with neutral point of view and verifiability.”).
horrific acts as well as graphic sexual topics, they are to be presented in such a way as to be informative, not for shock value. It must also avoid infringing copyrights, but service provider immunity for copyright infringement is covered by another law: section 512 of the Digital Millennium Copyright Act. If these policies were always followed, it is difficult to think of any material that could be posted where a plaintiff could state a substantive claim, in the United States, at least. In other jurisdictions, libel laws and privacy laws are stronger than the very weak protections in the United States; in others, mere distribution of information about certain topics may be illegal.

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

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

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


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

146 Discretion in Privacy Law, GERMAN AM. L.J., Sept. 14, 2008, http://galj.info/2008/09/14/#0914-nameiminternet.txt (last visited Dec. 22, 2009) (“The constitutional protection of privacy, known as Persönlichkeitsrecht, is protected by art. 1 of the German federal constitution. It may outweigh the public interest in minor criminal cases. Therefore, publishing the full name a person may lead to a civil liability when the person is convicted of parking at an expired meter.”). See also Pair Guilty of “Insulting Turkey,” BBC NEWS, Oct. 11, 2007, http://news.bbc.co.uk/2/hi/europe/7040171.stm (last visited Dec. 22, 2009) (describing Turkish penal code Article 301 which criminalizes insults to Turkish identity); Neil MacFarquhar, Iran Cracks Down on Dissent, N.Y. TIMES, June 24, 2007, http://www.nytimes.com/2007/06/24/world/middleeast/24iran.html (last visited Dec. 22, 2009) (describing a stern three-page warning from Iran’s National Security Council to newspaper editors detailing banned topics such as the rise in gasoline prices, new international sanctions, civil society movements, and US-Iran negotiations). Pages could be filled with examples from most countries in the
have no need for much law at all to regulate those who participate in an open project. The majority of users comply, and contribute productively, to the astonishment of many. But what about the others? Not everyone “reads the manual,” learning site policies before editing. Some make problematic edits just as a test: shouting nonsense into a microphone to see if it's really on and anyone is listening; some don't believe that Wikipedia would really let all changes go live on the site (and are horrified to see that it does). Others are bored schoolchildren or jokers, looking to cause a bit of mayhem and disruption. Some are otherwise good users who have a strong view that policy needs to be changed on a particular subject. Others are people who come to Wikipedia with a particular agenda, who attempt to use the site to smear the reputation of another person or organization.

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

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150 Id. (showing the latest changes at 20:49 on Dec. 11, 2009; “Legend: N - new page, m - minor edit, b - bot edit. 11 December 2009. * List of songs by "Weird Al" Yankovic; 20:49 . . (+123) . . 86.7.207.64 (talk) (→Compilation albums: ) * Haunted (film); 20:49 . . (-1) . . 216.163.200.47 (talk) (→Plot: ) * User talk:92.12.22.90; 20:49 . . (+92) . . 92.12.22.90 (talk) (→Unblock: new section) * Robin Hood Airport Doncaster Sheffield; 20:49 . . (-1) . . 87.232.125.146 (talk) * Lama (martial art); 20:49 . . (0) . . 187.131.51.29 (talk) (→Chinese Lineages and Beyond: ) * User talk:Hajatvrc; 20:49 . . (+825) . . SpikeToronto (talk | contribs) (Message re. Samuel Morse (HG)) * McDonaldland; 20:49 . . (+427) . . 76.77.139.243 (talk)...”) (emphasis added).
tools ("bots") which help identify some of the most common patterns of undesired edits so that an administrator can roll back the change, leaving the remainder of the edits for manual undoing.151

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


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

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

Essay topics on Wikipedia civility show provide a window into the core values and social norms behind Wikipedia content management. Essay topics for “Do’s” include: “Assume the assumption of
In addition to these, the developer community has added tools and features to help prevent the spread of problematic edits. One such early innovation was the introduction of differing user access levels to begin with, which the early MediaWiki software did not have. Other features include the "bad image list," which limits good faith. Assume no clue. Assume clue. Avoid personal remarks. Avoid the word "vandal". Award barnstars. Call a spade a spade. Candor. Drop the stick and back slowly away from the horse carcass. Deny recognition. In praise of 1RR. Revert only when necessary. Get over it. Go ahead, vandalize. Mind your own business. Discussing cruft. Keep it down to earth. Revert, block, ignore."

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

For the transcript and record from an Arbitration proceeding based upon etiquette principles, see Dmdevit v. Durova arbitration proceeding from November 25, 2007, http://en.wikipedia.org/wiki/Wikipedia:Requests_for_arbitration/Durova#Private_correspondence (last visited Dec. 22, 2009). In the Durova proceeding, Durova had sysop privileges and blocked a user named "!!" upon suspicion that he was a banned user resurfacing under another name. Durova agreed to give up her sysop privileges for blocking the user without prior approval from the Arbitration Committee. The Arbitration Committee encouraged user "!!" to keep contributing high quality content, and a third party, Giano, whose comments bordered personal attacks, was reminded of etiquette which depends on good will between editors. Id."
certain particularly graphic images only to the articles where their use is in the proper context, "oversight," which removes certain content such as private identifying data or outright libelous statements from the page history, and "checkuser," which allows selected users the ability to find the IP addresses behind a username in order to target user blocks. Describing every such technical tool for self-regulation could be a full paper in itself. Because the MediaWiki software is open source, any user with the programming skills can develop new features and tools to improve its functionality. Some must be incorporated into the version in use on the site, and these go through a vetting process by the lead developers; ones that involve major interface or functionality

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

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

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

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

161 For example, see MediaWiki extension, WikiTrust, created by the University of California Santa Cruz Online Collaboration Lab, which implements a system for checking the author, origin, and reliability of wiki text. Wikipedia, MediaWiki, http://en.wikipedia.org/wiki/Mediawiki (last visited Dec. 22, 2009).
changes are first approved by the Wikipedia community.\textsuperscript{162} (Some rejected features are in use on other wikis.) Other tools are stand-alone tools intended for use by individual users to complement the MediaWiki software; browser add-ons, command-line tools, and user interface skins all add features that enhance users' ability to view and interact with the site.\textsuperscript{163}

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

\textsuperscript{166} Wikimedia Meta-Wiki, OTRS/Info-En Recruiting, http://meta.wikimedia.org/wiki/OTRS/info-en_recruiting (last visited Dec. 22, 2009) (“OTRS volunteers handle incoming e-mail for the Wikimedia Foundation. This covers everything from complaints about simple vandalism to allegations of libel and bias in biographical articles. Volunteers have a number of "boilerplate" responses available for common questions, but they are also free to answer in their own (tactful!) words. Our info-en queue and its subqueues handle most e-mail written in English. They are some of the busiest queues in the OTRS system and serve as the "front lines" for most reader interaction.”).
\textsuperscript{167} Id. (“Answering the info-en tickets is stressful. There's no two ways about it. You'll be handling
III. LIMITS OF SELF-POLICING MECHANISMS

A. The Seigenthaler Incident

In late 2005, Wikipedia made national news when journalist John Seigenthaler Sr. reported that the Wikipedia article about him contained libelous statements.\footnote{Seigenthaler, A False Wikipedia “Biography,” USA TODAY, Nov. 29, 2005, available at http://www.usatoday.com/news/opinion/editorials/2005-11-29-wikipedia-edit_x.htm (last visited Dec. 22, 2009).} Seigenthaler, who had actually been first an administrative assistant and later a pallbearer for Kennedy, was shocked.\footnote{Id.} From May 26 until September 23, 2005, Wikipedia's entry on Seigenthaler reported that he had been involved in the murder of John F. Kennedy.\footnote{On May 26, the article was created with the libelous statements. On September 23, a colleague replaced the erroneous article with a biography from the Freedom Forum, which happened to be copyrighted material. On September 24, a Wikipedia user named Chick Bowen deleted the copyrighted material and replaced it with original writing. See http://en.wikipedia.org/w/index.php?title=John_Seigenthaler&oldid=23944523 (last visited Jan. 13, 2010). On October 7, 2005, the deletion log shows a user named Essjay deleted all old versions containing the libelous information, including everything previous to Chick Bowen’s rewriting. http://en.wikipedia.org/w/index.php?title=Special:Log&type=delete&user=Essjay&page=John+Seigenthaler+Sr. When a deletion of an article occurs, all revision history is deleted along with the page. This is why the Wikipedia log no longer shows revisions prior to September 24, 2005.} His son discovered the error, emailing friends and colleagues, one of whom later replaced the entry. Seigenthaler contacted Jimmy Wales soon thereafter.\footnote{Seigenthaler, A False Wikipedia “Biography,” supra note 170.} After finding a registered IP address on the website, Seigenthaler contacted BellSouth Internet for the identity of the contributor with little success. At Wales’ request, a Wikipedia administrator removed the false content from public view.
in article history almost immediately thereafter.  But for those four months, anyone who saw the article would have been left with the wrong idea.

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

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

\[172\] *Id.*
\[173\] *Id.*
\[175\] *See* Abrams v. United States, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting) (“the best test of truth is the power of the thought to get itself accepted in the competition of the market”).
who suffer damage to their reputation on Wikipedia are unable to respond in any forum more popular than the top-10 website. Seigenthaler appeared in national print and television media, talking about what had happened to him, and calling for greater accountability.\footnote{See \textit{Wikipedia to Require Contributors to Register}, National Public Radio Talk of the Nation, Dec. 6, 2005, \url{http://www.npr.org/templates/story/story.php?storyId=5041077} (last visited Dec. 22, 2009) (featuring John Seigenthaler and Jimmy Wales); CNN Live From, Rush Transcripts, Dec. 5, 2005, \url{http://transcripts.cnn.com/TRANSCRIPTS/0512/05/lol.02.html} (last visited Dec. 22, 2009) (featuring John Seigenthaler and Jimmy Wales).} As founder of a center dedicated to the First Amendment and the freedom of the press, Seigenthaler had no wish to censor or restrict speech.\footnote{\textit{First Amendment Center, Brian J. Buchanan, Founder Shares Cautionary Tale of Libel in Cyberspace,} Nov. 17, 2006, \url{http://www.firstamendmentcenter.org/news.aspx?id=17798} (presenting sixth of six “Conversations with John Seigenthaler” at the First Amendment Center).} However, as the user who posted it was identified only by an IP address, and his identity was not known. Someone was responsible for the harmful speech, but Seigenthaler could not easily find the author to hold him responsible for his words. By December, Wikipedia critic Daniel Brandt contacted the owner of the IP address, a small shipping company in Nashville. He found that an employee had placed the entry as a joke, not realizing it would stick around. The employee resigned.\footnote{He also wrote a handwritten apology letter to Seigenthaler, who later contacted the company and urged them to rehire the employee; they did so. It was a fortunate resolution, but not a necessary one. Susan Page, \textit{Author Apologizes for Fake Wikipedia Biography}, USA TODAY, Dec. 11, 2005, \url{http://www.usatoday.com/tech/news/2005-12-11-wikipedia-apology_x.htm} (last visited Dec. 22, 2009); Daniel Terdiman, \textit{Newsmaker: In Search of the Wikipedia Prankster}, CNET NEWS, Dec. 15, 2005, \url{http://news.cnet.com/In-search-of-the-Wikipedia-prankster/2008-1029_3-5995977.html?tag=st.num} (last visited Dec. 22, 2009).}

If the user had logged in, he might never have been identifiable. Under Section 230, Wikipedia is treated as simply an information service provider, not responsible for the words that users post, and the victim is left with nowhere to turn. The site, a former media darling, was now subjected to a more critical scrutiny: what kind of thing is this, where some anonymous joker using the site as a graffiti wall can have a real effect on another person’s life and reputation? The Seigenthaler article was the end of the honeymoon for coverage of Wikipedia; afterward, no journalist could write a story
without mentioning the dark side of the site’s openness.\textsuperscript{180}

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

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


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


\textsuperscript{183} \textit{See Wikipedia, File:IRCM.png, http://en.wikipedia.org/wiki/File:IRCM.png (last visited Jan. 11, 2010) (displaying a screenshot of an IRC monitor that is stylized like an email inbox. The application provides a Wikipedian with an automated list of recent article changes of interest, with data columns showing the name of the article, the username or IP address of the user who made the change, the number of edits for each user, and the content of edits. The application provides a one-click option to see the diff view of pages, to load the article page, to load the user page, and to whitelist or blacklist the user).}
accesses tend to follow a power-law distribution,\textsuperscript{184} with the handful of most popular articles getting the vast majority of the page views and edits, and the millions of articles in the long tail getting vanishingly few apiece.\textsuperscript{185}

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

\textbf{B. Living Persons, Living Reputations, and Trade-Offs}

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

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

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\textsuperscript{185} \textit{Id.} (suggesting that the least popular Wikipedia page gets 0.0015 times less traffic as the page with rank 6 in search results).
\textsuperscript{186} See \textit{Author Apologizes}, USA TODAY, supra note 181.
\textsuperscript{187} See \textit{Wikipedia to Require Contributors to Register}, supra note 179.
\textsuperscript{188} This is a conservative number. At the time of writing, 371,000 articles out of 2,877,800 are tagged with the category "living people;" a small percentage of articles remain untagged or are about people whose status is unknown. \textit{See generally} Wikipedia, \textit{Changes Related to “Category:Living People},” http://en.wikipedia.org/wiki/Special:RecentChangesLinked/Category:Living_people (last visited Dec. 22, 2009) (displays a list of recent changes to living people pages).
\end{flushright}
living persons has gained attention and is expected to be deployed in 2010. Flagged revisions would require a trusted editor to accept changes made by a new user to an existing living persons biography page. This proposed policy has been controversial to some, as being more strict than Wikipedia has otherwise operated. Most of the site works according to an "eventualist" process: facts may be incorrectly stated for a short amount of time, but eventually someone will come and fix it. As a general matter, the site exhorts its users to verify material found on Wikipedia in an external reference. Getting factual information wrong about a town or a novel may be embarrassing and hurt the site's reputation, but does little damage. Mistaking a fact about a person no longer alive may be similar.

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

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190 *Id.*
191 [cite Erik mailing list]
192 *Manjoo, New Edit Policy, supra* note 192.
193 *Id.*
195 Wikimedia Foundation, *Resolution:Biographies of Living People*, Apr. 2009, http://wikimediafoundation.org/wiki/Resolution:Biographies_of_living_people (last visited Dec. 18, 2009) (“The Wikimedia Foundation Board of Trustees urges the global Wikimedia community to uphold and strengthen our commitment to high-quality, accurate information, by: 1. Ensuring that projects in all languages that describe living people have policies in place calling for special attention to the principles of neutrality and verifiability in those articles…”).
Reputation, discusses the many ways in which the digital era has changed how we think about and manage reputation, and how we, as general Internet users, have not changed our thinking about it yet.\textsuperscript{197} A bit of gossip once made the rounds only among a small social group.\textsuperscript{198} The same information posted on a popular message forum may quickly be e-mailed to thousands, appear on several web sites, and reside in multiple caches of web content so that they are effectively deathless.\textsuperscript{199}

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

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

\textsuperscript{197} DANIEL J. SOLOVE, THE FUTURE OF REPUTATION (2007) (exploring the shortcomings of pre-Internet privacy law when applied to Web 2.0 with examples of shaming, rumors, gossip).
\textsuperscript{198} Id. at 74 (“In the past, gossip occurred backstage; it was fleeting and localized…But today details about people’s private lives are increasingly migrating to the Internet.”).
\textsuperscript{199} Id. at 8 (“[Dog poop girl] will not be forgotten. That’s what the Internet changes. [N]ow her image and identity are eternally preserved in electrons . . . forever, she will be captured in Google’s unforgiving memory.”).
\textsuperscript{200} Id. at 37 (discussing the benefits from rapid error-correction machinery available on the Internet with the costs of refuting false rumors or highly private true information). For an excellent analysis of the difficult aspects of protecting private persons from Internet shaming, see id. at 94 (discussing shaming downsides as lack of proportionality in punishment, lack of due process, bullying, and vigilantism or retaliatory self-help). See generally Daniel J. Solove, A Taxonomy of Privacy, 154 U. P.A. L. REV. 477 (2006); Daniel J. Solove, A Taxonomy of Privacy, Concurring Opinions, Mar. 21, 2006, http://www.concurringopinions.com/archives/2006/03/a_taxonomy_of_p.html (last visited Jan. 6, 2010).
\textsuperscript{201} See Resolution:Biographies of Living People, supra note 197 (“As our popularity has grown, some issues have become more prominent: Many people create articles that are overly promotional in tone…People sometimes vandalize articles about living people. …Some articles about living people contain small errors, are poorly-written or poorly-sourced. … People sometimes make edits designed to smear others. This is difficult to identify and counteract, particularly if the malicious editor is
have effects on the world outside Wikipedia. This sort of self-adaptation in response to problems is one of the justifications for the open model: though it cannot prevent all problems at the outset, it can continue to enable finding a balance between pure openness and protection of others’ legitimate interests.

C. Anonymity or Accountability

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

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

202 Id. (“As the popularity of the Wikimedia projects grows, so does the editing community’s responsibility to ensure articles about living people are neutrally-written, accurate and well-sourced.”).

203 Id. (“Increasingly, Wikimedia articles are among the top search engine results for just about any query. That means that when a potential employer, a colleague, friend, neighbor or acquaintance looks for information about a person, they may find it at the Wikimedia sites.”).


205 Id.

206 Id. at 274. See 18 U.S.C. § 2703(c)(2)(2006) (describing required disclosure of customer communications or records); Ashley I. Kissinger & Katharine Larsen, Protections for Anonymous Online Speech, 987 PLI/Pat 711 (Nov. 12-13, 2009); Nathaniel Gleicher, Note, John Doe Subpoenas: Toward a
postings made.\textsuperscript{207} But this may not be sufficient when IP addresses are assigned to residential users on a dynamic basis.\textsuperscript{208} Furthermore, IP addresses may not uniquely identify users (particularly in public areas such as libraries, cybercafes, and school labs).\textsuperscript{209} More sophisticated users may use multi-layered proxy services such as TOR,\textsuperscript{210} which hide users' originating addresses in such a way that no one knows where to seek the original user.

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

\begin{footnotes}
\footnote{\textit{Consistent Legal Standard}, 118 YALE L.J. 320 (2008).}
\footnote{See, \textit{e.g.}, U.S. v. Perrine, 518 F.3d 1196, 1200-01 (10th Cir. 2008) (“[T]he senior compliance paralegal at Yahoo!, testified that Yahoo! tracks dates, times, and IP addresses for log-in attempts on a Yahoo! account and maintains that information for approximately thirty days. She further testified that Yahoo! records showed that the IP addresses 68.103.177.226 and 68.103.177.146 belonged to ‘stevedragonslayer.’”).}
\footnote{See id. at 1201 (“the Cox Communications Customer Escalations Coordinator, testified that residential account IP addresses can change because they are leased for twenty-four hours at a time. Cox Communications residential account IP addresses release and renew every twenty-four hours; when an IP address releases, if the same IP address is available, it reattaches within a few seconds.”).}
\footnote{See Frederick Lah, \textit{Note, Are IP Addresses “Personally Identifiable Information”?}, 4 I/S: J.L. & POL’Y FOR THE INFO. SOC. 681, 690 (2009) (“Historically, most Internet users have been assigned dynamic IP addresses, with static IPs being used primarily for servers, but some cable and most new broadband connections also use static IPs.”) (footnotes omitted).}
\footnote{See Henry L. Judy, et al, \textit{Privacy, Information Security, and Data Breaches}, Information Technology Law Institute 2009: Web 2.0 and the Future of Mobile Computing: Privacy, Blogs, Data Breaches, Advertising, and Portable Information Systems, 962 PLI/PAT 199, 254 (2009) (“Don’t collect data if you cannot protect it.”); Wikimedia Foundation, \textit{Privacy Policy}, http://wikimediafoundation.org/wiki/Privacy_policy (last visited Jan. 8, 2010) (“Consistent with its Data Retention Policy, the Foundation collects and retains the least amount of personally identifiable information needed to fulfill the Projects' operational needs.”). See also Google, \textit{Privacy FAQ, Why Are Logs Kept Before Being Anonymized}, http://www.google.com/privacy_faq.html#toc-protect (last visited Jan. 7, 2010) (“We strike a reasonable balance between the competing pressures we face, such as the privacy of our users, the security of our systems and the need for innovation. We believe anonymizing IP addresses after 9 months and cookies after 18 months strikes the right balance.”).}
\end{footnotes}
leveraged user information to assist with technological and business development. In the case of commerce, verifiable user information often safeguards buyers and sellers when payment is required.\textsuperscript{212} For social networking, e-mail addresses from a broader range of users suffice, for example, Facebook which once required an active college e-mail address, but no longer.\textsuperscript{213}

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

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


\textsuperscript{215} Id. (“Anyone with Internet access (and not otherwise restricted from doing so) may edit the publicly editable pages of these sites with or without logging in as a registered user.”).

\textsuperscript{216} Id. (“The Foundation limits the collection of personally identifiable user data to purposes which serve the well-being of its projects, including but not limited to the following…[t]o enhance the public accountability of the projects…[t]o provide site statistics …[t]o solve technical problems.”).
as little personal information as the user wishes, and are not verified.\footnote{\textit{Id.} (“Users are not required to list an email address when registering.”).}

There are many reasons why a person might wish to remain anonymous online. On a site such as Wikipedia, a user may not wish his unusual areas of knowledge or expertise to become common knowledge to his neighbors or close associates; some fear their edits would make them socially or politically unpopular. On some forums, people wish to ask for advice for confidential problems; on others, they wish to leak information in the public interest without losing their jobs or their access to the source of that information.\footnote{\textit{Wikipedia, \textit{Wikipedia:User Page}, http://en.wikipedia.org/wiki/User_page (last visited Jan. 8, 2010).}} Recognizing that there are many legitimate reasons for speakers to prefer anonymity, the right to anonymous speech in the print medium has been long protected in First Amendment jurisprudence.\footnote{\textit{See \textit{Wikileaks}, http://wikileaks.org/wiki/Wikileaks (last visited Jan. 8, 2010).}} However, where identification of the speaker serves some compelling state interest, identification has been required.\footnote{\textit{Solove, \textit{The Future of Reputation, supra} note 199, at 148 (quoting McIntyre v. Ohio Elections Comm’n, 514 U.S. 334, 342 (1994) (“an author is generally free to decide whether or not to disclose his or her true identity”)).}

Contrary to expectations, it is those referred to as "anonymous users" on Wikipedia whose identities are least-protected, by default. Logged-in users’ IP addresses are not visible to the public, but only to particular users entrusted with technical tools for policy enforcement, and only under limited circumstances.\footnote{\textit{See Lyrissa Barnett Lidsky & Thomas F. Cotter, \textit{Authorship, Audiences, and Anonymous Speech, 82 Notre Dame L. Rev.} 1537, 1547 (2007) (citing McConnell v. Federal Election Comm’n, 540 U.S. 93 (2003) (no violation of free speech rights when closely drawn to government interest in preventing corruption among federal candidates)).}} For a limited period of time, their IP addresses are stored in server logs, but these are deleted after a certain time has elapsed, and only revealed where necessary to prevent abuse of the site.\footnote{\textit{Wikimedia Foundation, \textit{Privacy Policy}, http://wikimediafoundation.org/wiki/Privacy_policy (last visited Jan. 8, 2010) (“Logged in users do not expose their IP address to the public except in cases of abuse, including vandalism of a wiki page by the user or by another user with the same IP address.”).}} Users who wish to remain truly anonymous, by virtue of hiding their true IP

\begin{itemize}
\item\footnote{\textit{Id.} (“A user’s IP address is stored on the wiki servers for a period of time, during which it can be seen by server administrators and by users who have been granted CheckUser access.”).}
\end{itemize}
address, then, log in.\textsuperscript{224} In contrast, users who choose not to log in, so-called "anonymous" users, are publicly identified by IP address, which is then visible and permanently recorded in the public history of the page.\textsuperscript{225} An IP address provides the world much more personally identifiable information to the general public, given the search capabilities of IP address location, compared to a user-generated alias. Wikipedia provides reverse incentives to balance the trade-off between registration and identification among its users in a minimalist fashion.

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

\textit{D. Media Literacy and the Particular Problem of Wikipedia}

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

\textsuperscript{224} \textit{Id.}

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

\textsuperscript{226} \textit{SOLOVE, THE FUTURE OF REPUTATION, supra} note 198, at 17 ("We’re heading toward a world where an extensive trail of information fragments about us will be forever preserved on the Internet….How and why is this happening? How can the free flow of information make us more free yet less free as well?").
counteract this failure mode.227

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

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

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

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

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


232 Id.


235 Id.
slikeness by designing templates and graphics to lend the site a consistent, professional look and feel.\textsuperscript{236}

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

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

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

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

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


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

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

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

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246 See supra note 243 for a discussion of “tort law” search results.


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


how the site survives under the constant onslaught of garbage: schoolchildren or pranksters editing pages to contain profanity, jokes, or complete nonsense. But obvious, clearly-recognized nonsense is one of the least of Wikipedia’s worries. Even with a continual stream of irrelevant edits, nonsensical edits are easily recognized. A person patrolling new edits can reverse these changes in a single click, with far less effort and time than the creator invested to make the change.\footnote{See \textit{Wikipedia}, \textit{Wikipedia:Rollback Feature}, http://en.wikipedia.org/wiki/Wikipedia:Rollback_feature (last visited Jan. 10, 2010).} A reader stumbling across the change will easily recognize something wrong and correct the page. If a reader recognizes the change and is not aware of their ability to correct the site, he often writes in to notify the staff that the site has been hacked!

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

Most of the big players know to self-regulate. Craigslist self-policing its ads (if imperfectly) to ensure that illegal content is not allowed to remain (and now keeps a closer eye on adult services as well),\footnote{Craigslist, \textit{About: Help: Flags and Community Moderation}, http://www.craigslist.org/about/help/flags_and_community_moderation (last visited Jan. 10, 2010) ("[C]raigslist users enjoy free and nearly instantaneous self-publishing of tens of millions of postings each month, subject only to craigslist Terms of Use and posting guidelines. Users may flag postings they believe to be in violation of craigslist guidelines, by clicking on one of the flagging links at the upper right corner of each posting: miscategorized - wrong category/site, discusses another ad, otherwise misplaced; prohibited - violates craigslist Terms of Use or other posted guidelines; spam/overpost - posted too frequently, in multiple cities/categories, or is too commercial.").} as does eBay, which operates under a sophisticated and well-established ratings system for sellers and buyers.\footnote{eBay, \textit{Seller Performance Standards}, http://pages.ebay.com/help/policies/seller-non-performance.html (last visited Jan. 10, 2010) (describing the minimum performance standards through...}
some interactive social websites exist for the purpose of satire or anonymous jokes with little incentive to self-regulate. The users of gossip site Encyclopaedia Dramatica may only create more insulting articles about you, should you dare to complain publicly on the website,\textsuperscript{255} and on anonymous message board 4chan, there is no public record of changes to threads and posts with no guarantees of quality of content, where the site looks like the free-for-all that it is.\textsuperscript{256}

CONCLUSION

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

\textsuperscript{255} Encyclopaedia Dramatica, Encyclopaedia Dramatica:General Disclaimer, http://encyclopediadramatica.com/Encyclopedia_Dramatica:General_Disclaimer (last visited Jan. 10, 2010) (“We take no responsibility for any of this. It's a wiki. That means that anyone with internet access can create, change, modify or delete any of the pages herein….. If you feel as though someone has committed harassment or defamation against you, please pursue your remedies against that poster as encyclopediadramatica.com is not responsible for their words.”).

\textsuperscript{256} 4chan, Frequently Asked Questions, http://www.4chan.org/faq#what4chan (last visited Jan. 10, 2010) (“I never see proof of moderation! Why? ...Why would you? There is no public record of deletion, and since threads are frequently pruned, there is no way of knowing which have been removed by the staff.”).