Freedom of Expression and Imaginary Freedom on the Internet:

The Abolishment and Rebirth of Censorship

Dr. Karine Barzilai-Nahon,
Information School, University of Washington

karineb@u.washington.edu

Prof. Gad Barzilai,
Law, Societies and Justice [LSJ] and Henry M. Jackson School of International Studies,
University of Washington

qbarzil@u.washington.edu
Abstract

The article presents the following three claims. First, the well-known, classical model of state censorship has been weakened in Israel owing to a culture that uses the Internet as a means of providing information and criticizing the political, security, and social establishment. Second, despite the social mythos of the Internet being free of censorship and presenting a totally democratic space with complete freedom of expression, new mechanisms of censorship are in place, which are not part of the establishment but complement the existing state censorship. The research shows that censorship mechanisms are exercised by interested parties through self-regulation. We demonstrate this by empirical research of Israeli virtual communities. For example, the research shows how virtual communities manage the processes of deleting messages for the purpose of censorship, how self-regulation and information control work in this environment, and which tensions various interested parties must face: government officials, infrastructure providers, community managers, and users. In addition, we examine in depth the profiles of users who are likely to be censored and the rules of the new censorship. Third, we recommend initiating a discussion about the desirable model of freedom of expression based on self-regulation.

Index keywords

Censorship, freedom of expression, regulation, infrastructure providers, virtual communities, responsibility of service providers, self-regulation, Internet content providers.
Introduction¹

The Internet changed central aspects of censorship and freedom of expression in the political and social life of both communities and individuals. One example of this change is the case of Colonel Michael (Mike) Eldar, which until now was only partially known to researchers, academics, and laymen. For years Mike Eldad struggled to publish his book “Dakkar” despite objections from the Israeli security establishment that publication of the details revealed in the book constitutes clear and imminent danger to state security. Even the Supreme Court refused to lift the ban on the publication of the book; quite the opposite, it even prohibited revealing the existence of the ban.

The Internet became a central factor in the public life of many political regimes, and especially so in Israel. Segments of the book that was prohibited for publication, as well as debates on the subject of the publication ban, appeared on various Internet sites². In a discussion of the right to appeal the decision of the District Court³, the Supreme Court emphasized that “the study of materials presented to the Court leads to a clear conclusion that the print media (and not only the Internet) published material obtained from senior security officials according to which changes were made in the book “Dakkar” following requests by the government. Therefore, at the present time the security authorities cannot insist on continuing to bar publication.”

¹ We would like to thank “Tapuz” for providing us with basic data for our research; Member of the Knesset Michael Eitan, Head of the Knesset Constitution, Law, and Judiciary Committee, for providing us with various documents relating to the status of censorship in Israel; Colonel Michael (Mike) Eldar for agreeing to talk to us; Leon Feder, Chief Editor of Ynet for his valuable comments on previous drafts of the article. We would also like to thank Dr. Michael Birnhak, Michal Peri, and Ronen Wadlinger, Ruti Wisnavik, Eyal Mamo, Ben Shalev, as well as the anonymous judges, for their useful suggestions on the earlier versions of this article.
² Examples of publication of various excerpts from the book “Dakkar” and of debates on censoring the book can be found, for example, on www.tip.co.il, www.global-report.com, www.halemo.nt/edoar, www.nevo.co.il, as well as on many forums on Tapuz, Ynet, Reuter, and nrg (Maariv).
³ Supreme Court, Authorization for Civil Appeal 2003/5158, Colonel (Reserve) Michael (Mike) Eldar v. State of Israel (Ministry of Defense)
However, in the end the Supreme Court upheld the status quo on the ban and ruled: “… regarding this matter it cannot be said that new developments took place that would warrant lifting the ban on publication… these details should not be published.” At the same time, despite the official blackout on the publication ban, the ruling was published – on the website of none other than the Supreme Court itself, so that it became accessible to anybody concerned.

The Eldar affair had additional aspects that emphasized the influence of the Internet on freedom of expression and censorship. The Knesset Constitution, Law, and Judiciary Committee headed by Michael Eitan held a hearing on June 7, 2004 where the case of Eldar was discussed. The protocol of the Committee debates was censored however not by the Chief Military censor, who was of opinion that no restriction was needed, especially because sections of the book had already appeared on various Internet sites, both domestically and worldwide. As the case has been in the last years, the censoring was requested by the State Prosecutor under the pretext of state security. It was the State Prosecutor’s Office that censored the protocols of the Constitution, Law and Justice Committee. Only following the protest of Knesset Member Eitan did the State Prosecution agree to lift the ban on the protocols. At the same time, the State Prosecutor’s Office insisted on continuing the censorship by displaying in black the results of searches produced by typing the string “Mike Eldar” into the Google search engine. Such a restriction is meaningless because unlike in the case of print media censorship, there is no

---

6 See the letter of Shai Nitzan, Deputy State Prosecutor, to Knesset Member Michael Eitan, Head of the Constitution, Law and Justice Committee, of Jan 1, 2004.
efficient way of preventing user access to search results as long as the search engines did not censor the results on their own initiative.

The Eldar affair demonstrates that the Internet has real means to practically restrict state censorship of various types and to widen the range of free expression. The problem of various bodies implementing and enforcing various types of censorship in Israel is not only one of enforcement but also one of awareness of the abilities and of the forms of dialog that takes place on the Internet. At the same time, the State Prosecutor’s Office and the Supreme Court have gradually came to realize that in addition to major Internet sites, such as Ynet or Nrg, which follow rules of conduct established by the Committee of Newspaper Editors in Israel, security issues have been made public many times through various virtual communities. Most of these are not subject to any filtering or blocking procedure by owners of the Web sites that host these communities or from which they are managed. This article deals with official and especially unofficial censorship on the Internet. Our goal is to examine how censorship on the Internet works without direct involvement of state mechanisms.

In light of the importance of the Internet to freedom of expression in our times, we undertake to examine the following claims:

1. The well-known classical model of censorship – that is, state censorship performed by regulatory organs – lost much of its importance because of cyberspace. In Israel, however, the High Court of Justice (HCJ) in its ruling in

---

7 Keinan Ido, Ynet Editor: I made a mistake when I censored “The battle for Jenin,” Nana site, 11.2.04, http://net.nana.co.il/Article/?ArticleID=105561&sid=10
8 The rules established by the Editors’ Committee serve as a legal basis for censorship regulations agreed upon between the Chief Military Censor and Israeli newspaper and media editors. These rules concern more than one hundred topics about which the media agrees not to publish any new material without prior approval by a censor. For more information, see Zeev Segal, “Military censorship: Its authority, judicial criticism of its functioning, and the suggestion for an alternative arrangement,” Iyunei Mishpat (15), vol.2, pp. 311-342.
the Schnitzer case (1988)\(^9\) did not result in any significant change in the extent of security-related censoring, as the military censorship, which had relaxed its policies, was replaced by security agencies and the Military Prosecution, who issued publication prohibiting orders.\(^{10}\) However, we claim that the Internet added an important layer in the loosening of the traditional censorship, both military and civil, as described in the theoretical and comparative literature.

2. At the same time, the Internet is not free from censorship, and freedom of expression there is not absolute but limited. A system of self-restriction has developed regarding the freedom of expression, as we will show based on empirical research of Israeli virtual communities. Our main claim is that the cyberspace contains mechanisms for the regulation and censorship of freedom of expression unknown to the professional literature.

3. As far as a desirable model is concerned, we believe that there is a need for self-regulation on the Internet and that self-regulation is preferable to state-imposed regulation. We base this desirable model on the empirical research of virtual communities in Israel. We elaborate on the advantages, problems, and challenges associated with the self-regulation model as a replacement of the classical one for Internet censorship.

Following the three claims above, the article contains three main parts. The first part describes the decline of the state censorship as we know it. In the second part we discuss the empirical research and examine how the mechanisms of Internet censorship work. In the third part we present an outline of the desired model.

\(^{10}\) Ronen Bergman, “‘Patriotic Games:’ Conflicting values – the right of the public to know versus state security: A series of test cases in first hand testimonies,” Freedom of Expression, Gad Barzilai and Shimon Shetreet (Eds.), Politika (13), 2005, pp. 65-95.
The old and the new models of censorship: state-imposed regulation, and practical and imaginary freedom of expression on the Internet

All censorship deals a severe blow to freedom of expression and limits basic freedom in democracies. Retroactive punishment that follows publication is also difficult, imposing criminal penalty or civil sanctions for materials that have been published. Retroactive punishment is also a type of censorship. At the same time, the impact of retroactive censorship on the freedom of expression is much less severe than that of initial censorship, which prevents from the onset the publication and expression of opinion. Customary censorship in present-day Israel in military and security matters and in the movies amounts to “early prevention.” Therefore, its impact on pluralism in the social debate and especially on freedom of expression is extremely severe, despite being subject to the framework of agreements of the Editors Committee, and despite the fact that communication entities not bound by Committee agreements are under the putative supervision of the Supreme Court.

There is also social censorship that does not limit freedom of expression by the means of official governmental agents. Instead, society itself limits freedom of expression by imposing various practical social prohibitions on expression of opinions that are perceived by society to be excessively critical or peripheral. Social censorship is liable to cause a substantial decrease in freedom of expression and constitutes a serious danger to democracy. 11

In the High Court of Justice decision in the “Jenin, Jenin” case, Justice Dalia Dorner addressed the continually diminishing value of censoring the movies and explained

---

it, among others, by the existence and role of the Internet. The Internet was not the basis of her decision to prohibit screening of the movie, but it is important to emphasize that Dorner claimed that even if the High Court of Justice banned the movie from public theaters it would still be available for viewing on the Internet. Thus Dorner expressed a certain degree of recognition of the important contribution of the Internet to the democratization of public life. She also made it clear that the Internet further weakened the traditional mechanisms of censorship belonging to the state. But doesn’t the Internet itself represent a space where freedom of expression is being censored? Can’t there be informal social censorship or formal censorship at the community level where the official state censorship does not operate? Let’s take a closer look at the meaning of the Internet with relation to censorship and freedom of expression.

In a democracy freedom of expression is extremely important for the advancement of pluralism in the areas of thought and behavior. The professional literature in the fields of political science and political philosophy enumerates the main reasons for its importance: personal development and self-realization of the individual; autonomy of the individual in choosing one’s worldview, faith, and behavior; the need of every political regime and government for a choice of alternatives in public policies; participation of groups and individuals in the processes of decision making government matters; possibilities of expression for cultural groups, communities, and institutions as part of the multicultural fabric of society; and the last but not the least, – freedom of expression is a freedom that helps the advancement of human

---

knowledge and it promises or at least makes possible a minimal level of exposure of truth and accountability of the government.\textsuperscript{13} For example, in political science, freedom of expression is one of the main criteria for measuring the extent and the strength of democracy in a political regime. The ability of citizens and residents to make their voices heard is essential to the definition of a political regime as a democracy.

No theory of democracy today can ignore the far-reaching influence of the Internet on freedom of expression. The Internet changed the rules of political discourse in various democracies by creating a new space of interactive discussion and conduct. However, we should be careful not to give the Internet an interpretation that would encompass all of the Internet as one entity with one meaning. The perception of the Internet in a generalized manner as a unified phenomenon is simplistic. We should treat the various kinds of Internet applications in such a way that every application reflects different characteristics of a discussion space.\textsuperscript{14} For example, discussion in a mailing list\textsuperscript{15} is different from one in a virtual community, and both are different from the type of discussion that takes place on talk-backs at the end of a report at a content site on the Internet. A discussion on a listserv is usually monitored by a moderator and regulated according to rules of discussion set in advance, whereas the type of expression that one can use in response to reports (talk-back) is characterized by the exchange that is less directed and more dynamic, unexpected, aggressive, and lashing out. More specifically, there are also differences in behavior and discussion among virtual communities. For example, the rules of debate on


\textsuperscript{14} See similar statements by Justice Mishael Chasin as they appeared in TABAM 16/2001, Shas v. MK Ofir Pines.

\textsuperscript{15} The mailing lists are lists of electronic mail addresses of individuals with a certain common interest. For virtual communities, see a comprehensive definition on pp. 14-15.
online forums are different from those of discussion groups, which in turn are different from those of chat rooms, and so on. For now, we emphasize the central aspects common to the main Internet applications.

The Internet changed freedom of expression in several ways. First, despite the discrepancies in accessibility to the Internet in different countries, the distribution of information is much wider. Today it is possible to reach the widest international and cross-national audiences by sending information to various gatekeepers that are in positions of power on the Internet. Second, the speed of distribution of publication relative to the cost of transferring the information is today much higher than ever in history. In addition to the speed of information transmission on the Internet, the total cost of online publishing of information is close to zero, so that the publication becomes very rapid and cheap. Third, the possibility of publication of information depends significantly on the desires and abilities of the individual. In the past, individuals relied on various media brokers such as newspaper editors to publish their materials. The Internet greatly enhanced the ability of individuals to disseminate their content without regard to the opinion of this or that broker, for example by setting up a private site where an individual can publish articles or other items of information in an independent way. An additional example is publishing in virtual communities that have no managers, so that everything is automatically

---

16 Forums and newsgroups are a type of group that discuss specific topic and operate asynchronously. The differences between the two have to do with the timing of the reading of the messages, with their approach to the history of the messages, and such. By contrast, a chat is a type of computer communication between two or more users in real-time.


uploaded to the sites without censorship. At the same time, despite the individual’s power of self-expression in an online network, the network itself is not entirely open and democratic as it may appears. The latest statistics show that the attention of Internet users is concentrated on a very small number of content providers.\textsuperscript{19} For this reason, although relatively easy for individuals to publish on online networks through various venues, on the other hand, for the freedom of expression to have any practical meaning for discussion and influence an Internet user must publish only by means of the most important content providers – and there is a relatively limited number of these. At the same time, a huge quantity of material published on the rest of the sites on online networks does not attract the attention of the majority of users.

Fourth, compared with regular communication systems,\textsuperscript{20} the online network offers relatively more options to preserve the users’ anonymity of expression,\textsuperscript{21} or at least it appears to be doing so. Anonymity provides freedom of expression, for example to new users, but mostly to marginal groups, so that peripheral political discourse can become part of the main social political discourse more than in the past. At the same time, on an online network the accuracy of published material cannot be thoroughly checked, as it is being done (more or less methodically) in the traditional offline media. Fifth, unlike traditional media, the Internet is based on heterogeneous technology simultaneously presenting different types of applications, and a varied range of virtual spaces for interpersonal and group interactions. In this capacity the

\textsuperscript{19} Gil Mor, \textit{Israeli Internet: More Commerce, Fewer Foreign Sites}, May 15, 2003, Ynet, \url{http://www.ynet.co.il/articles/1.7340.L-2443595.00.html}

\textsuperscript{20} We emphasize the word “relatively” because today it is relatively easy to identify users and obtain their personal details from the various service providers, even when they used nicknames on the net.

Internet provides multiple ways of disseminating similar messages by various means.

Sixth, online networks made the regulation of information content a major, extensive problem, which we discuss later. Official regulators – various government institutions – have a limited ability of enforcement on an online network. For example, at the time of the preparations for the American invasion of Iraq (Mar 3, 2003), former Chief Military censor Brig. General Rachel Dolev asked popular online sites (news, portals, as well as sites that served as alternatives to the institutional ones) to honor censorship guidelines, and the Ministry of Justice asked several Internet sites to enforce a stricter filtering of militant and illegal responses. These appeals of the establishment demonstrate the difficulty that official regulators have in enforcing state censorship on online networks. At the same time, in our opinion the virtual space presents a problem not only at the level of the enforcement or of the authority to enforce state censorship. Sometimes the difficulty appears at a more basic level of system awareness and understanding. In this article the focus is not on the reason for the laxity of state censorship but on the fact that quite often censorship is a social phenomenon, not necessarily institutionalized.

Despite the fact that official state censorship is usually not enforced in online networks by the government, it does not mean that other types of unofficial censorship are not operative there. Large institutionalized sites tend to adopt the patterns characteristic of traditional media, even though they tend to request prompt

22 In addition to established sites, such as Ynet and Ha’aretz, for the first time the request was submitted also to alternative sites, such as Fresh and Rotter. These sites are not considered to be newspapers according to Press Ordinance, 1933, and are not eager to take upon themselves the conventions of the Editors Committee.
23 Gil Mor, *The Ministry of Justice to Websites: Filter Incitement Strictly*, Jan 6, 2005, Ynet, [http://www.ynet.co.il/articles/1,7340,L-3029445,00.html](http://www.ynet.co.il/articles/1,7340,L-3029445,00.html)
response from the censorship and not always refrain from bypassing it. Non-institutional Internet sites do not submit news and advertising material to the censor before publication. Alternative sites, such as Roter.net and Fresh, did not regard themselves officially obligated to meet the requirements of military censorship at the onset of the war, but nevertheless they complied and instituted self-censorship – all this as a result of a sense of “natural responsibility,” as one of the site managers expressed it. Such self-censorship attests to a fear of open confrontation with the political establishment, as well as general and cultural fear of sanctions by a wide segment of the surfing public.24

The official state censorship of the traditional press in Israel (print media, radio, and television) survived for years owing to the ability of state authorities to enforce it. For example, newspapers like Kol Haam and Chadashot were temporarily shut down for breaking censorship regulations, which served both as a penalty and a warning. The conduct of the press in Israel, whether by virtue of the guidelines of the Editors Committee or independent of it, is driven to a great extent by a clear understanding by newspaper editors and owners that abusing the trust of Military Censorship will trigger severe sanctions based on the Press Ordinance and Emergency Regulations.25 Imposition of sanctions of this nature on the Internet is meaningless in a democratic country and problematic even in an authoritarian one26 because online networks allow to transfer messages in many languages and from many places in the world, and the capability of official regulators to enforce discipline on this or that service provider is extremely limited, and usually incapable of preventing the publication of the relevant information.

24 We are grateful to the editorial offices of Roter.net and Fresh for clarifying to us their policies, and to Mr. Ion Padar, editor of YNET, for his helpful comments on this article.
26 Even under authoritarian regimes, where censorship is enforced more vigorously, it is still not complete.
The difficulty of the state in regulating freedom of expression on the Internet is not manifested only in enforcement but encompasses also the authority to enforce and the issue of sovereignty in cyberspace. At times the publication mechanism works cross-nationally, originating in countries where Israel has no jurisdiction whatsoever over the place of publication. At the time of this writing our probe showed that all the online Israeli establishment newspapers (Ynet, Ha’aretz, NRG, etc.) are subjecting themselves to the regulations of the Editors Committee, and some have even joined the Committee in order to avoid confrontation with the Military Censorship. But in examining the content sites, the portals, the infrastructure providers that provide content as well, and all types of virtual community providers, it is obvious that the traditional censorship is completely powerless and irrelevant. Requests by government agencies to various Internet gatekeepers to observe the censorship regulations only prove that the censorship establishment itself is aware of its weakness in cyberspace. Alternative content sites tend to express much more criticism of the state than official establishment sites.

The problem of enforcement of direct government supervision of the Internet did not result in a vacuum. Instead of institutionalized state regulations of freedom of expression, other mechanisms of self-regulation were created on the Internet in addition to government supervision. While freedom of expression in a digital environment is not significantly limited by the authorities, it is influenced by other factors, as we show below. Furthermore, in our opinion it is impossible to discuss

27 An example of the difficulties in the authority to enforce censorship can be seen in the case in which a French court ordered Yahoo to use all available means to prevent French surfers from gaining access to Nazi content that is prohibited from being displayed according to French law, and which were displayed on the central site of the company, yahoo.com, located in the US. See Interim Order, Ligue Contre Le Racisme et L’antisemitisme, vs. Yahoo! Inc., No. RG. 00/05308 (T.G.I. Paris, Nov 20, 2000).
self-regulation of freedom of expression that taking place on the Internet in a
generic manner because every online application has different characteristics. For
example, there is a difference between placing some information on a site, sending
the same information as a response, or participating in an active discussion on a
forum. In this article we focus on interactions in virtual communities: forums,
discussion groups, chats, mailing lists, and so on. In the next section we examine
the self-regulation mechanisms of freedom of expression in virtual communities and
discuss their interaction with traditional state regulation, and we show that there is
almost no meaning to the supervision of virtual communities by government
institutions.

Virtual communities serve the purposes of this discussion for several reasons. First,
they represent social interactions and reflect in miniature interactions in society at
large; thus, problems and challenges of freedom of expression in virtual
communities can illustrate the problems of freedom of expression, censorship, and
regulation in society in general. Although we do not draw an analogy between virtual
and traditional communities, the mechanisms of official censorship, such as Editors
Committee regulations or social censorship exist in the prototypes of both
communities. Second, virtual communities and communities in general have their
own inside power structures and arrangements for self government (partially
discussed below in greater detail). Third, virtual communities provide a fertile soil for
freedom of expression on sensitive matters of great public importance. Today a
significant part of the public debate takes place in communal spaces of the virtual
network. Forth, most of Israeli virtual communities operate through the infrastructure
made available by providers that are subject to censorship regulations, and are
usually under the aegis of major Israeli content providers. Therefore, greater public
attention is focused on information conveyed by large providers than, for example, on news items posted on an ordinary site offered by an unknown host.

Virtual community space: limits of freedom and censorship through self-regulation

Mapping of virtual communities

A virtual community is a group of online network users who, with the help of technological infrastructure, maintain a discussion on various topics for an extended period of time, with the participation of Web surfers who can establish personal relations among themselves based on the topic of debate.28 There are various types of virtual communities. Every type of activity is characterized by reciprocal relations between Internet users. For example, the structure and the shape of the dialog in a chat room (who speaks to whom, how many topics are discussed and how many responses are allowed per each topic, the length of messages, the intensity of debate, etc.) are different from forums because chats take place in real-time. Chat rooms are characterized by more extensive interactions between people in real time, greater authenticity, shorter messages, and so on, while forums are characterized by exchanges that are not in real time and occasionally lengthy messages, even short articles. In this paper we focus mostly on forums that we have examined closely. The topics we researched in connection with forums are not sufficiently representative to reach conclusions similar to those we reached about other virtual communities that have a comparable dialog structure, like discussion groups.

28 This definition is very close to the one of Rheingold, H. 2000. The Virtual Community: Revised Edition. Cambridge, Mass.: The MIT Press.
Most Israeli online forums have moderators who are directly responsible for whatever takes place on the forum under their supervision. Most moderators are trained by the managers of their communities’ infrastructure, that is, by the suppliers of the platform on which the forum resides and functions. Some infrastructure providers allow the creation of new forums without prior filtering and authorization (for example, the site that hosts the Hyde Park forums), resulting in a huge diversity of informative sources. Cass Sunstein appears to be correct in claiming that the online era creates a historically unprecedented diversity in freedom of expression. But our opinion is different; we claim that we must distinguish between the historically unprecedented variety of ways of expression and the variety of content, which is much more limited. The major monopolistic content providers in Israel (for example, Tapuz, Walla, Ynet, Nana, and MSN) open virtual communities only after completing a procedure of authorization and checkup. Among others, providers check, for example, whether there is a demand among their users for such a community, whether the person who offered to manage the community is adequate for doing so, and whether the topic of discussion is of any interest for Internet users. Various forums address various issues, such as politics, entertainment, economics, literature, and so on, and hold various types of discussion, such as discussion groups, support groups, expert consulting, and more. Examples of virtual communities include news and current events, the current economy, victims of sexual abuse, mysticism, humane society, feminism and women’s status, and soap operas. There is therefore a need to differentiate between the variety of venues for freedom of expression and the variety in the content of freedom of expression.

---

30 In main business of the content provider to which we refer in this article is to provide content. At time we use the term infrastructure providers because in the context of virtual communities it is content providers that set up the infrastructure for the discourse platform of the community.
variety of means facilitated by the online networks is indeed historically unprecedented, as Sunstein pointed out, but the variety in the content itself is more limited than could be expected in light of increase in the means of expression, for two main reasons: first, the attention of the users is focused mainly on portals and on major content providers; second, censorship mechanisms and internal restrictions of the online networks lead to homogeneity of content, as discussed later.

Despite great differences between virtual communities, most of them face the same challenges. The common denominator of these communities is their desire to preserve the stability of the community and its relative homogeneity, and their tendency to preserve the actual and imaginary limits that define the community and its discussion. There are many challenges in keeping the community homogeneous and organized because as a result of a breadth of distribution unknown to regular media the debate can stray to issues involving other users who are not members of the community. Forums and discussion groups activate various mechanisms to maintain order and retain control, such as blocking and filtering procedures, information protection mechanisms, mechanisms for attention channeling based on a visual representation of the site that encourages focusing on some topics rather than others, and more. The professional literature lists several challenges that virtual communities face, such as dealing with users whose objective is to trigger a confrontation between other users, or with users who attempt to create anarchy and disorder that would destroy the virtual community.

---

Mechanisms of self-regulation on online networks

The argument of this paper is that the mechanisms of self-regulation of freedom of expression that are in place in virtual communities replace the censorship of the old variety and convert the mechanisms of state regulation into a mechanism of communal self-regulation. It is important to study community-imposed limitations to freedom of expression because communities can lend powerful support to freedom of expression by sheltering individuals who voice criticism. Furthermore, individuals often feel empowered by the fact that they are part of a wider community and therefore tend to voice opinions that without the support of their community they would have kept to themselves. Nevertheless, virtual communities do regulate freedom of expression.

The concepts of self-censorship, regulators, and limits on the Internet are based on the assumption that the Internet is an online space (“cyberspace”). The regulation of virtual communities is meaningless unless clear borderlines are drawn between the communities that are active in this space. At the same time, regulation on the Internet is different from that in the nation state and from state supervision of the kind we are used to. The concept of national sovereignty is rooted in the capability of exercising authority over a certain territory and population. This authority is based on the ability to enforce rules that are perceived as legitimate by controlling the means of violence that guarantee compliance. The classical meaning of sovereignty and authority as known especially since the 17th century has been greatly transformed with respect to online networks, where the information systems are of utmost importance. Definitions of territory and population acquire new

---

meaning and form. The state as a sovereign entity is not always seen in cyberspace as a regular sovereign and sometimes not as a sovereign at all. Although governments attempt to establish governing procedures concerning various issues connected to the Internet, quite often the Internet produces situations in which governments must depend on mechanisms of self-regulation driven by non-government agents because of partial or total inability of the government to enforce law and order in the virtual space. Even authoritarian regimes that tightly control the Internet cannot impose state regulations in an absolute way.

Replacing the state, other types of regulators restrict freedom of expression in cyberspace. One of the main types are community infrastructure providers. A European law states that an infrastructure provider that receives information about unlawful materials that it hosts (for example, material that violates the copyright laws or constitutes slander) must expeditiously expunge them from the communities for which it is responsible, and if it does so it will not be held responsible for any ensuing wrongs. The American law is different in that it covers only the violation of ownership rights; regarding the publication of slander, providers were granted complete and absolute immunity for information originating with third parties.


contrast, the Israeli Committee for Examination of Legal Problems Involved in Electronic Trade recommends:

“The Committee recommends the adoption of the principles common to European and American law concerning the conditions of exemption from responsibility of the Internet service providers regarding the materials submitted by a third party, that is, providers will be exempt from responsibility if they meet the following conditions:

1. They do not transfer the content on their own initiative and make the content available to all who request it.

2. They do not have any prior knowledge that the content infringes on any rights.

3. They do not interfere with the content.

4. They do not prevent content updates or the checking of its usage, while complying with the common rules in this area.\textsuperscript{38}

The Committee’s recommendation reflected an already existing practical situation. Infrastructure providers in Israel prefer not to appear as censors and tend not to actively check the information transferred by them, and usually only react to requests for checking the information published by the virtual communities under their supervision. In this way, the providers hope to avoid being held legally responsible in case of an actionable wrong caused by a third party that published the information in the online framework that they had provided. \textit{De facto} Israeli infrastructure providers indeed prefer not to regulate the conduct of the communities and the content of their sites. At the same time, the providers are concerned about

\textsuperscript{38} Committee for Examination of Legal Problems Involved in Electronic Trade, Part 4, p. 75, Jerusalem, May 2004, \url{http://www.justice.gov.il/NR/rdonlyres/989CB3C8-BFEC-49C6-A689-433181BED312/0/electroniccommerce.pdf}
the intervention of government authorities in the content they host, which would
invade their virtual autonomy. Therefore, a considerable part of content regulation
activity on the Internet is passed on to community forum moderators, whereby the
providers relinquish some control and transfer managerial responsibility to forum
moderators. This is to prevent the intervention of the state in the online networks, and it may have legal repercussions because in the absence of legislated obligation
that places direct responsibility exclusively on infrastructure providers,
responsible for judicial caution as well as criminal liability would devolve to forum
moderators who have accepted *de facto* responsibility for forum management.

Even when the infrastructure providers claim that they function according to state
laws, in reality only a small number of laws is being enforced or complied with in
virtual space. There is a discrepancy between legal expectations and the character
of online network. It is impossible to effectively check every content item posted on
thousands of forums. In most cases the daily business activity of virtual communities
is autonomous and takes place far away from the gaze of state officials. For
example, our research shows clearly that many members of certain business forums
dealing with economics and equity markets tend to pass around information
concerning stocks and engage in ramping (stock pushing). In most cases these
messages are erased by forum managers, but state authorities are not even aware
of the scope of the problem of illegal information transfer taking place every day
right in front of them. Often the lack of enforcement on the Internet results from a

39 These claims are based on personal interviews held with managers of content providers and communities
40 Series of interviews held with Nir Ophir, manager of Tapuz communities, in August 2003.
41 The Tal Podim affair is an example of ramping by means of the Internet that ended up in court. See State
of Israel v. Tal Podim, C.A. 7057/01 (Tel-Aviv District Court). The research shows that the authorities are
aware only of a small portion of the problem.
lack of awareness by state authorities of the problem that exists in virtual space, as illustrated by Colonel Mike Eldar’s claims against the state that the information included in his book was already published on various Internet forums and, consequently, the ban on the book should be lifted. But the judiciary rejected this argument, which probably would not have been the case has his book been published by more traditional media, such as newspapers or television. Therefore, despite increased knowledge about the Internet and its importance for freedom of expression, the state is still far from understanding the meaning of freedom of expression on the Internet and how relatively easy it is to publish content that in the past would have been censored or prohibited for publication in the traditional press. Sometimes virtual community providers exercise their authority in response to events that require their intervention or in response to a request from official authorities. For example, the Israel Ministry of Communication requires infrastructure providers to filter out pornographic messages addressed to minors.

Complete, unlimited freedom of expression is obviously an illusion. It is impossible to consider a human space without practical normative limitations and constraints on the scope of freedom of expression resulting from democratic requirements such as privacy and individual autonomy. Virtual communities are aware of the problematic and delicate fabric of the relationship between the official state regulators and themselves try, and to preserve their independent virtual existence, but they also regulate the scope of discussion within their community limits. In practice, government agencies on the one hand and content and infrastructure providers on the other reached to some sort of a silent agreement that in return for non-intervention of the state in the virtual space, the providers and, especially,
Community forum managers maintain virtual order. Thus, there is censorship on the Internet, but it is expressed mostly as self-regulation by virtual communities and occasionally by state authorities as well.

In virtual communities, the freedom of expression dilemma is not a simple one. On the one hand, to avoid the intervention of state authorities, virtual communities must supervise their content themselves. On the other hand, the communities do not want to appear to be censoring the content of discussions — not to their own members and not to the state authorities, to avoid liability in case an infraction has been committed and not to lose the trust of community members. So how do virtual communities resolve this paradox? How can they supervise the data without appearing to do so? This is where virtual community managers as regulators become important. Community managers are appointed by infrastructure providers to manage the everyday functioning of the virtual community. Most forum moderators are not volunteers. Moderators of forums operating under official content providers, such as Ynet, undergo training by managers of the infrastructure provider to prepare them for their jobs. Virtual community managers are required to be present at least for several hours a day in their online communities. By doing so, they become de facto censors within virtual communities. As opposed to the common legal situation in the traditional press, where censorship is perceived as official and originating from the state, on the Internet, much more so than in the

---

42 Based on observations and interviews conducted within the framework of the doctoral dissertation of Barzilai-Nahon, K. 2004, supra note 18.
43 The information was collected through in-depth interviews with the supervisors of virtual community managers under Ynet, Nana, Tapuz, and Walla, on behalf of the infrastructure providers: Neta Levto-Silber from Tapuz on 11.8.03, Romi Itzhaki from Nana on 13.8.03, Riki Cohen from Ynet on 7.8.03, and Lior Hamudot from Walla on 4.8.03.
print media, a new legal situation has been created that needs to be addressed by legislation.

The supervision over the flow of content (for example, simple text messages, pictures, audio files, and so on) that enters and is propagated in a virtual community is carried out by moderators of forums operating within the infrastructure of that community. The measure of community control over the information in virtual space grants a meaning significantly different from the original one to the concept of state sovereignty, at the point where virtual communities intersect with infrastructure providers and state law. Research shows that members of virtual communities are the ones who implement the strongest demand for control and order in the community, together with regulation by infrastructure providers and community managers. Therefore, according to the views of various specialists, there is a need for a three-way “protection” of content in cyberspace. First, protecting virtual community members against content and users declared as undesirable. Second, preventing members from leaving the virtual community. Third, maintaining an ongoing satisfactory interaction between community members, without risk of anarchy or rebellion inside the virtual community. These three aspects are the main reason for compliance and self-regulation on the part of community members. Self-regulation in virtual communities can be seen as one of the main mechanisms that guarantees the orderly flow of information, and it is the result of cooperation between community infrastructure providers, community managers, community members, and official state regulators.

In an online network, self-regulation can be a product of several levels of behavior. At one end of the spectrum is regulation by an external virtual community manager. It constitutes some type of formal control, and in most cases it is foreign to the community. In many cases this type of regulation is implemented by traditional mechanisms of state regulation and not through community self-regulation.

Sometimes this position is filled by a state regulator or an infrastructure provider, as for example, when in January of 2005 the Ministry of Justice demanded that Internet sites filter out in advance postings that represent incitement or break the law. At the other end of the spectrum of regulation possibilities in an online network is regulation by virtual community forum moderators. This kind of self-regulation can appear in different flavors, for example as a policy enforced by the virtual community members themselves, in the form of educational kits, or by the appointment of community members to instruct newcomers on what is permitted and what is prohibited in the community.

A model of self-regulation on the Internet built on infrastructure providers and community managers

The model of self-regulation presented here is intended to facilitate a better understanding of the new type of censorship that came into being on online networks.

A virtual community infrastructure provider offers a platform for management of virtual communities, in other words, a virtual settlement. Infrastructure providers act not only as technological facilitators, usually they also guide policies and formulate rules and procedures for community management, norms, and virtual behavior. Form time to time individual communities override these general rules and subject their members to more specific ones, and activate specific regulation mechanisms that are more appropriate for the community members, consistent with the virtual community culture and the context of its activity. The majority of specific policy guidelines the community follows does not contradict or conflict with the general constitution dictated by the providers. Often an individual virtual community emphasizes a certain detail or aspect of behavior that is important to this particular community. For example, the infrastructure provider can issue a generic warning, without going into any details, that prohibits all illegal activity on the site; then, a virtual community that deals with games adds its own internal rule that says: “Every message or discussion that abuses the platform by passing around passwords or cracks for stolen software will be automatically erased.”

Infrastructure providers do not tend to intervene in managing content and do not impose restrictions on expression beyond the formulation of working rules, so they leave the daily supervision of activity to virtual community managers. Only seldom do the infrastructure providers act as content gatekeepers. This usually happens in reaction to some event or a request from authorities for their virtual intervention (for example, a court decision that requires them to remove some content under their

---

48 The quotation is taken from the charter of the “Games” community operating under the Tapuz infrastructure provider.
control that contains incitement, or child pornography, or extreme racist expressions). The daily activity regulation of Internet behavior falls under the purview of virtual community managers, who have full authority to act against all information that resides within their communities. They are the source of censorship on the Internet and of restrictions on the freedom of expression. Tension and conflict are liable to flare between the two hierarchies of independent regulators: the infrastructure providers, who represent the external powers, and community managers, who represent internal powers. The conflicts and the tensions are created because in certain situations infrastructure providers act against the “general will” of the community, as it is expressed in the “rules of the game” established by community members themselves or formulated by community management.

Tensions between the official external censoring agent and the internal unofficial one are created also as a result of differences in the objectives of the two entities. Infrastructure providers are interested in increasing their revenues, therefore they constantly try to attract more users to their platforms. Sometimes they invest in promoting certain communities that have a high potential to stand out and attract Internet users, or have already achieved a prestigious standing. By contrast, communities are interested in preserving their character, and they focus on their core topics. The expansion of the virtual communities to absorb large numbers of additional users is perceived by them as a threat because of the greater heterogeneity of the user population and a wider variety of opinions and speech, including some critical of the character of discussion in the community. Therefore, with increased freedom of expression the community perceives a great danger to its
unity and to the character of the community. Here lies the danger of the community limiting the freedom of expression for the sake of community agreements and homogeneity of its discussion. In the course of these conflicts, the managers of virtual communities act as representatives of the community and as gatekeepers vis-à-vis infrastructure providers. As such, the managers try to protect the content arriving from providers before it appears inside the community. For example, when an infrastructure provider invites community members to join an event in a different community, it endangers the original community by prompting its members to abandon it in favor of a different community, and at times also by encouraging the transfer of loyalty to a different community.

This function of the community managers represents a considerable element of Internet censorship. Such censorship is not officially recognized by state law and it is not enforced by official state agents. Virtual censorship takes place in the shadow of the law, it is the result of the social dynamics on the Internet, and is supervised by the virtual community itself in accordance with its interests. This is a social, non-affiliated censorship, the enforcement of which does not rely on state law but entirely on power players within the virtual community.

Internal tensions and disagreements can also appear between community managers and community members, not only externally, between infrastructure providers and managers. The present research focused on the virtual community managers, especially on their sensitive relations with community members. Managers use
various censorship mechanisms to control behavior in their communities, removing, editing, directing, and regulating content.\textsuperscript{49}

Why did we choose the mechanism of message deletion in virtual communities to gauge the extent of censorship. Unlike in distribution lists, information posted by surfers in forums usually does not go to the moderator for prior approval. On forums restrictions in freedom of expression and on content take place \textit{a posteriori}, that is, censorship is activated after the message has already been posted for the users to see. As a result, forum moderators cannot be used as focal points for the entire flow of information that passes through a community.

One of the main reason for the increased judicial supervision of the Supreme Court over the military censorship was the dissatisfaction of the High Court of Justice with the very fact of the existence of \textit{a priori} censorship that prevents the fee expression of opinions and does not limit itself to retrospective punishment for the publication of materials that have caused hardship or will do so with a high degree of likelihood.\textsuperscript{50}

As opposed to censorship in the traditional press, the largest part of the self-enforced regulations in virtual communities consists of the voluntary compliance of community members with procedures for the self-regulation of the community, without any direct link to an official state supervisory agent. Compliance is by virtue of the community members’ desire to conduct an organized virtual discussion of matters that from the beginning were considered valid discussion topics by community members. For example, a young female member of the Britney Spears forum would expect most of the discussions to revolve around the object of her admiration. Her interest in self-regulation and compliance is not derived from her

\textsuperscript{49} Barzilai-Nahon, K. 2004, \textit{supra} note 18.

\textsuperscript{50} See Zeev Segal, \textit{supra} note 44; Gad Barzilai, \textit{supra} note 44.
explicit desire, but from the simple fact that the virtual community will not deal with any other topic than the one that attracted her to the community in the first place.

Generally speaking, it is correct to argue that compliance with virtual community rules is considered by community members as essential for the chances of the community to survive in the long run. Virtual communities, like other social communities, need a shared definition of the common “good,” for the sake of which they strive to exist. Contrary to the state, as an imagined community, as defined by Benedict Anderson, where the sovereign and the ruling elites are likely to establish censorship from the outset, as in the case of state security in Israel, virtual communities, which to a high degree are based on voluntary participation (meaning that both joining and leaving are voluntary and almost free of charge), are interested in considerable freedom of expression, even if it is guided and adjusted to the prevalent community discussion. Virtual communities are based on disciplined freedom, which reflects the desire of the majority of users to be able to conduct a debate and exchange information based on their shared interests. Therefore, censoring of content in a virtual community in most cases takes place after community members have posted their messages, and is implemented by mechanisms of deletion of messages that are perceived as inappropriate according to community norms.

The anonymity of the users on the Internet offers a certain type of social immunity for them and reinforces the freedom of expression. In our research we found that

---

Ultra-Orthodox Jews, most of them yeshiva students, use the Internet not necessarily for work, and sometimes even challenge their rabbis, thinking that their identity on the Internet is unknown. This is where a great difference between traditional and virtual media lies. Anonymity makes it difficult for the regulators, both governmental and non-governmental (forum moderators and infrastructure providers) to implement censorship. Although Israeli infrastructure providers can identify an anonymous user connected through them in an almost unambiguous way, it requires the investment of resources and time, so the effort is seldom made. It is mostly non-governmental regulators (for example, community regulators, such as the rabbis mentioned above) who have difficulty identifying users, especially those closer to the user, such as community managers or site managers who provide a platform for content and who lack the means of enforcement and identification available to the state or to infrastructure providers. Anonymity in online networks makes it easy for unwanted users to enter the community; it also encourages heterogeneous discussions and even criticism within the community. Online post-publication censorship based on regulation mechanisms, coupled with user anonymity, on the one hand encourages freedom of expression but on the other, allows community members to abuse the situation and post deceptive messages or information that can hurt other community members. Sometimes, in reaction to the publication of objectionable messages, sanctions in form of message

---


deletion are applied, but usually too late because the embarrassment and the harm have already occurred.54

Censorship on the Internet is not always the direct result of regulation mechanisms, because forum moderators are not always present online; therefore, community members take upon themselves the task of regulation in an attempt to strengthen and uphold the internal community rules and to preserve what they perceive to be the “general will.” Regulation is an action taken to preserve the social capital or the laws of the community. Self-regulation of this type creates discipline against surfers who do not submit to the basic conditions of community life, and a warning of community managers when there is a need to erase messages. It maintains order within the community discussion through the creation of secondary threads. As a result, community members are liable to censor opinions important for the community dialog, as well as expressions of positions straying from the dominant discussion in the community, that are perceived as a threat to the ruling ideas in the discussion. The internal, unofficial censorship performed by community members is liable to deal severe blows to expression that could strengthen the community by allowing criticism.

In addition to new channels that are available in online networks and allow the distribution of information in ways different from the traditional ones, self-regulation mechanisms that affect both content and expression on the Internet result in the silencing of opinions perceived as threatening. Censorship in online networks exists

and can result in uniformity of thought and behavior achieved by penalizing positions and discussion that deviate from the accepted limits of these virtual spaces. On the one hand, this regulation is essential for the continuing existence of virtual communities and other content platforms on the Internet. On the other hand, self-regulation can sometimes serve government supervision by providing mechanisms of internal censorship that are more efficient than the mechanisms currently at the disposal of government authorities.

Who is the censor? Beyond the screen of illusion covering virtual freedom of expression

What are the reasons for censorship on the Internet? The findings presented below are based on data collected from major Israeli infrastructure providers: Tapuz, Walla, Ynet, and Nana, most of the data was generously provided by Tapuz.55 We sampled 715 virtual communities and 1,385,000 messages. Included in the data were parameters describing users, forums, and messages, as well as interviews with 47 community managers and infrastructure managers.56 We combined the technique of data mining57 with content analysis (classification of messages in order to analyze the deletion processes carried out in various virtual communities). First we checked whether the message was censored and if so what were the specifics of the censoring. Second, we examined the reasons for censoring the message. We explored communities of different kinds: expert groups, support groups, discussion groups, service communities, dating groups, interest groups, and fan groups. The core topics of the community were varied: current events, culture, art, education,

56 Parameters were: the seniority of the user in the community, the seniority of the user on the platform, number of deletions of their messages in the community and on the platform, number of communities to which they belong, number of messages they wrote, age, gender, the message itself, the age of the forum, and so on.
57 Data mining is a collection of techniques that combines approaches of building a model constructed from a pool of data, while using statistical tools, artificial intelligence, pattern recognition, optimization, etc. In our research we used GainSmart software, for which we are grateful to Jacob Zehavi and Ronen Meiri.
economy, social issues, sports, music, science, health, nutrition, spirituality, entertainment, law, and more.

The study of the deletions reveals that only 5.48% of messages were erased. This means that self-regulation on the net is efficient, even as we take into account other existing censorship mechanisms, because it reduces considerably the enforcement and the punishment of user deviation from the conduct considered normative by the community or of expressions considered unacceptable by the majority of the community. At the same time, even when we check empirically the extreme step of message deletion, it is still clear that censorship by erasure exists in online networks and freedom of expression is subject to extreme steps, such as deletion of user messages.

The following illustration details the reasons for censorship of expression as it was carried out in virtual communities of various types (support groups, discussion groups, etc.)
91% of erased messages were censored for three main reasons: off topic, deviation from community norms and culture, and revealing of commercial information. We will show clearly that there are factors that increase the probability of online censorship, and most important among them is social capital. The results of research prove that social capital is one of the critical factors in the preservation of the community and in its long-term survival. At the same time, social capital is used in virtual communities for building of social self-regulation in matters of conduct and content. The more the community is united around a certain core topic (for example, a unifying subject, shared norms), the more self-regulation of content and expression is based on arrangements that prevent in advance injury to the rest of community members. Accordingly, regulation based on a posteriori censorship decreases (for example, the tendency to punish the members by deletion of their messages decreases, and provider’s demands to remove user names decreases as well). The core of the community represents this social capital which in fact sets the community limits and its autonomous space, as well as the scope of discussion and the limits of what is permissible and forbidden within freedom of expression on an online network.

A community based on a relatively permanent group of long-term users, that complies with a code of conduct and well-defined boundaries, that is, a community with a considerable number of long-standing members who invest all their energy in this community alone, can face more efficiently various challenges and threats to its

59 Social capital mostly relates to a set of characteristics that unify social networks, such as common norms, social trust between community members, and connections that help and facilitate cooperation and coordination and produce mutual benefits. Both Robert Putnam and Pierre Bourdieu elaborated on this notion. For a more critical outlook on community-related and communitarian issues, see Barzilai, G. 2003. Communities and Law: Politics and Cultures of Legal Identities. Ann Arbor: The University of Michigan Press.
virtual existence from both insiders and outsiders. The members of a community with a solid social capital protect by themselves the proper limits of conduct and indirectly control content through self-regulation. Regulation in these communities is based on user guidance and deterrence from disrupting the discussion and damaging the character of interactions in the community. By contrast, communities with a weaker core, that are not unified in any clear way and that have a relatively high ratio of guests to permanent members, tend to base their self-regulation on penalty mechanisms that can take different forms, such as isolation of users, prevention of criticism, or retribution after criticism has been voiced. In virtual communities all this is implemented through various means of censorship. For example, erasing of user messages, deletion of users, moving of user messages to the end of the list in order to lessen the chances of the messages attracting attention, and so on. Communities that have only limited social capital rely more on censorship and less on mechanisms of guidance and governance (for example, the structuring of social and communal code, the preparation of instruction kits for new users, virtual patrolling of the community at all hours, and so on).

The essence and limits of freedom of expression depend more on the characteristics of the virtual community than on mechanisms of external regulation. As shown before, the state practically does not deal with regulation and limits of freedom of expression in virtual space. Moreover, the split-loyalties of users to various virtual communities as well as their seniority in a specific community affect their readiness to censor users. In the physical world the ability of people to connect to multiple communities is limited because of higher entrance barriers. The costs in time and other resources, such as money, required for joining simultaneously various physical
communities are relatively high. On the Internet, however, there is nothing to prevent user from simultaneously membership in an unlimited number of communities, thus decreasing the attention paid to each particular community and creating multiple, sometimes even conflicting loyalties to communities to which they belong. At the same time, the research shows that users who have multiple loyalties to various virtual communities (three or more) are more likely to appear as a disturbing factor in the life of a virtual community and as a threat to its social order. Accordingly, the content posted by these users is censored more often than that of other users (for example, by deletion). Thus because of its low cost the virtual text allows simultaneous participation in multiple, conflicting virtual communities, and at the same time despite a wide range of possibilities, the spectrum of freedom of expression in a virtual community is sometimes limited by censorship.

Comparative politics and political theory researchers consider multiple loyalties to be a basis for a democratic regime because they guarantee pluralism while respecting democratic procedures. 60 On the Internet, however, they create a paradox. On the one hand, the Internet allows users, at least theoretically, an unlimited number of memberships in various virtual communities. On the other hand, virtual communities, like real communities, are liable to show little patience toward cross-users who visit many virtual communities simultaneously. 61 Cross-users are not deeply involved in community life. For example, their surfing time in a community is short and they are not always prominent in community dialog. Sometimes such users are not sufficiently involved in a dominant discussion or, on

---

the contrary, they get involved only for the purpose of creating a disturbance rather than because they are substantively interested in the topic.\textsuperscript{62} Therefore, virtual communities usually apply sanctions against users with split loyalties because they want to preserve their shared narrative. They see split loyalties as damaging to the community, as a characteristic that does not serve its best interests. This is why the messages of these users are more likely to be deleted that the messages of others. In our research we found the probability that the messages of users who belong simultaneously to three or more virtual communities would be deleted to be considerably higher than of those who belong to one or two communities. In other words, freedom of expression on the Internet often depends on the tendency of the virtual communities to preserve sufficiently clear virtual borders between themselves and other communities. Freedom of expression on the Internet is limited by the borders of virtual spaces, which in a way is similar to the physical world.

A good example of abusing split loyalties can be found in the practices of commercial companies. Advertising, marketing, or other commercial companies become members of various online communities that can present a potential market for their products or services. Using multiple loyalties they simultaneously send commercial information to many virtual communities, increasing the volume of electronic junk mail. The more sophisticated among them do it in disguise and pass information about their products and services by participating in conversations with online community members. Targets of the commercialization of multiple loyalties

\textsuperscript{62} In our research we found that the community is often not aware of the split loyalties of a user, as for example when a user belongs to other communities hosted by different infrastructure providers. Even in these cases, however, these users tend to be more likely candidates for deletion. The reason for it is higher likelihood of certain a behavior within the community: on one hand, apathy, on the other, destructive activity. Usually, if the same infrastructure provider is involved, community managers can check the number of communities to which the user belongs.
are mostly communities of teenagers and youths who are relatively easy to manipulate. [In these communities] there is a great deal of hidden activity to promote products and services using the forum and the space provided by the community, as supervision over the content is relatively lax and advertisement much cheaper than in the physical world. Thus there is a conflict between the forces of freedom of expression and of censorship on the Internet, and it is subject to manipulation by various interests, for example, economic interests.

Freedom of expression and censorship on the Internet also depend on the seniority of users in the forum. The research clearly shows that long-term members tend to have fewer messages that threaten the community deleted by community managers. Long-term users constitute the core of the community and represent the leverage of the social capital and for the structuring of a framework for effective self-regulation of the community. They become the dominant gatekeepers and use their seniority extensively to balance extreme behaviors in the community, to stabilize the discussion, to calm tempers, to train new community members, and to outline community norms. The research showed that, since the official regulators – community managers – are often not present for the entire duration of the virtual activity, senior users take it upon themselves to enforce and protect the limits and the content of a virtual community. It is they who direct other users toward “desirable” conduct, who ask the rest of the members to apply sanctions against problematic Internet users, who notify the community when a rule or a norm was broken, and who choose the appropriate regulation measures in every specific case.
For example, in the forum dealing with the life experiences of homosexuals, after a user intentionally offended community members in a personal way, addressed them by derogatory names, and attempted to disrupt the discussion, senior users asked all other members to ignore the intruder and to force him to leave the virtual community.\(^{63}\) A similar development occurred in a computer game forum. A user asked for passwords for stolen games, which breached community rules, so senior users asked other community members to verbally attack this user to make him feel unwelcome in the community. Seniority within a community is used for control and self-regulation on the network. The research, however, also shows that virtual communities tend to preserve the structure of their dialog at all cost, and that they are tolerant and allow freedom of expression as long as it does not damage or threaten the hegemony within the community. Therefore, virtual communities do not form a free democratic space with total freedom of expression, but represent a conflictual field subject to the dynamics of freedom of expression and censorship. Confrontation is part of the process of content regulation in virtual communities, which resort to self-regulation through various mechanisms of speech censorship or actions taken against users who endanger their dominant discussion.

The research succeeded in identifying clearly the conditions and the groups that have higher chances of having their messages censored. Thus, for example, despite the option of keeping one’s anonymity, which presumably exists for every online network user, the history of user conduct in the community is accumulated and it affects the regulators’ decision-making as to who and what should be censored. In virtual communities patterns of expressions and behaviors are traced with every

---

\(^{63}\) Data received from Tapuz included the dates when users logged into the community and the infrastructure provider for the first time, which is how we determined their seniority.
action undertaken in the community, on the platform of a specific infrastructure provider. At times the virtual history of user behavior patterns is accumulated not only for a specific community but across all the communities hosted by the service provider to which the user belongs. Messages of users who are considered by forum moderators or infrastructure providers as having a problematic history tend to be deleted more often and to be subjected to other measures of limitation of freedom of expression (for example, messages can be moved to places where they do not attract attention).

One of the elements of a user’s profile that can make the user subject to more extensive censoring is the personal history of the number of messages that were deleted in various virtual communities to which the user belongs. Another such element is the user’s personal history of the number of disturbances to the community discussion. The opinion of community managers is that personal history profiles supply truthful information about problematic members of their communities. It is important to emphasize that while community managers can check the actual number of deletions for a user, building a personal profile of a certain Internet user involves the categorization of that user’s virtual conduct. The categorization can be achieved without exact statistics, by observation for a period of time of the member’s behavior. Contrary to the common perception, the Internet allows a high level of personal tracing of users, infringing on the rules of privacy. Currently there is no legal arrangement regulating the violation of a private autonomy of Internet users. It is doubtful that there is any effective legislation regarding this matter.
Long-term users play an important role in virtual communities, where they serve as “profile builders; it is they who remind everybody else who this or that user is. The building of online network user profiles is an important part of the self-regulation process of the virtual community which demonstrates to members the necessity of following the community rules, both written and unwritten, within the shadow of state laws. As a virtual space, the Internet created unprecedented possibilities for user surveillance, which makes it easy to enforce discipline and censorship in various Internet communities.

Although the Internet communal space is considered to be more free than the physical space, it is not tolerant toward visitors in virtual communities. Infrastructure providers allow people to join community discussion as guests and not as members. Guests are regarded as a potential disturbance that threatens the homogeneous fabric of the virtual community and as enemies of the hegemony of its discussion. The research shows that the messages of community members who register as guests are more likely to be deleted than those of users who are not community members.

Furthermore, despite relative anonymity on an online network, a regular virtual identity known to community managers and sometimes even community members is created. Users can override it by registering as guests. Most users who enter the communities as guests are actually not guests but members who prefer to register in a virtual community as guests rather than using their regular nicknames. Often virtual community members feel that their opinions are not acceptable to their community and they prefer to avoid confrontation and not risk building a negative
profile for themselves. In these cases they prefer to register under the user name “guest” to voice their real opinions. They claim that this gives them greater freedom of expression and reduced peer pressure, without risk of retribution. At the same time, while pretending to be guests, they still can post the information potentially critical for the community and participate in the virtual dialog. Virtual community members tend to prefer the “guest” login especially when their opinions do not represent the dominant discussion in the community, and could be perceived as provocative and arouse opposition. This exciting phenomenon of struggle for anonymity, identity, and privacy on an online network shows how powerful the mechanisms of content self-regulation are and how users who are perceived as a risk are subjected to enforcement of all types of limits on expression. It is now clear why online self-regulation is so efficient: it is initiated by community members themselves. Here lies the possible danger of community censorship suppressing extreme opinions in online communities.

The desirable model for freedom of expression

Freedom of expression on the Internet is not free of censorship and limits on discussion. At the same time, Internet censorship is of a relatively new kind while the model of state censorship carried out by official regulation mechanisms has become much less relevant. In his book Republic.com, Cass Sunstein claims that the Internet bring produced a democratic revolution in our lives by allowing extreme personalization of information and services. Sunstein believes that the huge democratic potential of the Internet is liable to be used for the dissemination of extreme political views, thereby endangering society. He is afraid of extreme separatism that would harm the social democratic discussion. He claims that in a

---

democracy freedom of expression must meet thee threshold requirements? First, exposure of individuals to content that they probably would not choose to be exposed to on their own, although their exposure is essential for the democratic process. Second, the guarantee that processes of radicalization and division into extreme groups will not take place. Third, most citizens sharing a minimal common value system. Without it, society will be too heterogeneous and it will be difficult to address social problems objectively. According to Sunstein, in the past various social mediators were responsible for this function, for example, the traditional mass media. But the Internet detracts from the power of these mediators while empowering the individual to select and reduce through personalization of content the number of matters to which he chooses to relate.

We showed in this article that the basis for Sunstein’s claims is invalid. Like other researchers, he formulates a widespread but erroneous assumption that on the Internet there are no intermediaries limiting freedom of expression. We showed that such an absolute, binary perception of the Internet is incorrect. Although it is true that the Internet allows a high degree of personalization of information, freedom of expression is not absolute. There are regulation mechanisms that parallel traditional regulation and work within a framework of self-regulation on the Internet. We also showed that there is manipulation of content and information on the Internet. Therefore we find that the Internet does not create the conditions that would guarantee a pluralistic discussion presenting a wide range of views. The research of virtual communities clearly shows that both individuals and groups (communities) have the ability, and actually do limit social discussion and content on the Internet.

which greatly endangers freedom of expression. At the same time, virtual communities have an effective mechanism of self-regulation.

In light of these findings we suggest that the desirable model of freedom of expression on the Internet should consist of two tiers. First, transferring the focus from state regulation to self-regulation. Our findings clearly point to a significant drop in the effectiveness of state-regulation in online networks and to a positive contribution of the decline in state regulation to the growth of freedom of expression on the Internet. Therefore we recommend a legislative model that would officially cancel state censorship on the Internet, with a few exceptions.\textsuperscript{66} Second, the establishment of principles of cooperation between service providers, state, and virtual communities. These arrangements should be based on non-intervention by the state in content, except in extreme cases such as racial incitement or child pornography. At the same time, virtual communities must commit to service providers and the state to allow maximum freedom of expression in their field and provide entry terms for new users that would significantly reduce infringements on their privacy, increase the autonomy of individuals, and improve the degree of pluralism in online networks.

Online networks are not an obvious component of the democratic dialog yet, but rather a fundamental component of the democratic culture of the 21st century. Improvement of our democratic existence needs arrangements for online networks. Concrete legal arrangements must be backed by a scientific understanding of the character of online networks rather than on untested assumptions about the

\textsuperscript{66} Compare with a similar proposition in N. Elkin-Koren, \textit{supra} note 55.
essentially egalitarian and liberal nature of the Internet. This research shows that the Internet is a political space, a multi-directional field, that requires normative solutions. As an arena for social wrestling, the Internet must become an integral part of arrangements, absent which the tendency to suppress human freedom will increase and not diminish.

According to the opinion presented in this, there was not much sense in censoring Mike Eldar’s book. As we demonstrated here, the Internet renders the old state censorship useless. We have shown that the Israeli Supreme Court is gradually absorbing an awareness of the influence of the Internet on freedom of expression. For example, virtual discussion of Eldar’s book on online forums would have encouraged discussionary democracy without causing damage to state security, especially in light of the fact that the book had already been published on various Internet sites. It is important to emphasize that discussion of Eldar’s book on online forums was not without limits, which were set by community members themselves. The Eldar case was mentioned in our article only as an example. Its significance is clear: in contexts broader than state censorship of security matters, the Internet plays an important democratic role in catalyzing discussion and shattering the old censorship. However, the Internet gives birth to a new censorship at the community and personal levels. Legislators must become acquainted with the Internet and encourage the dismantling of its censorship mechanisms. In an online era, it is necessary to promote legislation that would help structure the democratic discussion on the Internet, among others based on the understanding that the old model of censorship had lost its significance anyway.