Chapter 3: Broadcast Yourself

01 – GETTING PUBLISHED (manually)

There are several images that convey my entry into the world of public media, by self-instantiation. Maybe the most immediate is loading moving boxes of my self-published ***Do Ask, Do Tell*** book into my Ford Escort, rigged as a hatchback, on a July 1997 Friday afternoon when I had rarely taken comp time from work. The book printer was located near a Gaithersburg, MD airport, among schools of private Cessnas, the delivery done from a tin warehouse. The price offered at this "book manufacturer" in the distant Maryland suburbs of DC had worked much better than the printing packages offered by all the web presses in the Shenandoah Valley, all the way down to the North Carolina Blue Ridge.

I drove down I-270 and then the Capital Beltway, Outer Loop, to my high-rise Annandale, VA apartment, with the boxes stacked, and an aroma of acetone (no benzene!) in the car. The view through the rear view mirror was obstructed, and I wondered if a trooper would stop me. But I got home safely, and performed the steps it took to become an officially published author efficiently. It took about 20 trips up a flight of stairs to get the boxes stacked in the computer alcove of my apartment – a good cardiovascular workout. It took another 20 minutes to get a manila envelope with the two required copies for the Library of Congress stuffed and driven to the local post office. At 4:28 PM, I surrendered the package with the cash for postage to the clerk, releasing my dangerous book into the wild, as if it were an intellectual virus. It circumscribed the existence of everything in my mind. For someone like me, publishing a book was like having a child. It generated responsibility and took risk.

It had not cost all that much, however, to do a "print run," or even get the proofing done, with the help of an editor and graphic designer in Maryland.

How I saw things, in 1997, was that low-cost desktop publishing, amplified by web materials, originally intended to be used by people familiar with my book(s), could, if the message was coherent and original enough, make me "important" and listened to.

The week had been eventful. I had traveled on business to Minneapolis, actually reviewing the "final draft" of the book FedExed to the hotel (finding one duplicate page), and flown home July 10, my birthday, on a rare day when the sky was clear all the way from Minneapolis to DC.

I've sketched out the "message" in the preceding of this new book, but I would summarize it by saying that it was a nuanced view that the implementation of "personal responsibility" could free people of tyranny and maximize their ability to find and live out their own destinies. Underneath this notion was an understanding that some common responsibilities exist (and naturally surface in a "libertarian world"), which led to my concerns about conscription and "family responsibility," and whether the latter would be completely subsumed by procreative choice. The other concern was with speech itself, both its content and its mode of distribution and delivery. In time, the Internet would lend another layer of nuance to how I saw things. But in 1997 that hadn't quite happened yet.

The opportunity for "self expression" through technology had started to surface with the appearance of PCs in the late '70s and early '80s. By the mid '80s, there were a number of effective word processing packages, like WordPerfect, and Q&A (which was loaded on a 1985 AT&T 6300). Laser printing at home was starting become pretty feasible by 1985. In time, Microsoft would start to dominate the word processing market with Office and Word (slowly squeezing WordPerfect), and I would become concerned with questions as to whether word processors really could produce printed pages with right-aligned columns that looked as good as professionally typeset books in the past.

I had learned about the world of traditional literary agents, and worked with one, who actually did an edit on my first draft in 1996 (giving me a chance to review his comments while "on the road" in the middle of that year). Self-publishing, rapidly becoming affordable, already (by the late 1990s) seemed ethically controversial. Should a book or other media project pay its own way to stay out there? Should everyone with something to say be exposed to the same pressures to prove he can provide for others by profit from his work? A trade group called the Authors' Guild would not allow membership to any writer who did not have enough clout to get advances from traditional publishers. The old world had been hard on mid-list authors who could not stay on the best-seller lists, but suddenly this notion was changing; now New York did not rule the world of book publishing any more than Hollywood could continue to rule movies.

I wasn't yet aware that there were some cumbersome online forums already available by the mid '80s (some of them with antiquated protocols like Gopher). In time, gradually at first, visibility online would become "the way," first through search engines (in the "Web 1.0" world where online publishing was broadcast to everyone), and then social media ("Web 2.0" and up, emphasizing specific lists of friends and followers, and nimble mobile content, facilitated by W3C standards and the "semantic web"). But, still, word of mouth from a controversial book sounded like a good place to start.

02 – HIGH PLAINS DRIFTER

There was an earlier moment of epiphany, on a Saturday in early August 1994, in the high plains town of Sterling, CO, northeast of Denver, connected to the cattle mutilations of UFO lore. I remember buying a disposable camera "downtown," and going into a family diner for lunch. I was on a week's vacation, had a rental car (actually a stick for the mountains), and the night before had watched the Rockies play and lose in Mile High Stadium, with its 370-foot right field line. (A friend asked if I was out there to "run around.") One week later, the 1994 baseball strike would start. I recall reading a local newspaper with some syndicated story about the military ban, and somehow as I left the restaurant, I knew I would write the book. Later that afternoon, I stopped and hiked at Scottsbluff in western Nebraska, on the way to Cheyenne, and thought a lot about the book.

At the time, I had an IBM PS3 at home, and had never even activated email. But I had published one article in *The Quill*, the newsletter for GLIL (Gays and Lesbians for Individual Liberty), about the tension between people who set their own goals personally, and those whose goals are set for them by families.

At the time, I was working as a computer programmer for a life insurance company that specialized in selling life insurance to the military. Since I was going to write a book that dealt with the military ban,

and issues concentric to it, I sensed a conflict of interest. (As an exercise in hyperbole, imagine that I was working for a "Christian" school and was going to write a book on Christian fundamentalism. Given the political controversy over the debate on the ban, I began to feel increasingly uncomfortable about the idea of continuing to depend on a livelihood based on customers who – somewhat justifiably, based on my distant past – could see me as a moral distraction.) It wouldn't become significant for years, perhaps. But shortly after my "epiphany" there was an announcement that we would be bought by a larger company. On the day of the announcement, I mailed an essay, about the military ban in the form of a review of a particular book *Honor Bound* by midshipman Joseph Steffan, not actually speaking publicly on the issue until I knew "legally" that there would be a merger. "Change is good" applied to me, even as "people were crying."

In time, I would get many other pieces published in *The Quill*, which typically would get free distribution to a few hundred people, many through Lambda Rising Bookstore in Washington. (I would also get published in a couple other places, particularly by the *Ground Zero News* in Colorado Springs, site of the battle over Colorado's "Amendment 2" [*Romer v. Evans*] and home of Focus on the Family, near the Garden of the Gods.) Even then, in 1995, some people thought that physical printing was unnecessary, and that an email (probably in Yahoo!) listserver mechanism was the most efficient way to "publish." Since listserver email entries are seen mostly just by the people on the "list," it actually anticipated the concept of "friends" or "followers" that would develop with social networking a decade later. (Even so, by around 2000, some companies were trying to monetize the listserver market.) I submitted several pieces to the *Ground Zero News* in Colorado Springs and had them published there, including my "White House Letter" to propose a way to end the ban on gays in the military.

03 – FROM STRIP MINES TO THE BOARD ROOM

Two-plus years later in December, I did another one of my walkabouts, in southern West Virginia, in the strip-mining country, to think about all this again, a few days before I met with HR to discuss the "conflict" as the time for publishing the book neared. I put my materials in a cardboard box and walked into the office, and cracked the joke "what's in the basket," which was a tagline for a horror comedy ***Basket Case***. That might not be as funny today in a post-9/11 world.

The end result was an unwritten "agreement" that a transfer to Minneapolis, away from emphasis on the military line of business, would be a good idea. That would happen the following September 1, although the first step in the phone interview process would occur only an hour after I put published my book "into the wild" (and celebrated by going to see the movie *Contact*). I pulled it off perfectly.

Let me annotate the potential conflict: I would write a book dealing with the political and moral controversy over gays in the military, and I was working, largely as an individual contributor but sometimes in the line of sight of military customers who would visit the place, for a company whose business model focused particularly on military customers. I saw my making a living in this manner as a potential ethical conflict. At the time, the mid 1990s, placing oneself in the limelight over a moral controversy, whether going through an established commercial third-party or not, wasn't always viewed as a "fundamental right." If I had become a "stronger" person earlier in my life (not needing to use

education to “avoid” things), such a controversy for me might not exist. Yet some people will see this as a self-defined or manufactured conflict. It would come up again.

Self-publishing was still a bit novel in the 1990s, even though more printing companies were surfacing to facilitate it. In fact, I had submitted the manuscript to an agent and gotten some good feedback, particularly on the “military” parts of the book. I remember reviewing all of it on the road in 1996 on another trip, on the West Coast, to interview “victims” of the ban. Finally, I settled on self-publishing. (The agency submission in May 1996 provided another celebratory moment.)

I had gumshoed a lot of handbooks and reference books on publishing law. I was concerned at first about “fair use” but I convinced myself I really would be OK by making brief quotes (and attributing them in footnotes, term-paper style, something Microsoft Word was already good at). Industry references suggested that most books go through rigorous third party vetting for all kinds of issues, especially libel and invasion of privacy, before being released into the wild. Companies existed to secure permissions. I decided that I did not really need to use them for a book, although for movies and music rights it really is mandatory to purchase or secure usage licenses. In movies they call this “script clearance.”

04 – DRIVE ABOUT – back to the Midwest

Once “on the ground” in Minneapolis (right after a wonderful drive-out Labor Day weekend of 1997, while Princess Diana’s tragedy unfolded in the media), I found that the book’s concept and content played well with the libertarian community there, paradoxically in a “blue state” culture. (Don’t tell Michele Bachmann.) A college student at Hamline University set up my lecture there in February 1998 (which I gave on crutches after a convenience store hip fracture), and that would be broadcast on a local cable channel, giving me some pretty wide PR. That student, a graduating senior, had already run for the St. Paul city council as a libertarian (I think at the age of 20).

But I had already hit on the idea of maintaining the book online, and realized that this would become more and more important. My entrance to the online publishing had been utilitarian and a little bit cautious. In March 1996, I found a company that would host an abstract for my planned book for $200 a year. I remember putting it up on a Monday night (from my AOL account, still at 2400 baud) before going to GLIL’s Academy Awards party in town. Then AOL introduced “AOL Hometown” but at first there was no way to upload a previously written piece of text (as in Word) to it; I keyed in an entire *Quill* essay. In the meantime, I participated in a number of AOL message boards, particularly about the military ban. I wondered if that could some day cause trouble at work, since anyone could find it. Foreshadowing! In October 1996, AOL enabled FTP for uploaded text to the Hometown.

A coworker-become-friend told me shortly before publication that he ran an ISP from home. I signed up with him for $100 a year and established a domain, hppub.com (for “High Productivity Publishing”) to place the supplementary materials for my book. He had backing from a British entrepreneur running a web service for female body builders and another business partner ran rack space from a small building near his home in the Maryland suburbs of Washington.

So I published my supplementary materials on both AOL Hometown and hppub.com, to have it up at all times, but the rack space proved to be quite reliable, with only one outage of more than one day in four years.

I added most material at first on "running footnote files" keyed to the chapters of the book, and then started adding some sidebar essays on various topics. Around August 1, 1998, I decided to put the entire text of the book up for free browsing in html. And during most of 1998, Google was rapidly becoming the most popular search engine. Many services indexed my files free, even without my having to use metatags for keywords, but by the end of 1998 I noticed that most of my search engine hits came from Google.

I also used the Internet to fix gaffes and uncaught typos in the book. On the back cover, I had misstated the age of the Bill of Rights and had not caught it, but no one noticed until the end of 1998. But I could fix it easily with an online copy. (It's not a good idea to put a statement of age on a book cover; that will change with time anyway.)

So what I had, I thought, was remarkable. The book would sell a few hundred copies, but the real PR would come online. Without my having to compete in a normal way, people would find out who I was, and the nature of my concentric argument.

As long as I could maintain something like this, I could be a thorn in the side of bureaucratic politics as usual. I had a structure online that enabled me to poke holes in almost anything, and "be right." (Who needs a "real life" anyway? Remember the character Ephram in the WB series *Everwood*?) And people would find it. I would get emails. In those days, the elaborate mechanics of social networking weren't yet available, although discussion forums (as with one on AOL on gays in the military) were popular, and listservers provided another way to get noticed, even if it meant preaching to a specific choir. (In Minnesota, one particular millstone dominated our Libertarian Party listserver, attacking everything anyone said.)

And my own "choir" at first did turn out to be the libertarian community, and only secondarily the LGBT community in Minneapolis (including a social group called "Pride Alive" as sponsored by the Minnesota AIDS Project). Also I was getting to know the Twin Cities independent film community, and at least one Landmark Theater manager in 1999 recognized me as the author of this most provocative book.

What did resonate with the libertarian crowd was the idea that people often seek "confiscatory" (or "expropriating") collective remedies for problems because they don't perform well enough in life individually. (The urge to restrict the "private" sexual freedom of others was seen as a kind of collective psychological confiscation.) Of course, sometimes people are kept from performing by systematic discrimination, an inconvenient truth. But libertarians saw government as the ultimate source of discrimination, and of forced expropriation and servitude. My material about DADT and the draft didn't always resonate with them, but what I saw was that "personal responsibility" does, besides obviously owning up to one's deliberate "choices," include sharing some of the risks and sacrifices that occur in a community, or being capable of withstanding them.

In time, I would change my strategies. In the summer of 2005, I would consolidate my material onto a site called doaskdotell.com (eliminating hppub), get re-indexed by Google and get traffic to the new site pretty quickly. (My old name hppub would get picked up by an offshore gambling operation, and that could have complicated things!) Then in 2006 I would switch to covering most new content with Blogger, with some revenue from Adsense.

I have played around with the idea of setting up an "opposing viewpoints" database, and coded a prototype (in Access), but to deploy it would require technical talent that would need to be hired, or perhaps found by joining forces with another party. It sounds like something that Wikipedia should consider.

I did quite well with ordinary dial-up from AOL for years, and didn't get into heavy use of cable broadband until 2003, later finding wireless almost as fast.

05 – THE SUPREME COURT: The three-minute line is a good deal

My own personal contribution to this whole area seems at first to be mainly comprised of my participation, as a sub client of the Electronic Frontier Foundation (EFF), as a litigant against the Child Online Protection Act (COPA). Congress passed COPA in the middle of 1998 to replace censorship-oriented portions of the 1996 Communications Decency Act (CDA) which were struck down by the Supreme Court in 1997. In fact, on a snowy March 19, 1997, I waited in the "three-minute line" to hear the oral arguments about the CDA at the Supreme Court, and actually heard about 20 minutes of questions that were more in line with supporting the law, even though it would be overturned. (Another portion of the law would stand, however, and that's important and we'll get to it later.) The original CDA has been quite draconian in its potential for censorship; some claimed that it could shut down discussions of abortion, and others expressed a concern that they could be prosecuted even for links to offending material.

Really, though, what I did is broader: I innovated a way for a single person to stand out as a sentinel for interrelated news items, and had to defend it against COPA, but then had to take the "fight" further into the problem of online reputation and "implicit content," and finally had to deal with questions about insurability and liability and deal with philosophical, existential questions about what motivated me to do it at all.

At this point, I should mention that I covered COPA in Chapter 10 of my second DADT book, *When Liberty Is Stressed* (2002), and I won't recap all the details (up to 2002) here. The link is http://doaskdotell.com/content/copachap.htm

But in October 1998 I did contact EFF about becoming a plaintiff against COPA, and was rather quickly accepted based on the content of the book, and the fact that I offered the book online and had ultimate commercial "intent" (that is, was already talking to the motion picture industry). I wrote an affidavit, had it notarized and delivered by FedEx. For the first time, they wanted page request counts from my ISP for various files, as well as search engine records; it was apparent that Google was

becoming a big factor, and the whole paradigm for self-publishing had already shifted from desktop print to online.

The underlying concern was that COPA could make it impossible for newbie speakers like me to address controversy on any site that had any remote connection to commercial activity.

Oddly, when I wrote the 1997 DADT book, I had suggested (in my "proposed constitutional amendment" in the last chapter) that censorship laws could be mitigated by adult verification schemes, Section 12 on p. 428). I had been thinking still in terms of print and word-of-mouth (which had worked for a while), and didn't grasp how crippling adult verification could become for a small publisher. So my own views changed. There is a big difference between content filtering (which parents can administer) and publisher age-verification, which is very problematical.

Much was made of the "three prongs" in the definition of harmful to minors. But the most critical question was probably how sexually explicit something had to be. In discussing AIDS, elaborating on the role of anal intercourse, because of the mechanics of transmission, could have been a violation. So could quoting the taunts of boys in the dorms about "vampire queers" draining semen from straight men. All of this connected logically to constructive discussions of close-quarter intimacy for the issues over gays in the military (a concept which, I have noted, would get conflated with the "unit cohesion" concept). My problem, legally, is that I had linked ideas and images in ways not envisioned by lawmakers. The other critical prong had to do with whether it had to be socially relevant "with respect to minors." Did that mean all minors, or only the most mature minor? I called this the "**Smallville Problem**." A 15-year-old Clark Kent is probably much more mature than the average minor, but if it is suitable for him, does it escape legal sanction? (I've actually met a couple of teen CK's.)

Judge Lowell Reid enjoined the law on February 1, 1999, and I remember the feeling of reassurance when I saw the email from the ACLU. There followed a long legal battle as detailed in my (second DADT) book, resulting in a Third Circuit ruling in 2002 claiming that community standards couldn't be used to determine what was harmful to minors. But in May 2002 the Supreme Court said, not so fast, because by that logic there could be no legal sanction against obscenity.

So in a second go-around, the Third Circuit essentially held the law overbroad, and in June 2004 the Supreme Court upheld the injunction but ruled that the law should be tried on its merits.

The trial was held in Judge Reid's court in Philadelphia in October and November 2006, and I attended one day, October 30, meeting the lawyers in a deli luncheon. The crux of the trial covered points like the effectiveness of filters, whether technology had made age screening practical for small publishers (it really hadn't), and whether the prongs of the "harmful to minors" definition were still impermissibly overbroad, which the judge held them to be, for a few of the plaintiffs. I was mentioned on p. 11 of the final opinion but apparently the judge did not believe that my own material would have crossed the lines of the prongs. The link was here:

http://www.aclu.org/images/asset_upload_file341_29137.pdf

One of the constructive results of the protracted COPA litigation was some innovation in the area of content labeling, led by the British group "Internet Content Rating Association" (now the Family Online Safety Institute), using the semantic web to develop metatags for webmasters to put on to their files to match specifications in browsers to allow parents to filter content for a variety of undesirable content. Webmasters, in such a system, would be responsible for self-regulation; but it could be implemented by browser manufacturers and web software developing tools (like .NET) to be economically practical. (For some reason, the group abandoned this project in early 2011. But there is a new product called RTALabel that may accomplish much the same thing.)

Before my materials were submitted to the Philadelphia COPA trial, the attorneys asked for copies of several of my screenplays, a couple of which dealt with ephebophilia, or sexual attraction to a legally underage but physically mature teen by an older adult. However, the screenplays did not contain any actual sexual depictions and probably would not have fallen under the three prongs for "harmful to minors."

But that leads to the next big ethical and legal problem area for the Web and my involvement in it: online reputation, and "implicit content," a notion which the judge mentioned from the bench the day I was there, as a potentially troubling one.

These problems need to be understood in context: The ways that most people used the web were evolving quickly. In the late 1990s, the Web had been perceived primarily as a self-publishing platform and as an e-commerce facility, the latter of which drove the dot-com boom and bust. (Another of EFF's COPA plaintiffs had been an e-book innovator who offered a package called "Softlock.") Then, "the kids" noticed that the Web could become an efficient way to "share" music and movies, perhaps not always legally. Sean Fanning invented Napster around 1999 or so, mostly as a way to "collect records," as I recall my own classical record-collecting days of the 1950s and 1960s. P2P and BitTorrent took off, creating all kinds of controversy, and litigation, often against individual home users accused of illegal downloads, sometimes done by other household members.

While home downloaders were being sued for copyright infringement (sometimes by boarders or kids), online writers started becoming more concerned about intellectual property lawsuits, perhaps, frivolous, for libel and other torts. In Chapter 9 of *When Liberty Is Stressed* I discussed my own abortive attempt to gain "media perils" insurance through the National Writers Union in 2001. But generally, and somewhat fortunately, the law already provided two instruments that actually provided amateurs a lot of protection. One was the Safe Harbor Provision of the Digital Millennium Copyright Act (DMCA), which, although abused, protected ISPs from downstream liability for their customer's copyright violations when followed properly. (It did not directly protect individual speakers, just the service providers.) The other was "Section 230," which protected web hosts and bloggers from secondary or downstream liability (both criminal, and civil) torts like defamation) from content posted by others (as in comments to blog posts, or discussion forums), but not from liability for their own content. This was the portion of the 1996 "Communications Decency Act" (actually, the Telecommunications Act of 1996) that held. My experience with "media perils" contradicts the general practice (and perhaps best interests) of property and auto insurance companies, which often only offer heightened maximum liability coverage in

umbrella packages, which by definition include defamation and slander (and sometimes identity theft), perils generally not related to property loss or liability for physical accidents. Sometimes these policies are not available to "entertainers," whatever that means in the Internet world. Property and casualty companies were apparently designing these "umbrella" policies, well known even in the 1990s, before they really understood how the Internet could give them risks that they could not quantify. One practice that would complicate liability insurance further is the filing of frivolous "SLAPP" ("strategic lawsuits against public participation") lawsuits to burden speakers critical of plaintiffs with the cost of defending vague and hard-to-disprove complaints.

It was the "freedom" to put anything out there without review that was creating future conundrums. I had already gotten some understanding of this quandary with the "conflict of interest" issue over gays in the military. That seemed to set up what would follow, including a major incident with a public school system in 2005 when I was substitute teaching.

In the spring of 2000, I wrote and web-published a "Whitepaper on Employee Intellectual Property" on my domain, where I explored the possibility of speech-related conflict of interest in the workplace. Because anyone could find any content posted by an employee on his own through a search engine, in effect any comment made on a personal site could be regarded as having been made at work. (The social networking site issues had not yet arisen, but I'll get to that.) So, particularly if a manager or someone with direct reports expressed her political or social opinions online, a hostile workplace situation could get set up inadvertently. In fact, by 2002 the media was already reporting occasions where people were fired for blog postings, such as Heather Armstrong, resulting in the creation of a new verb "dooce." In Minnesota, a filmmaker, with a project he called *Blogumentary,* started to explore this problem and presented it at an IFP film screening. A few companies were starting to consider whether they needed "blogging policies." Generally, I felt that people who made decisions about subordinates, students, or underwriting decisions about customers should not blog on their own in a public free-entry environment at all. (As I have noted, this point had come up with my own discussions with my employer over my writing about gays in the military before I transferred to Minneapolis, away from the potential conflict.) But why not just limit the content range of blogging? For example, don't permit anything to be posted that could not be said in the open at work – but that would eliminate discussion of anything controversial (like my favorite "gays in the military") under free entry; I thought of that as "content-based censorship" and to be avoided. Instead, I thought, people in certain kinds of work should not distribute their own personal work in a free-entry setup at all. It was not then a free speech question so much as a "right to distribute" question, which did not seem to be strongly driven, legally or constitutionally.

In the meantime, people had been using the Web to network, with email, instant messaging and chat rooms becoming particularly popular (in addition to forums) before 2000. Security and abuse problems – virus infections, at one time mainly from attachments, and spam, with a great deal of sender spoofing, were discussed widely. There developed a fear that someone could be "framed" on the web for, say, transmitting or even just possessing child pornography. About 2002 or so, police departments started setting up stings both for downloading child pornography, but also for detecting men in chat rooms seeking sex with underage people. By 2004, a vigilante group called "Perverted Justice" had

joined with NBC *Dateline* (in a program called *To Catch a Predator* with Chris Hansen, as documented in his book) to set up a particularly notorious set of stings. Men with no criminal records and pillars of the community were caught by these. In one particularly excruciating case, a Maryland rabbi, David Kaye, was indicted nine months after his unwise visit to a Virginia home and then convicted in federal court, and had not been home since he surrendered to police nine months after the incident, in mid 2006 (until release in 2012). The idea of "purpose" or "intent" started to take hold legally in the Web world, just as it had in the "real world."

Social networking, as we know it today, came into being around 2004, with Myspace the first player, to gradually be displaced by Facebook once, around 2006, Zuckerberg moved Facebook (which he "invented" at Harvard in early 2004, as documented in many books and films like *The Social Network*) into the general public from the campus-specific environment. By 2006, pundits were starting to talk about the problem of "online reputation," and companies like Michael Fertik's "Reputation Defender" and several others were founded.

The "reputation" problem exploded, partly because the public as a whole, including the world of employers and universities, did not know how to relate to information it could garner from the web with search engines. People would be denied jobs for their own content, but also for content others posted about them (including "tagging" of images, which only very recently has come with a permission mechanism from Facebook). Sometimes people would be misidentified; employers would reject resumes and the job applicant would never know that he or she was confused with someone else. Beyond the problem of deliberate identity theft (becoming a public problem by around 2004 or so), it's amazingly easy to mix people up with the same name on the web.

Further, as I have noted, there seemed to be no "pre-publication review" of what went up on the Web, and few consequences in practice for most people who bullied someone else online.

Added to this was the subtle fact that social networking sites do purport to serve a different need: to network with people you know, and "publish" preferentially to people who know you, whereas blogging and flat sites (as well as forums) and book authorship are more about broadcasting material and obtaining global feedback – which sometimes does result in "social networking" in practice.

It seemed that we were becoming unglued as a culture, with the "personal responsibility" driving individualism (and free expression) breaking down, perhaps because too many people gained what they had at the expense of others without realizing it – leading to cynicism, bullying, and a failure of respect for law and consent in the usual sense (as libertarians perceive it). Perhaps the unwinding of social ties associated with the family and other hierarchies had left a lot of less intact people adrift. In time, people starting using the Internet to hunt down and stalk others, sometimes even for home invasions or possibly frame others for crimes.

06 – THE SUB

In the midst of all this, my own "incident" at a high school occurred in October 2005. Even here, it's important to understand that it had started in the background of more conventional "First Amendment"

issues. I had already shown my COPA litigation online to some history teachers at some high schools and generally teachers and administrators found this interesting and possibly important to what they should be teaching (at least in civics, and technology), because COPA had threatened “free entry” self-published online speech. But there were other threats, too. Around 2002, a court had ruled that the McCain-Feingold campaign finance law could mean that the FEC had to concern itself with whether bloggers’ writings could amount to indirect but illegal campaign contributions. Some conservative sources, including the *Washington Times,* commented that the FEC situation, if not brought under control, could spell the end of the “free entry” system for Internet speech (which had survived with the DMCA Safe Harbor and Section 230). In school systems, teachers followed a syllabus, and often didn’t “connect the dots” among more recent trends that were more relevant to students’ future lives than teachers and administrators could imagine. Substitute teachers, who came from the “real world,” might have an opportunity to make the school establishments more aware of these things. But, watch out!

I had also thrown some other hydrocarbons (reducing agents!) on my own fires. Early in 2005, I had posted on my doaskdotell.com website another perspective called “The Privilege of Being Listened To.” I explored the idea that most people make political arguments from the one-sided perspective of their own needs (indeed sometimes related to personal non-performance or non-competitiveness), amplified by elective (and sometimes “inherited”) family responsibility. I wrote that what I did was try to set an example of objectivity, but I was beginning to see that this could ring hollow if I wasn’t willing to take on the risks and responsibilities (having children) that others had. It was beginning to seem that speaking out in a “free entry” environment was inviting people to throw responsibility at me. Suddenly, it was starting to seem as if no debate about anything was necessary if people could always do what they should, and a certain kind of moral fundamentalism was starting to intrude my thinking.

I also did something much more provocative. I posted a number of my screenplay scripts, started in Minnesota when I had been attending a screenwriters’ workshop, on my site. A few of them reproduced my William and Mary expulsion, including some of the vulgar language of dormitory talk from the other young men. A couple of them (one a sci-fi UFO piece) had subplots where a character arguably like me had been taken in by advances from a Clark Kent-like, physically mature but legally underage teenager, and wound up in prison for allowing an ephebophilic interest to be acted out. One of these scripts was a 30-minute short called “The Sub.” In that movie, an aging substitute teacher named Bill, arguably resembling me (since I used my nickname Bill as a partial “pseudonym” in authoring the book) meets a tenth-grade musical prodigy with a “Clark Kent” sort of appearance and presence. “Clark” feigns a disco embrace one time between classes, and then takes an interest in Bill’s unpublished music after finding it on the Internet. One day Bill has a cardiac arrest at work and Clark defibrillates him. Bill refuses bypass surgery in the hospital and returns to work. One day Clark invites Bill over to his house to look at the music, and tricks Bill into helping him make a fake ID card (that would be harder to do now than it was in 2005). Then Clark shows up at “Youth Night” (18 and over, no alcohol) at a disco and dances with Bill. Others see the incident and call police. Bill is arrested at school. After perambulations with his own attorney and DA, Bill decides that it is better to go to jail than be out and about as a registered sex offender. In jail, he has another cardiac arrest, and dies during treatment. But Clark performs his music

in public with the idea that his music will live forever, even if he doesn't and if he has no biological descendants.

I had done one other thing to stoke the Venusian lava flows. I had written an essay about substitute teaching on my "doaskdotell" site, and noted that subs were being unexpectedly confronted with the possibility of providing custodial care for certain special education students. I noted that I thought I should not accept assignments involving such an exposure because I had "outed" myself in print and on the Web, and that, by analogy to the reasoning that had once been used to implement "don't ask, don't tell," I might be violating legal privacy rights of the disabled.

One Wednesday morning in October 2005, while the kids were taking an AP placement test, I found the *Washington Times* article about the FEC (Federal Election Commission) and showed it to a first year "student" teacher. The article expressed the (already noted) legal concerns that bloggers were sometimes making indirect and unaccounted political contributions, which might (until later resolved quietly) have led to "crackdowns" on political (or at least partisan) blogging. She was quite interested in the significance of the piece, so I gave her a sheet of paper naming my website and some files related to the FEC issue, including "The Privilege of Being Listened to" and a piece about employer blogging policies. I did not mention the screenplays. Nothing happened (I, thinking this could be a good lesson for kids on the First Amendment, even tracked down the *Washington Post* editorial that the *Times* claimed to be responding to, in the high school library), and the third day went uneventfully. But at home I got a cell phone call saying that the intern had been "offended" by the "inappropriate website reference" and that I was banned from the school. (When the cell phone buzzed, I had even been "reviewing" the film the kids and I had seen at school that day, *The Most Dangerous Game*, based on the notorious 1924 story by Richard Connell.) Then things really got complicated, as I explain in a long blog posting here (July 27, 2007, url is (Footnote blog entry "DADT3-C3-1" aka DADT3-B1-Bill20070727"). I wasn't banned, and was invited back in December and met with the principal. Again, this whole sequence could make a movie itself, but the principal scolded me for bringing personal materials into school, which wasn't really correct. Later I would find, from server logs, that she had found the screenplay by Googling "Bill Boushka sex offender" (actually without quotes, not the correct way to do it, and the search engine actually picked up my name off a copyright notice!) That told me that the school had known about the screenplay draft with its controversial material before, as if some student, teacher, administrator or parent had found it with Google. In fact, the previous spring, another male teacher had been arrested and fired for touching a female student, in a circumstance somewhat resembling the screenplay. And even my own website had noted that I had been "inspired' by the film *Student Seduction* (Lionsgate) where a female chemistry teacher is set up for prosecution by a male student. It's important to note that I never mentioned my presence on the Web to any students or classes at any school. (There's more chilling evidence that they intended to confront me the third morning, and then decided they didn't have real grounds.)

The morning of my meeting with the principal in December 2005, I actually overheard a student in an AP Chemistry class say about me, "that's the 'gays in the military' guy" (a compliment), so I knew they had found me online! I decided to stop subbing after that meeting, and, again, the history is rather intricate, but the essential concerns bear noting. (Actually, I worked for a while in 2006 in another

capacity for the school district and subbed again in 2007, but not at that school, where I remained "banned" without the need to show cause. I did remove the text of the screenplay from my site eventually, and it has been kept offline. I have expanded it into a potential feature.)

Could I have taken legal action against the school district? There is the First Amendment claim. I could conceivably take legal action against the school district as a public employee, and the standards for teachers (the *Tinker* case) for off-duty speech are somewhat nebulous. However, generally, the speech must be about a matter of public concern (and not constitute just a personal rant), although it would seem to me that a fictive piece showing the vulnerability of teachers is certainly of public concern.

What worried me was the new flip side, "**implicit content**," that is, what readers (in this case, minor students) are likely to see as the "purpose" of the writing. It could be true that the only purpose is to make an argument about the vulnerability of (substitute) teachers, as well as, perhaps, a philosophical (if ironic) argument about vicarious immortality (after all, historically at the heart of the moral objections to homosexuality), or maybe even a fable about "temptation." But what probably upset the school was that I used my own nickname and created a "victim" obviously like myself, self-libel. (My blog posting, listed in the Bibliography, goes into the legal arguments as to whether that would hold in court.) Arguably, unless I was paid to make the posting for income, my only "purpose" could be construed as to tempt students into making overtures like those in the screenplay. If that were my "intent," conceivably I could wind up in jail. More recently, I've discovered that the way Virginia law is written, the state would have to show some other action on my part in approaching a student to show "purpose"; in that case, the screenplay could become auxiliary "evidence," but I had never made any such approach. Remember, at this time, the *Dateline* series with Chris Hansen (mentioned above) was getting a lot of attention. The facts are quite different in those cases from this, but there is still the common element that the "speaker" had rationalized his actions because of the impersonality and invisibility of other "real" people when logged on to the Internet. It's curious that after this incident with my screenplay and the visibility of the *Dateline* series, arrests of teachers for improper behavior around the country suddenly seemed to skyrocket. If all the coincidences of that week had not occurred and if I had not mentioned my online life to the teacher, I still think I would have gotten an unexpected "do not send" letter soon about that school, which had been one of my favorite places for assignments.

So, an existential problem grows: if one is speaking on the web, one's "purpose" can carry consequences. Speech, designed just to show "I'm right, you're wrong" if unaccompanied by willingness or even eagerness to enter new areas of personal responsibility, could be viewed has intended to provoke disruptive behavior in others. Bloggers who re-report provocative comments made by extremists could be seen as dignifying them and acting in complicity, whereas the established news media could report the same material out of its normal professional function. In a sense, from amateurs, commercial (one-sided) speech might be more defendable, because its results can be measured (revenues or even profits) and can support real families. The democratization so welcomed on the Web gets flipped upside-down. This was an emotionally shocking development. (On comments, there's another trend: people tend to believe that I share the views of a book or film I review, and some commenters "blame" me for reinforcing an objectionable view merely by "reviewing" it.)

All of a sudden, self-publishing solely to make a name for yourself as a kibitzer who screamed “I told you so” could be dangerous. It’s more than just shoot the messenger. If you observe and criticize others, you should have a vested interest in them, become responsible for them. That could even evolve into a legal precept. I thought, after all, I had merely authored a story, warning teachers of what I thought could happen to almost any teacher. True, I used my own pseudonym in a trivial way, but I would have considered it well within the First Amendment, even for teachers, to broadcast what could happen to anyone, even if that could include me. I guess I stepped on the first law of witchcraft, “You create your own reality.” There was, in my mind, a replay of what had happened in 1961 at William and Mary: in a desire to broadcast a statement that was intellectually correct (as with “latent homosexuality” in 1961) and step on people’s toes over their mental sloppiness, I had stepped over some invisible line or through a gray area or “Erasure” (as Clive Barker would call it) into compulsiveness.

The “implicit content” problem can have other practical consequences. My “blogger journalism business model” practically compels me to “cover everything” now in order to find all the dots to connect. Yup, “do ask, do tell” equals Anderson Cooper’s “keeping them honest” and equals “connect the dots.” If I write a blog post, say, on untraceable guns printed in plastic from 3D printers, an immature person who finds the blog post in a search engine could think I am encouraging someone to make such a gun, not realizing the context that is apparent to someone who looks at many of my postings as a whole. The same person would probably understand that a “professional” and established news organization has a “legitimate” reason to report the story without the appearance of enticement. Or, if I report a “Be Brave and Shave” benefit for cancer chemotherapy patients at a local neighborhood tavern and don’t participate myself, someone might read contempt for the whole idea from the posting.

Sometimes I get emails from people who think that I can give them “legal advice” on specific topics that I have written about, such as Social Security eligibility (or Annual Earnings Test), or filial responsibility laws (Chapter 5). I don’t make any representation of being qualified to do that, but the appearance could conceivably prove troublesome. In one of two cases, I’ve been mixed up with other “professionals” and “artists” because of similarity in blog appearance and worldview.

Social networking complicated the picture. First, Facebook particularly took the position that one has only one valid identity, and that the separation between self, work and family is no longer tenable (Zuckerberg has even said that to maintain multiple identities shows a lack of integrity. Zuckerberg was a freshman at Harvard the spring that “don’t ask, don’t tell” led to a controversy with military recruiters on campus. This was a year before he invented his first cut at “Facebook” but he must have heard about it, though perhaps even the military policy had impressed him as a mode of legally-forced dishonesty.) So much for my concerns about conflict of interest (including “Conflict of Interest II” when I was a sub) and even for don’t ask, don’t tell! A lot has been written about Zuckerberg’s apparent duplicity on providing users with more clear-cut privacy protection, because without some public openness about identity as a morally compelling precept, he has no business model. In any case, the experience in the “online reputation” area has shown that while search engines are significant (as in my case), other behaviors are too (as they were with me); even private emails and whitelisted comments and images get sent to the wrong hands (as well as social networking postings made under privacy settings), resulting in job loss, divorce, and other consequences. Zuckerberg is a bit Janus-faced on whether Facebook really is

predicated on networking with people you really know. In practice, both Facebook and Twitter have become powerful politically, especially in totalitarian countries.

In fact, it is not too much to claim that Facebook, particularly, has destroyed the idea of leading a "double life," or of living in a "separate but equal" (or pseudo-equal) status in one's separate world without meaningful participation in "the lives of others."

The "self-publishing" model – again, more a Web 1.0 phenomenon born in the '90s – raises still another question with regard to future employment and business arrangements. If one develops a propensity to comment on his workplace, even "constructively" and even without disclosing legally confidential information, future employers, by Googling, could discover that tendency and become concerned that eventually the candidate will "out" the employer, with no recourse for rebuttal. Perhaps landlords would behave the same way (although I haven't heard of Tenant Check looking for issues like this "yet"). Already, some physicians demand contractual gag orders of new patients. Old-fashioned service businesses had to deal with the possibility that one online heckler, on a review site enjoying Section 230 immunity, could practically shut them down. Looking ahead, we can see that social networking, with more finely tuned use of privacy controls, could answer these problems.

07 – SETTLING "CONFLICT OF INTEREST," and (more) ONLINE REPUTATION

Since 2006, a number of entrepreneurs have started businesses offering to help people monitor and repair their online reputations. The best known, as noted, is Michael Fertik and his Reputation Defender. But online reputation spreads into commercial areas and in various ways and affects businesses as well as individuals.

My take on this issue is to recognize that online activity has both "publication" or "broadcast," and "social networking" components. These overlap. Generally, there is a risk that clearly inappropriate comments about another person, made in digital media will get repeated and harm the reputation of the person. On one end of this problem, there is the serious problem of cyberbullying, which can occur in social networking sites or in chat and cell phone text messages, all of this clearly outside of what we normally think of as "publication."

It's clear that codes of conduct in employment and in school systems should address these problems, even when they occur off campus with personal resources.

It's true that as a legal matter in libel law, "publication" means a written statement (like a text message) shown to at least one other person who understands it. But in practice, as the Internet has evolved since the late 1990s, "publication" means exporting to the Web texts (or audio and images or video) that can be read by "everyone" (or as "public," to use Facebook terminology) and generally allowing search engines to index it. Most independent blogs and websites published in "public mode" (the usual default, meaning accessible to "everyone") will get indexed unless the publisher or author does something to stop it.

In the era before the Web, it was a big deal to "get published." By the time I published my first book, desktop publishing and book manufacturing had considerably reduced the cost, but at one time in the past, subsidy (or "vanity") publishing was indeed very expensive and typically not very reputable. That has indeed changed now, especially with "print on demand" book publishing as well as "cooperative publishing" (or "supported self-publishing"). So authors frequently do not have the supervision, or the financial pressure to produce results, if they just want to be "listened to," that they once did, when conventional trade publishers would pull titles that did not actually earn profits. Think back a few centuries when people needed "licenses" to publish (they still do in China and Singapore). There exists, then, an element of "amateurism" in today's publication world that not everyone thinks is a good thing. So it's a good question whether publication and distribution are a "fundamental right" of the individual as part of the First Amendment. We do know from COPA litigation that the Supreme Court has said that once distribution can happen, government cannot constitutionally censor on the basis of content itself.

After selling my first printing, in 2000 I placed my first book with an on-demand publisher, iUniverse, and followed with a sequel (as I explained in the Introduction). I get repeated calls from them trying to convince me to try marketing programs to keep selling old books, when the only way to keep selling for most writers (especially policy non-fiction) is to come up with new or updated content. There seems to be an unspoken insinuation that people should publish only when they have to sell. Did I undermine my own sales by placing the text "for free" online (generating the COPA issue)? In theory, maybe I should only allowed to publish what I can "sell" (implicit content again). Some people in more traditional media businesses might then feel that their jobs were less threatened by no-cost competition, a bigger problem than piracy. In practice, offering free online viewing got me much more visibility. Probably hundreds of thousands of people would learn, from free online access to my text, of my basic "story" relevant to a hot political issue, particularly gays in the military, leveraging the eventual influence on the debate and probably contributing to the ultimate repeal of DADT. Actor-filmmaker-musician Reid Ewing has produced a few satirical videos having fun with the "it's free" problem.

As noted already before, one of the most serious potential challenges to "free entry" Web publishing, as we have come to know it, would be downstream liability of service providers, in various areas like libel and copyright. But fortunately for web publishers, as noted before, Section 230 of the 1996 Telecommunications Act (e.g., that portion of the Communications Decency Act that stood) prevents providers (like YouTube) from having downstream liability in most cases related to libel. That would also protect people who host forums, or accept comments on their blogs, but only from content provided by others. There are those who want to change this, and overseas (as with a case in Italy) there have been some serious downstream liability issues, even criminal prosecutions of corporate management. In fact, in July 2013, the National Association for Attorneys General circulated a letter to Congress asking it to remove the tricky protection in Section 230 that state prosecutors say prevents them from enforcing states laws against companies that sell some kinds of illicit services. The ACLU and other free speech advocates say that this proposal would put ordinary service providers in an impossible position of having to screen everything. As of this writing, it is unclear where this will go; it is true that this proposal would not affect civil, but just the less frequently occurring potential criminal liability. Likewise, the "Safe Harbor" portion of the Digital Millennium Copyright Act (DMCA) can protect service

providers, but not individual writers or publishers, in situations involving copyright infringement. Obviously, Blogger or YouTube could not pre-screen every "amateur" posting for libel, harassment, or copyright, or even possible criminal law problems and operate the ad-driven business it has today. Nevertheless, service providers like YouTube have some implemented automated screening for possible copyright infringement. Screening or editing content at all, even with the best moral intentions, without jeopardizing downstream liability protections can be legally tricky. The same Section 230 provisions and DMCA Safe Harbor procedures protect social networking hosts like Twitter, Facebook and Myspace, although in an environment where privacy settings (now becoming stronger) are used, the practical risks change, away from incidents precipitated by search engine discovery to individualized complaints.

But, again, what concerns me is something even more subtle. When a blogger or webmaster (or even book publisher) puts out material for everyone to see, there is a risk that more generic material that still expresses political and social viewpoints about various kinds of people could be construed as showing that the speaker is prejudiced against other people with certain issues. For example, someone with many direct reports in the workplace, or a teacher with the power to give grades that affect college placement (generally, not a substitute teacher, as in the circumstance I discussed above), might be found to have certain prejudices regarding sexual orientation, race, obesity, disability, or other matters. I could tell from the logs on my own sites that people would look for material with quirky search arguments, possibly looking for prejudicial attitudes on my part. In some cases, this could lead to "hostile workplace" charges.

That's why I believe when someone has direct reports in the workplace, or makes underwriting decisions about customers, that person probably should not engage in "blogger journalism" without pre-publication review of what he will publish by third parties. When he uses social media for his own purposes (not his employer's), he should use full privacy controls and limit the number of followers or "friends" to the number of people whom he could really know (like fewer than 200), unless the marketing situation in his job says otherwise. Like it or not, social media have transformed the world to the point that you have one public face (you are no longer Janus) and your employer or legitimate career (however unfair the workplace) has laid claim to it.

Maybe in this kind of world, self-broadcast speech becomes its own justification, as a pre-emption.

08 – MARCH OF THE TROLLS (not Liszt's *Dance of the Gnomes*)

Over the past ten years or so, the legal risks to ordinary bloggers and people who post on the web has indeed grown just as risk to online reputation has increased.

We all know the story of Shawn Fanning and Napster (or maybe we don't), but a few years ago it was becoming common for P2P users to get sudden phone calls demanding settlements for illegal downloads, under suits filed with the RIAA. That has been stopped, but instead a new kind of copyright troll, like the US Copyright Group, started mass-suing downloaders of a few select movies (that included *Hurt Locker*).

The biggest practical danger for users might have been getting sued for behavior of someone else in the household. Some defendants, including one in Minnesota who lost a big judgment, insisted on their innocence. Parents could be accountable for their kids. But what about roommates? Or, worse, what if a wardriver got into your home wireless router, which could be tracked, to do illegal downloads?

But the most notorious problem, starting in 2010, had nothing to do with P2P. A new business model evolved, for a "law firm" to "buy" the rights to newspaper articles from selected client papers, then troll the Internet for bloggers who reproduced articles. This has become the Righthaven controversy. The company entered into an agreement with the *Las Vegas Journal Review*, and then with some other small papers in Colorado, Arkansas and South Carolina and started suing bloggers for reproducing parts of their articles and photos. It tried to shake them down for settlements, figuring they did not have the financial resources to defend themselves from even frivolous claims. This could become an existential threat to the blogging world.

Many questions arise. First, there is another downstream liability mechanism that Righthaven bypassed. That is, of course, the "Safe Harbor" takedown provision of the DMCA, or Digital Millennium Copyright Act of 1998. The problem is that the provision applies only to service providers and protects them from downstream liability when they comply. Righthaven tried to take advantage of the fact that Safe Harbor does not protect original content writers. DMCA Safe Harbor does not protect individual writers from liability if a copyright owner chooses to go after them, unless they set themselves up as "service providers" and host content of other people, and even then the protection applies only to the content of others, not self. YouTube has recently automated its complaint handling mechanism, perhaps reducing risk in the video area but not with blog postings themselves.

Another question involves fair use. In some of the cases that have been tried, judges have said that sometimes reproduction of newspaper articles may indeed still be fair use. This may or may not be true on blogs that have nominal commercial use (as with accepting Adsense ads and nominal revenue stream).

But the biggest recent question may be Righthaven's standing to sue. Some judges have said that Righthaven does not really own the copyrights in the manner required by the 1978 Copyright Act. All of this could wind up before the Supreme Court some day, or Congress could step in with some real tort reform, providing bigger penalties (like "loser pays") for frivolous or abusive litigation and prohibit copyright assignment for litigation only. Copyright trolling developments need to be closely followed.

Another contentious issue could be trademark law, since in 2006 Congress changed trademark law to allow trademark owners to bring litigation based on a prospective expectation of dilution. So far, there does not seem to be much increase in litigation regarding domain names that resemble commercial trademarks.

Also related to copyright trolling is "patent trolling," where a company buys some patents that may be generic or frivolous or poorly conceived, and then demands license fees from customers of companies that use the technology, a kind of "extortion." This has particularly affected software developers. Congress has a "Shield" law under consideration that may discourage some of the abuse.

Recently, Congress has stirred up the brew by proposing laws (like Protect-IP) allowing plaintiffs to bring action against domains that appear dedicated to promoting copyright or trademark infringement, probably without sufficient due process. Protect-IP stalled in the Senate, but in the fall of 2011, the House introduced a similar Stop Online Piracy Act, or SOPA, with an intention to try to pass it by the end of 2011. SOPA (rhymes with COPA, ironically) would give private copyright and trademark holders the right to complain to courts about infringement, and get whole sites taken down because of the actions (or content) of a few or even one user (the supposed "school detention problem"). Earlier versions, like COICA, had just proposed that certain commercial interests like credit card issuers or ad networks, couldn't interface with sites on a federal "blacklist." But with SOPA, DMCA Safe Harbor might not prevent a takedown, and some observers think that the requirement to use "technically feasible means" to stop infringers would require pro-active prescreening of content put up by amateurs, as would the practical threat that one infringer could bring a site down (through a variety of means such as domain name cutoff, payment processor stoppage, removal from search engines, and advertiser cutoff, essentially operating a blacklist). In such a world continuation of the posting of amateur content as we know it might not be continued. Some observers feel that the same risk exists with a July 2013 letter from National Association for Attorneys General to weaken Section 230, as noted already.

In fact, it took a partial Internet blackout of sites like Wikipedia and Reddit, organized in part by Aaron Swartz, to convince Congress that SOPA was a lose-lose proposition. The government, however, would bully Swartz with a gratuitous prosecution over its way of interpreting "terms of service" law, and, tragically, Swartz would take his own life in early 2013. The government had been angered by Swartz's downloading of public domain court documents from PACER, which the government had grown used to collecting fees for. It jumped on Swartz when he downloaded academic journals from JSTOR and MIT that technically were covered by copyright.

It may be relevant that sites like Facebook, Myspace, and Twitter (and now Google+) aim not at public self-publication but at social networking within a variety of specific social circles, almost, in a philosophical sense, an antithesis of "getting published" for its own sake without third-party supervision. But in practice, the possibility for torts (whether libel or copyright infringement) exists both in conventional online publishing forums (public blogs, e-books, videos) and in selective social networking. It's hard to predict how bills like SOPA could affect both. Besides gutting downstream liability protections, other future dangers exist, such as requiring mandatory insurance (section 10, below).

09 – WATCH FOR THAT KNOCK ON THE DOOR

Ever since email and Internet access in the home became commonplace in the '90s, families, more than singleton individuals, have tended to be exposed to a number of risks.

For example, in Arizona in 2006 a teen was accused of downloading child pornography when there was reason to believe a hacker could have put it there. In numerous instances, employees and teachers have been accused of viewing pornography on computers later found to be infected with viruses. In Florida and New York State, people have been arrested when others have hijacked their routers to download child pornography.

There used to be an “absolute liability” doctrine that maintained that a party was totally responsible for any illegal content on his computer, particularly child pornography. This has not stood up, fortunately. But federal law in the area is predicated on “knowing” possession, as it is now in most states. Still, the practical risks for users in defending themselves could be crippling. A few states now have laws requiring repair technicians to report child pornography when they find it, yet they may not be trained in the legal limitations of the definition of it. Generally, technicians and service providers are not required to prescreen for child pornography, only to report it to authorities if they see it or a consumer informs them about it. That’s an important concept when compared to downstream liability legal protections like Section 230. Similar concerns may sometimes apply to obscenity, or to issues like sex trafficking, and some states, as we’ve noted, want to increase service provider responsibilities in these areas.

On the other end, email sender spoofing has been a problem that would appear to be able to make a person responsible for sending spam. Fortunately, it’s nearly always possible to track real senders.

Cable companies have been encouraging the use of home wireless networks, with routers with only one physical output to a home network. Users need to be trained to use them properly. “Wardrivers” can use the wireless signals for illegal behavior (with respect to copyright or even child pornography). This could lead to service slowdowns or interruptions over the new “six strikes” programs that the CCI (Center for Copyright Information) has organized with ISPs, or even sometimes prosecutions (arrests have happened in Florida and New York State). Should home and small business users become their brothers’ keepers?

One encouraging development, right now, however, seems to be the MiFi card, a portable hot spot which seems much more secure than hotel wireless or maybe even home wireless.

The “spam” issue has become (since about 2005 or so) a major problem in a different sense: it undermines the credibility of “free” blogging platforms. Spammers lift material from legitimate blogs and generate fake blogs. Blogging platforms such as Google’s sometimes incorrectly remove “legitimate” (original) blogs because they are hard to separate for clever spam copies. Blogger “Nitecruz” has written extensively on the problem. Some experts say that it is safer to link any “free blog” to a domain space that you pay for in a conventional way, except that to be really protected you would need to host your own copy of the Blogger or WordPress software. Some critics maintain that amateurism will always attract spam.

A related issue for bloggers who use advertising platforms like Adsense for earning small revenue from their blogs has been invalid clicking or “vandal” clicking from disgruntled readers, causing advertising accounts to be revoked. Another question is whether an “amateur” blog that runs ads should be regarded as “commercial” for fair use or other copyright purposes.

Another controversy is the pressure from government and users on companies to allow Internet users to be opt out of being “tracked” (by a less-than-convincing comparison to “do not call” in telemarketing). Most major browsers offer anti-tracking now, sometimes as a preset default. There is concern that gutting the ability of companies to track could undermine the whole “free entry” system

for newbie Internet publishing, since advertising revenue is what pays for all of this (just as it used to for broadcast TV). But some people say that tracking results only in a tiny fraction of actual ad placement and clicking.

A largely overlooked potential "threat" blew over shortly after 9/11. Authorities feared that terrorists could use "ordinary" websites as a place to park "steganography" – clues for others to look for instructions for future attacks. "Self-promoters" could become targets for such abuse. This did not develop, but I did receive a few emails over the years that may have been clues for possible attacks (including possibly one right before 9/11, which several people got). I did spend some time discussing one of them on the phone with the FBI in 2005. Also, one of the chapters of the (sneak preview) online copy of my second book (***Do Ask, Do Tell: When Liberty Is Stressed***) was hacked around April 1, 2002, approximately where I started talking about the dangers possibly posed by suitcase nukes! A security expert determined that my ISP had left the "site command" open (on a Unix site), allowing a hack. The incident has not re-occurred. This sort of hacking threatens sites (and maybe the willingness of an ISP to continue hosting possible nuisances); better known hacks in the news today deal with personal information, with risks of identity theft or to financial and home security.

After the Boston Marathon bombing on April 15, 2013, some authorities became more concerned with the permissive environment that allows people (although often overseas) to post directions on weapons-making to those who "self-radicalize." Again, that could suggest a raising of the barrier to entry, using gatekeepers, to protect the public. The danger could become complicated if it is really possible for amateurs to make RF (radio frequency) flux guns from cheap raw materials to wipe out electronics in wide areas (like whole neighborhoods), as is suggested in a recent book by Michael Maloof (*A Nation Forsaken*, 2013).

The public outcry after both terror attacks and rampage killings (Aurora, Sandy Hook) have sometimes led police departments or prosecutors to take a "zero tolerance" approach to social media statements that, read literally, sound like threats. A 19-year-old teen near San Antonio has been held awaiting trial for a Facebook statement that he intended as "trash talk" sarcasm, but read on its face sounded like a rampage threat. Prosecutions for misinterpreted Internet use are rare, but very destructive to those caught up in it.

I have not followed the debate on government surveillance as much as some people, and I have mixed feelings about the whole issue of leaks, and the activities of Julian Assange (WikiLeaks), Bradley (or Chelsea) Manning, and now Edward Snowden. I've noted in Chapter 2 that security clearances have been problematic for me. I did publish an embed in one of my blogs of Manning's video incriminating soldiers in Iraq for friendly fire, with no objections from the government (yet!) The question of surveillance has itself become the subject of detailed books (the best one is a 2011 work by GWU law professor Daniel Solove, who has also written extensively about privacy and online reputation). People who have behaved gratuitously may well be more wary of the possibility of false accusations resulting from surveillance, so I understand that even in the US the "nothing to hide" argument is weak. Generally, I don't think that most people need to resort to technical tricks (like TOR, or Project Anonymity Online) to avoid surveillance; "private" criminal hacking is much more dangerous in practice.

Overseas, it can be a different matter. The “Arab Spring” has not always resulted in more freedom or democracy overseas.

10 – INSURANCE HUCKSTERS

I’ve mentioned the conceptual divide in the way the insurance world looked at liability insurance for web and now social media content. The ambiguity would continue until this day, as property companies still sold umbrella coverage with little grasp of the conceptual risks. In September 2008, a group called the Media Bloggers Association arranged for bloggers to be able to purchase liability insurance, which appeared to be rather expensive. I do not know how well it has done, and there would be a question as to whether the premium is charged per site. To get a policy, you first had to take an online course and pass an easy multiple-choice test to show that you understood defamation.

Ultimately, the insurance world will have to learn how to price various kinds of risks associated with the Internet. As in umbrella coverage, that could include liability for libelous statements in emails or blogs, or maybe misuse of a home router by wardriving. But I doubt that it could cover liability risks associated with large-volume blogging or blogs with ad servers. More recently, a few property insurers have become concerned about social media use, because people have sometimes been burglarized after announcing vacation or even concert plans on social media, where people can pretend to be “friends” of others whom they intend to stalk and later rob. Social media use, as a socializing but not particularly as a broadcast or self-publishing tool, has become so universal that it would seem as though the insurance world will have to adapt to it. In fact, insurance companies and agents use social media to promote their businesses anyway.

Because self-publishing may seem **gratuitous** to some (despite its advocates – I remember at least one seminar on self-publishing in Minneapolis in 2002, and another held in 1997 by novelist Vince Flynn), some people might argue that insurance ought to be mandatory, just as it is for auto use. I wonder if this idea will surface soon. One concern would be that if self-publishing (including public-mode blogging) is done for “vanity,” it could, by drawing gratuitous attention to oneself, attract “enemies” (even to family or associates) without actually accruing any real economic benefit. “Whitelisting,” making self-published material available only “privately” to people already known (as encouraged by the structure of social media) could become expected again.

All of this presents a mixed picture for the health of “free entry” web use in the future, especially for broadcast. “Amateurism” has become a topic of debate itself, as in Andrew Keen’s book *The Cult of the Amateur*. No question, newbie speech enriches the debate and helps “keep ‘em honest” and provides a novel, if controversial, check on excessive partisanship in our political culture. But the “amateurs” lack scale and access to due process, as seen with the spam and advertising fraud issues. Bloggers can decide to remain objective (even function as encyclopedic “know-it-all’s”) but are still not held to the deadline and fact-checking standards (and sometimes site hazards) of “professional” news personnel. On the other hand, “amateurism” helped build Wikipedia, which has had to tighten some procedures to retain credibility.

11 – CONCLUSIONS

I took a real "risk" and committed myself, more than I could at first grasp, when I decided back in 1994 to get into publishing on controversial issues, doing it myself as necessary. I was 51 when I made the decision, and it would be hard to make it stand up indefinitely, as I would soon find. Maybe it was OK if I lived only another 25 years or so. At this point, I'm not game to join anyone else's Army, put on someone else's uniform, or raise anyone else's babies. If I can speak for myself, I can't speak publicly for someone else's partisan agenda. I feel I need to cover everything (and take no one's side) because everything is connected, just like in ***Cloud Atlas***.

I feel that I did prove that one person can cover a whole "nest" of issues in such a way that he or she attracts visitors continually, over years; his mere presence as a permanent "devil's advocate" or public ombudsman tends to keep politicians and some corporate interests "honest." (I guess Anderson Cooper owns the phrase "Keeping Them Honest" if I own "Do Ask, Do Tell," which has a similar meaning.) Had I not been "out there," exposed, for 15 years, possibly we would not have a repeal of "don't ask, don't tell" by now. But we could also give Zuckerberg and Facebook a lot of credit for motivating the repeal.

It is difficult to function as a "general practitioner." I do a lot of things: maintain blogs, write fiction and non-fiction books (the first novel is almost ready for final editing as of this writing), play chess, and compose music. Most people can maintain professionalism only by specializing in one or two areas. But in my case, the different areas produce a synergy with one another.

It's also difficult to speak out openly for a long time without creating conflicts with personal or professional commitments, however imperfect they sound in terms of moral ideology. Real responsibility for others requires loyalty, sometimes, and a willingness to accept limits in one's reach. In a broader sense, it relates to the ability to accept forgiveness.

One of the ironies of the history of the Internet is the way social media has actually tended to reinforce social conformity. You need a social media presence now in most lines of work, and you need to use it to support your livelihood (and family), and not your ideology. In the final analysis, the Internet has not made it easier to become "famous" by skipping out on the "rites of passage" (or "tribunals") of real-world competition for popularity and profits. In fact, the idea of "social circles" (more or less like email listserver subscription lists of the past), supposes that the purpose of online activity should be to interact with others, not just to "publish." But in my own case, I found that "broadcast" self-publishing (of Web 1.0) did indeed attract the people I wanted into my physical world. But that opportunity was more effective 15 years ago than it is today.

There are people who think that Internet self-promotion should not be perceived as a fundamental right (as derived from the First Amendment), but should be tempered by sharing responsibility for others. Some people want service providers to assume more downstream liability responsibility to prevent piracy (to protect jobs in legacy music and media industries, which might well fear low-cost competition from "amateurs"), to protect children from cyberbullying, and people in general from reputation damage done by others, often anonymously.

Furthermore, many forces are arguing that companies and advertisers should not be tracking consumer browser behavior (on either computers or mobile devices), because this tracking

compromises personal security. Newer browsers are being offered with “do not track” turned on. (I can tell from the ads that I get that I am definitely being tracked.) And visitors are appropriately wary of interacting with “commercials,” not always realizing that they are “customers.” In time, publishing service platforms (like Google’s Blogger and YouTube, and WordPress) could become less profitable as a result, and the “free entry” world that we expect now could some day come to an end or at least become much more exclusive. I hope that the Web 2.0 to 3.0 or 4.0 world has an ace up its sleeve to face this business-model issue. Business models of providers could be seriously undermined further as an indirect result of their participation in the NSA snooping scandal (whatever one thinks of the spectacle of Edward Snowden). The signs that I receive personally – unsolicited calls to “make” or “raise money” with services or products or for goals that do not seem worthy of or warrant my enthusiasm – are not that encouraging so far.

Remember that the Old Testament ends with the word “curse.”