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Cyberharassment and Online Defamation: a Default Form of Regulations?

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Introduction

The notion of freedom of expression is a fundamental principle of democratic societies, and its importance is reflected in the many laws and regulations aimed at protecting free speech, such as the laws of defamation. Traditional theories justifying freedom of expression often identify three main supporting arguments (Belmas; Chesterman 301). Firstly, freedom of expression is essential to individual self-fulfilment. According to this model, an individual's moral and intellectual development is dependant on that individual being fully able to express their opinions and thoughts; conversely, the listener benefits by being exposed to a wide variety of opinions and views. Secondly, society at large benefits from a "free marketplace of ideas" whereby ideas of value and truth will emerge, and false ideas will be exposed and dismissed (Chesterman 301). Lastly, the freedom to discuss matters of public interest is vital to a genuinely democratic society.

These justifications for the right to free speech were particularly articulated in an emerging discourse on the Internet in the last two decades of the twentieth century, with many commentators presenting this new electronic landscape as a utopia for freedom of expression. In a "discourse of empowerment" (Meikle 75) pioneering Internet advocates such as Howard Rheingold explored the potential this new communications medium offered to revitalise democratic societies through direct participation. Other writers viewed the anarchic, unregulated, and decentralised network as a "technology of freedom" – one that would "defy the tendencies towards censorship and centralised control of speech and content" (de Sola Pool qtd. in Flew 32). John Perry Barlow's 1996 manifesto, *A Declaration of the Independence of Cyberspace*, encompasses beautifully the promise of this new medium as envisaged in the 1990's. "We are creating a world where anyone, anywhere may express his or her beliefs, no matter how singular, without fear of being coerced into silence or conformity."

Central to these utopian predictions was the premise that cyberspace should develop upon "laissez faire principles that characterised the settlement of the American western frontier in the nineteenth century, without attempts at government regulation or social planning" (Dyson qtd. in Flew 34). This notion of the Internet as an extension of the American dream underpinned much of the rhetoric in the following decade, and was particularly evident in the discourse that emerged in relation to freedom of expression. Internet advocacy groups such as the Electronic Frontier Foundation [EFF] stressed the importance of extending the protection of the United States Constitution's First Amendment to the online environment. The application of the First Amendment, which provides constitutional protection for freedom of expression, was viewed as not only vital to the integrity of the Internet, but essential to protect individual users' rights of free speech in cyberspace.

However, the notion of "absolute" free speech rights, as suggested by Barlow in his manifesto, is

problematic. Studies into computer-mediated communication (CMC) suggest liberal free speech codes, as championed by Barlow and groups such as the EFF, have resulted in a contemporary Internet culture that both facilitates and accepts as "normal" an adversarial style of interaction that privileges aggression and confrontation over conciliation and compromise (Belmas 200; Edwards; Herring, *Gender and Power*). According to Edwards, many newsgroups express a traditional "Internet culture" that exhibits a

strong collective sentiment towards anarchy, libertarianism and free speech rights – and a strong corresponding dislike of corporate, governmental or legal authority or control. In this culture, full, frank and unfettered discussion known as "flaming," which was often indistinguishable from rudeness and abuse, was not only tolerated but by and large encouraged. . . . It was and is not uncommon for all newsgroups to degenerate into "flame wars" – torrents of abusive comments which destroy all sensible discussion in the group.

Given this atmosphere, it's not surprising that in many online forums and newsgroups, the individual right to freedom of expression may appear to be valued above and beyond the value of the information imparted, and may be exercised without any thought to the real world consequences that ensue from the exercising of those rights to free speech. Of more concern, perhaps, is the suggestion that this adversarial, confrontational style of interaction has the potential to degenerate into abuse and harassment that may in itself inhibit the free speech rights of other participants (Arnold a; Edwards; Hyman). Observing online forums over an extended period of time has led Arnold to conclude that "people get harassed and leave, get disgusted by the bullying and leave, or filter vigorously, with the end result that the 'community' is one of the likeminded" (a). Although there is little empirical evidence of the prevalence of this type of behaviour (Arnold a), the proliferation of Internet safety sites such as WiredSafety and CyberAngels, which provide advice and information on how to deal with cyberstalking and cyberharassment, suggests the problem of online abuse and harassment is widespread.

The potential for abusive and defamatory behaviour to occur in online environments is further exacerbated by the unique nature of CMC. The relative anonymity of much CMC tends to "have a powerful, disinhibiting effect on behaviour. People allow themselves to behave in ways very different from ordinary, everyday life" (Danet qtd. in Palandri & Green 639). The immediacy and spontaneity of CMC, in which messages are often sent in haste and in the heat of the moment, "tends to lead parties to say things they would not only not normally commit to writing, let alone widely published writing, but would in fact often also not say in face to face interaction with the other party" (Edwards).

Indeed, the Internet provides an ideal platform from which to abuse others with minimal physical risk and inconvenience to oneself, and with little call for accountability. As the following case study of online harassment and defamation highlights, the perpetrator was able to conduct his campaign of harassment from the comfort and safety of his own home, thousands of kilometres away from his victims. As the perpetrator, Bill White asserted wryly, "This is what is so nice about the Internet . . . you can do most of it without leaving your desk" (qtd. in Hyman). This case study explores an instance of sustained and malicious online harassment and defamation, and while the circumstances may be considered bizarre, the impact of the offensive behaviour was extremely damaging, not only to the personal and professional reputation of the immediate target of the abuse, Dr. Trevor Cullen, but, as will be discussed later, to the free speech rights of not only Dr. Cullen, but many other individuals as well.

Cullen v White [1]

The genesis of this case originated in Papua New Guinea in 1996, when Bill White, an American lecturer employed at the Divine Word University in Madang was dismissed, after only one semester of a three year contract. Apparently aggrieved, White began a campaign attacking the

small Roman Catholic university, its staff, volunteers and supporters. During the following six years he registered hundreds of websites, often in the victims' names, and sent thousands of defamatory emails and faxes, attacking a diverse range of individuals and organisations, from the former PNG Acting Governor-General Sir Peter Barter, to AusAid volunteers, clergy members, missionaries, medical practitioners, journalists and lawyers. Online discussion groups which traditionally encouraged robust debate were repeatedly forced to close due to White's abusive postings, and "wild claims about sex scandals, corruption, cover-ups and conspiracies" (Robie, 2003). The common thread to these attacks was White's perception that the individuals were in some way defending the Divine Word University, and were involved in a "conspiracy to cover up the truth about widespread corruption which only he can apprehend" (Henningham).

Dr. Trevor Cullen first met Bill White when they were both working at the Divine Word University in 1996. As they were teaching in different schools, they had little contact with each other. After two years at the Divine Word University, Dr. Cullen moved to the University of Queensland, where he was undertaking his PhD on the topic "Press coverage of HIV / AIDS." Following a series of disturbing messages posted by White to the Pacific Forum website in July 1998, Dr. Cullen sent the Web maestro a letter, asking them to take action on the abusive and defamatory postings. Instead, his letter was posted on the website, and within two days White had created a web page in Dr. Cullen's name, alleging he was a paedophile and had committed academic fraud.

Initially White concentrated his attack on Dr. Cullen through a series of websites defaming him personally and professionally, and through dozens of emails he sent to staff at the University of Queensland, as well as other journalism educators throughout the country. At one stage Dr. Cullen counted sixty four websites that White had linked to his name, and was receiving up to six emails a day, sent by White using an alias identity (Cullen, qtd. in O'Leary). On these abusive and bizarre websites, White claimed Cullen had falsified his academic credentials, fabricated interviews, and misrepresented himself as an ordained priest. Using domain names he had purchased including <http://www.trevorcullen.info/thesis>, White posted excerpts of Dr. Cullen's draft PhD thesis which he had downloaded, and accused him of falsifying research, using unsubstantiated evidence to discredit Dr. Cullen's research. Interspersed with a repetitive theme of "massive fraud" related to Dr. Cullen's PhD thesis, White's commentary also included repeated references to Dr. Cullen's allegedly false theological qualifications, and accusations of paedophilia and homosexuality.

By this stage White's attacks on Dr. Cullen had come to the attention of the wider academic and journalism community. "I had a few lecturers coming to me saying that students had raised concerns about me after coming across sites, which was distressing and embarrassing" (Cullen, qtd. in Hellard). As Dr. Cullen submitted articles to journals and newspapers, or travelled around the Pacific promoting HIV / AIDS awareness, White tracked his activities, "sending abusive emails to news organisations and NGOs across the Pacific" (Cullen *Open Letter*). By this stage White had also created defamatory and abusive websites targeting Dr. Cullen's colleagues; both the Head of The Department of Journalism at the University of Queensland, Professor John Henningham, and Dr. David Robie became the unfortunate recipients of White's vitriolic attacks after coming to Dr. Cullen's defence.

In January 2002 Dr. Cullen moved to Perth, to begin his tenure as a Lecturer in Journalism at Edith Cowan University. Personnel at the University immediately began receiving abusive emails from White, warning them about Dr. Cullen's "fraudulent" academic qualifications. When this didn't have the desired effect, he continued his pattern of creating defamatory websites, this time targeting academic staff at ECU. In an attempt to counter the weight of defamatory material White was posting on the Internet, attacking Dr. Cullen and ECU, the Head of the School of Communications and Multimedia, Professor Robyn Quin, took the extraordinary step of posting an open letter, completely refuting White's allegations. The letter expressed ECU's view that White's allegations were defamatory, illegal and immoral (Quin).

Despite this show of support for Dr. Cullen's academic credentials, and the public rebuttal of White's claims, the campaign of harassment towards Dr. Cullen, and anyone who sought to defend him, continued unabated. Dr. Cullen approached the Federal Police in 2001, and again in March 2003, seeking their assistance in bringing an end to White's offensive behaviour, but was advised there was little they could do, since there was no legislation that dealt specifically with this form of "cyberstalking or cyberslandering," and as White had not physically attacked Dr. Cullen, the police had no power to apprehend him on criminal charges (T. Cullen, personal communication, August 23, 2004). Moreover, the issue was further complicated by the fact that White did not reside in Australia; had he done so, there may have been some opportunity for police intervention.

By this time several other victims had attempted to have the defamatory websites removed, with limited success. The primacy given to free speech in the United States is reflected in regulatory mechanisms applied to Internet Service Providers - The Good Samaritan clause of the United States' *Communications Decency Act* provides protection from liability for ISPs. This has been interpreted in judgments as "Congress has conferred immunity from tort liability as an incentive to Internet Service Providers to self-police the Internet... even where the self-policing is unsuccessful or not even attempted" (qtd. in Collins 67). While some ISPs did remove White's sites after receiving complaints, he was easily able to find other ISPs to host his material. Catalina Hosting, an American based ISP which in 2003 hosted the bulk of White's sites, chose not to remove them despite complaints; perhaps the financial advantages outweighed any moral obligations they may have had (Hyman). Approaches to Internet search engine companies and domain name suppliers have been similarly unsuccessful. Google refused to remove the offending sites, citing an unwillingness to be "judge and jury over the approximately 3 billion Web sites that are searched by Google" (Krane, qtd. in Hyman). Domain name suppliers suggested they could not act unless a legal judgment against White was handed down in the United States. In the meantime, a quick search on Google continued to retrieve dozens of websites created by White, linked together to support his delusional theories and accusations against his victims.

Distressed at the impact it was having on his family and colleagues, and concerned about the effect White's attacks were having not only on his own reputation, but also those individuals who sought to defend him, Dr. Cullen decided to take legal action. In April 2002 he sued White in the Supreme Court of Western Australia, having obtained leave to serve White in California. In a judgment delivered on 3rd September 2003, the Court found that White had gravely defamed Dr. Cullen, deliberately disseminating defamatory statements on the Internet so as to "maximise their detrimental effect. . . . [I]n the circumstances, it is obvious that the defendant intended to cause as much damage and hurt as possible" (Newnes J in *Cullen v White* (2003) WASC 153 at 9). In determining damages the Court took into account the harmful effect of the defamatory statements upon Dr. Cullen's reputation and standing as an academic, and upon his future employment prospects, as well as the "personal distress and anguish" he had suffered (Newnes J in *Cullen v White* (2003) WASC 153 at 19). White did not appear at the proceedings, nor did he raise any defence to the defamatory statements. Dr. Cullen was awarded \$70,000 in compensatory damages, and a further \$25,000 in exemplary damages, in recognition of the deliberate nature of White's attacks: "The conduct of the defendant can be attributed only to a conscious desire on his part to cause the plaintiff the maximum amount of damage, hurt and embarrassment by what amounts to a campaign of deliberately offensive vilification" (Newnes J in *Cullen v White* (2003) 153 at 22).

Unfortunately for Dr. Cullen, fundamental differences in the law of defamation between the United States and Australia mean the Western Australian judgment is unlikely to be recognised in the United States. The First Amendment free speech principles, which underpin the libertarian culture of the Internet, have also influenced the development of law in the United States, particularly in areas related to freedom of expression. As a result, the key mechanism designed to balance the competing interests of freedom of expression and individual reputation - the law of defamation - is radically different in the United States in comparison to Australia (Weaver par. 2).

Electronic Frontiers Australia (EFA 2002) suggest defamation laws in the United States are "significantly less restrictive of speech than the laws of most (probably all) other countries." This presents enormous challenges to Australian plaintiffs such as Dr. Cullen; incongruities in the balance of free speech and reputation between Australia and the United States, as expressed through defamation law, limits the likelihood of Australian judgments being enforced in the United States (Fitzgerald par. 1).

Under these circumstances, individuals in Dr. Cullen's situation are effectively denied any practical form of relief from online defamation (Sheridan qtd. in Belmas 73). The difficulties Dr. Cullen faced in reaching a suitable outcome were to a large extent caused by the fact that White was a resident of the United States, where it is unlikely that foreign defamation judgments that offend First Amendment principles will be enforced. Furthermore, legislation which provides ISPs based in the United States with total immunity from liability for defamation means that decisions on whether to remove offensive and defamatory websites are determined by commercial, rather than legal or ethical considerations.

As a result, although the damage to Dr. Cullen's reputation was incurred largely in Western Australia, he was, for all intents and purposes, subject to a default "American legal hegemony" in operation on the Internet (Callinan J in *Dow Jones & Company Inc. v Gutnick* (2002) High Court Australia. 56 at 200 [*Gutnick*]) which effectively denied him any true measure of justice. The practical impact of this is that despite the judgment in Dr. Cullen's favour, some of White's defamatory web sites can still be accessed over two years later.

Defamation and Free Speech on the Internet

Given the level of cyberharassment and defamation that may be present in electronic environments, and the difficulties this presents to other users such as Dr Cullen, it could be assumed that critical attention would be focused on the impact of such behaviour on cyberspace. However, the bulk of research into online defamation appears to be directed at a macro level; towards the potential impact of traditional, territorially based defamation laws on the integrity of the Internet as a robust "marketplace of ideas," rather than the damage that may be suffered by individuals, and, as evidenced in Bill White's activities, charitable and not-for-profit organisations as well. Many critics accuse plaintiffs of using the legal system to stifle freedom of expression, effectively "chilling" robust debate, and situate the debate within a "David and Goliath" context, wherein wealthy individuals and corporations use defamation laws to stifle opposition, whether that be in the mainstream media or on the Internet.

The discourse surrounding the landmark High Court of Australia decision *Dow Jones & Company Inc. v Gutnick* (2002) HCA 56 reflects this paradigm. This is the first decision by any country's highest court to determine place of publication, and consequently which jurisdiction's laws apply for documents published online. The case concerned an allegedly defamatory article about Melbourne businessman Joseph Gutnick published in an edition of *Barron's Online* in October 2000, and in the equivalent hard copy of the magazine. Gutnick relied on established common law principles which find that publication occurs in the place where it is "received and comprehended by a person (other than the publisher and the plaintiff) ... i.e. when the material sued for appeared on the appellant's website and was 'downloaded'" (Kirby J qtd. in *Gutnick*, 2002 at 108). Applying these principles, the Court found that the offending article had been published in Victoria, where Gutnick resided.

In contrast, Dow Jones submitted that the unique nature of the Internet called for a radical departure from this principle, which would recognise publication as taking place at the point of upload. This would effectively mean articles that appear on *Barron's Online* are, for legal purposes, deemed to have been published in New Jersey where the Dow Jones' servers are located (*Gutnick*, 2002 at 18). Furthermore, they contended that since the content was lawful at the point of upload in the United States, any attempt to enforce local jurisdiction by an Australian court

would act to inhibit the Internet as a forum for transnational discourse. In their appeal to the High Court, Dow Jones noted the contribution the Internet had made to human knowledge and freedom, and argued that:

[T]he law should generally facilitate and encourage such advances, not attempt to restrict or impede them by inconsistent and ineffective ... interventions, for fear of interrupting the benefit that the Internet has already brought and the greater benefits that its continued expansion promises. (Kirby J. qtd. in *Gutnick*, 2002 at 88)

The High Court unanimously rejected Dow Jones' submission, finding that reputation is damaged when the defamatory publication is comprehended by the reader, listener or observer (*Gutnick*, 2002 at 25).

The judgment attracted widespread condemnation from digital libertarian groups such as the EFF, and Australian and international media organisations, concerned at the impact it may have on online publishing, and by extension, freedom of expression on the Internet. Much of the criticism levelled at the *Gutnick* decision draws on ideological concepts of the Internet as an inherently democratic medium, worthy of the highest levels of free speech protection. In contrast to other communications media such as television and radio, which are often the subject of extensive government regulation, historically the Internet has been a relatively unregulated and at times seemingly anarchic medium. This has provided a dynamic forum for the robust exchange of ideas and information for ordinary individuals, in an era in which ownership of the mainstream media is increasingly concentrated in the hands of a few very powerful media moguls.

It is perhaps not surprising then that attempts to regulate the Internet have been met with vociferous opposition. Both the EFF and the American Civil Liberties Union [ACLU] have taken an active stance in promoting freedom of expression on the Internet, by advocating the extension of First Amendment provisions to the online environment and opposing measures aimed at regulating content, such as the United States' *Communications Decency Act 1996*. This is articulated in the ACLU's claim that "the importance of the Internet as 'the most participatory form of mass speech yet developed' requires that the courts perpetually uphold the freedom of speech."

Cyberharassment as Regulation

However, while critics of Internet regulation focus on the importance of free speech in a democratic society, and on the potential chilling effect defamation actions may have on the public sphere, they fail to acknowledge that defamatory and abusive behaviour - as Bill White engaged in - can also be used to effectively stifle free speech. White's activities not only impinged other people's rights of freedom of expression, but also directly impacted on the public sphere by disrupting forums dedicated to fostering open and informed debate. According to Henningham, "White has sent thousands of emails to discussion groups and forums, attempting (often successfully) to disrupt discussions and conferences." White's actions also resulted in the repeated closure of discussion groups. David Robie, the publisher of an online forum disrupted by White's abusive postings, had first attracted White's wrath late in 1998, after he refused to join White in exposing the supposed web of corruption at Divine Word University. Robie then became the target of a torrent of personally abusive and threatening emails, with White accusing him of "sexual misconduct of various kinds [and] betraying the principles of independent and ethical journalism by 'failing to investigate the Divine Word University fraud'" (E-mail communication). When White discovered Robie ran an unmoderated discussion board, *Toktok*, he directed his attention there.

In the space of about four hours on one particular day, he sent 11 messages to the website. The result of this abusive bombardment is that other people offering considered comment on media issues were scared off. It virtually killed off the

discussion board. I closed the board three times and left it closed for a matter of weeks at a time. Remarkably, when I reopened Toktok again, Bill White seemed to be lying in wait and a message from him would be posted on the message board within hours of it being live. (Robie, E-mail communication)

As a result of White's repeated interjections Robie closed the unmoderated board completely, and replaced it with a moderated version. According to Robie, "the time involved in minimising the damage inflicted by Bill White meant less time for providing new content on the website" and resulted in a "'chilling' of free expression on my website" (E-mail communication).

Robie is particularly concerned by the issues raised by White's activities. "[White's] sustained malicious activities with apparent impunity had a disturbing implication for the [I]nternet public sphere and for those committed to ethic[al] and professional journalism and commentary" (E-mail communication). It is illuminating to contrast the basis of Robie's concerns for the future of the Internet, with those of digital libertarians who view restrictions on free speech as the greatest threat to a thriving electronic public sphere. Robie's practical experiences with absolute and unfettered free speech stand in stark contrast to utopian notions of a cyberspace that "would be the embodiment of free speech, devoid of censorship, a realm where discourse would flourish and truth would – somehow – travel more quickly and be more persistent than lies" (Caslon Analytics). As demonstrated on *Toktok*, in practice the 'unregulated' environment of an unmoderated discussion board can too easily be subverted to serve the interests of a very narrow band of users, at the expense of the majority of other users.

The experiences on *Toktok* are a vivid reminder that a lack of formal regulatory measures does not automatically mean an absence of regulation altogether; White imposed his own brand of regulation on Robie's discussion board with devastating effect. This notion of regulation by default has echoes in Lessig's claim that "Liberty in cyberspace ... will not come from the absence of the state. Liberty there, as anywhere, will come from a state of a certain kind" (Lessig qtd. in Given 214). In the context of *Toktok*, the only way that an equitable level of freedom of expression for all participants could be ensured was to institute formal regulatory measures that restricted completely unfettered freedom of expression.

Aside from the damage to personal and professional reputations as a result of White's allegations, his actions also had the potential to cause much wider, long term damage to the offline community. As well as individuals such as Dr. Cullen, White's victims included academics, missionaries and medical practitioners, as well as a number of not-for-profit organisations such as the Australian Government aid agency AusAid and the church aid organisation Cordaid. By implying that individuals, many of them volunteers and missionaries, as well as aid agencies and charitable organisations, were involved in corrupt and inappropriate activities, White's actions had the potential to damage ongoing development work in the Pacific. According to Henningham, "To the extent that [White's attacks] ... may have affected financial and other support for genuine charitable and development activity, they may have adversely affected thousands."

White's network of websites and email postings eventually came to the attention of the mainstream media in mid 2003, after Dr. Cullen resorted to the courts to seek redress. Reports carried in *The Los Angeles Times* (US), *The Sunday Times* (WA), *The West Australian* (WA) and the Australian Broadcasting Corporation's current affairs programme, *The 7.30 Report* exposed the extent of White's activities. *The Los Angeles Times* article "Cyberspace: Last Frontier for Settling Scores?" highlighted the potential danger posed by the Internet. "For all its omnipresence, it remains frontier territory, laden with traps for the unwary" (Hymon). Both *The Los Angeles Times* article and *The 7.30 Report* explored the difficulties victims face in having abusive and defamatory websites removed, in light of the international nature of the network.

Following his normal pattern of behaviour, it wasn't long before White had created abusive

websites about the journalists involved. Incensed that *The Los Angeles Times* was focusing on his behaviour, rather than the alleged scandal he was trying to expose, White set up websites about the reporter just five days after meeting him (Hyman). This was soon followed by further sites abusing two *Los Angeles Times* editors. Similar treatment was meted out to journalists from Australian media outlets following their requests for information. The medical editor of *The West Australian*, and journalists from *The Sunday Times* and *The 7.30 Report* were on the receiving end of a "series of abusive emails and harmful web postings" after contacting White to seek verification of his allegations (Cullen, email 2004).

As with other victims, White attempted to coerce the journalists by threatening to create abusive and damaging websites about them. In essence, his actions had the same goal as his interjections on numerous discussion groups and online forums – to silence dissenting opinions. To some extent he succeeded. While an article revealing White's attacks on Dr. Cullen, and the judgement against him, appeared in the print version of *The West Australian*, a conscious decision was made not to publish it in the web version of the newspaper. According to the journalist who covered the story, the newspaper's proprietors decided the risk of attracting Bill White's attention was too great. Similarly, after making initial inquiries to Dr. Cullen, the local ABC radio station, which posts transcripts of most stories on the ABC website, decided not to pursue the story (Cullen, email 2005).

Disturbingly, the two media organisations that made conscious decisions to "self-censor," in order to avoid unwanted attention from White, may be just the tip of the iceberg. This author has recently learned an Internet research and analysis consultancy, *Caslon Analytics*, has delayed adding information to their website on the *Cullen v White* case because of concern that they too will become a target of White's paranoia (Arnold, 2005b). [2]

There is no way of knowing how many other individuals and organisations have had similar concerns. What is apparent, however, is that aggressive behaviour such as White engaged in has the potential to induce a degree of self-censorship that impacts on the level of information in the electronic public sphere, at least to an extent that may parallel the threat posed by a defamation suit. However, whereas defamation laws operate within a transparent system of laws and regulations, and are open to debate and review, White's form of "regulation" is completely arbitrary. Indeed, it could be argued that the insidious nature of the threat posed by individuals such as White – a threat which often escapes the notice of the broader public and the media - represents a greater risk to an active and engaged public sphere than traditional defamation suits.

Conclusion

The right to freedom of expression is integral to a healthy and vibrant society, and is considered fundamental to an individual's moral and intellectual development. However, it is generally accepted in democratic societies that exercising the right to free speech carries with it the responsibility to ensure co-existing rights are not impinged. This responsibility is enshrined in Article 19 of the *International Covenant of Civil and Political Rights* :

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers. . . . The exercise of [these] rights . . . carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary . . . for respect of the rights or reputation of others. (Art. 19)

Accordingly, in most democratic societies the right to free speech is not considered an "absolute" right; there will be occasions when it may be necessary to apply restrictions to an individual's right to freedom of expression. For example, the application of injunctions to restrict the publication of defamatory material in defamation court proceedings may be considered necessary

to prevent malicious damage to an individual's reputation.

However, evidence suggests that on the Internet the focus is on the right to freedom of expression, rather than on the responsibility to ensure that this right is exercised with due care and respect for the rights of others. Internet advocacy groups such as the EFF justify the privileging of free speech over other co-existing rights, by arguing that the ongoing benefits generated by the Internet far outweigh any disadvantages caused at an individual level.

Furthermore, the historical development of the Internet along "laissez-faire" principles has resulted in the adoption of a particularly liberal interpretation of free speech rights. According to commentators such as Belmas and Edwards, this has contributed to the development of an adversarial and confrontational style of interaction in many online environments. Indeed, participants in many online forums and newsgroups appear to have adopted "absolute" free speech rights, with little consideration given to the real world consequences of their speech.

The practical impact of this is that individuals such as Bill White, who are intent on causing maximum damage to their victims through malicious and abusive behaviour, are effectively protected both by an Internet culture that tacitly affirms aggressive styles of interaction, and by a hegemonic American legal system that strongly privileges the rights of individual speakers, over an individual's right to protect their reputation (EFA).

Furthermore, society's actions in upholding the right of individuals such as White to continually post abusive and defamatory material on the Internet, for fear of impinging on their right to free speech, effectively denies individuals such as Dr. Cullen their fundamental rights under international human rights laws. Moreover, White's aggressive interjections in online newsgroups such as *Toktok* directly impinged the free speech rights of many other individuals, and negatively impacted on a healthy electronic public sphere. While Barlow may have envisaged a utopian cyberspace where anyone could express their beliefs freely, the reality of a self-regulating environment, in which "libertarianism favors the most aggressive individuals" (Herring "Rhetorical Dynamics"), is that the right to free speech may in reality be reserved for the most aggressive. Under these circumstances, the Internet's potential to enhance self-realisation and contribute to a more democratic society appears to be threatened by the very principles that protect unfettered, indiscriminate speech.

This paper, drawing on a case study of online defamation, has aimed to provide a personal perspective on the impact of online harassment and defamation, by considering the very real damage malicious behaviour can have not only on the individual concerned, but on other innocent people as well. Not only does the individual suffer, but the ripple effects of the damage can extend far beyond the victim's immediate sphere of influence. In this particular case study, the defamatory attacks affected not only Dr. Cullen, but through similar defamatory and abusive attacks on educators, volunteer aid workers, missionaries, aid organisations and online forums had the potential to cause much wider, long term damage (Henningham).

It is of concern that while defamation law continues to draw strong criticism from civil libertarians for its chilling effect on free speech, there appears to be little consideration given to other mechanisms of informal regulation. White's abusive and defamatory behaviour is no less an attempt at censorship, albeit directed at people rather than ideas, than many opportunistic defamation lawsuits, yet this form of subversive regulation receives little critical attention. Unfortunately, this more insidious form of censorship continues to remain largely off the radar; unnoticed and unchallenged. In the meantime, individuals such as Dr. Cullen will continue to pay the price for the Internet community's desire for the right to unfettered free speech.

Julie Dare has recently completed a Bachelor of Communications (Honours) at Edith Cowan University . Her thesis examines a case study of online defamation, and explores the difficulties in balancing society's interest in freedom of expression, and an individual's right to protect their reputation against unwarranted slurs. Her research interests are the social and cultural contexts of online communication, and the changing sociocultural role of the Internet.

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Endnotes

[1] This chapter first appeared in a refereed conference paper (Dare) titled "Online Defamation: A Case Study in Competing Rights", presented at the Cultural Studies Association of Australasia Annual Conference 2004: Everyday Transformations: The Twenty-First Century Quotidian. [\[return\]](#)

[2] Caslon Analytics were not aware of White's death in early 2004, until contacted during research by this author, in October 2005. [\[return\]](#)

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