



## **Human Rights in the Digital Age**

### Free Expression and the Four Horsemen of the Infocalypse

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Human Rights Protection – Basis For Achieving Sustainable Development In The 21<sup>st</sup> Century

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PGU – UofL Collaborations

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*And you?*

your interests and spheres of study?

*Why are you here and what do you wish to know?*

- **And reflect on**

- Hopes

- Dreams

- Fears....

- Safety of sisters, brothers, mothers, fathers...

# Our Case Today is Your Case Today on Free Expression and Sustainable Development

- Consider how you begin
  - Are you legislating?
  - Are you regulating?
  - Are you litigating?

# *So, First -Does Sustainable Development Need Free Expression?*

- What is “Sustainable Development?”
- What is “Free Expression?”
- If Sustainable Development does not need Free Expression, everything will be easier, yes?
- Quick thoughts?

# The Goals- a.k.a. *what's in this for you?*

*Consider your first case before the Court of Human Rights, first legislation before the Council of Europe, first promulgation of regulations*

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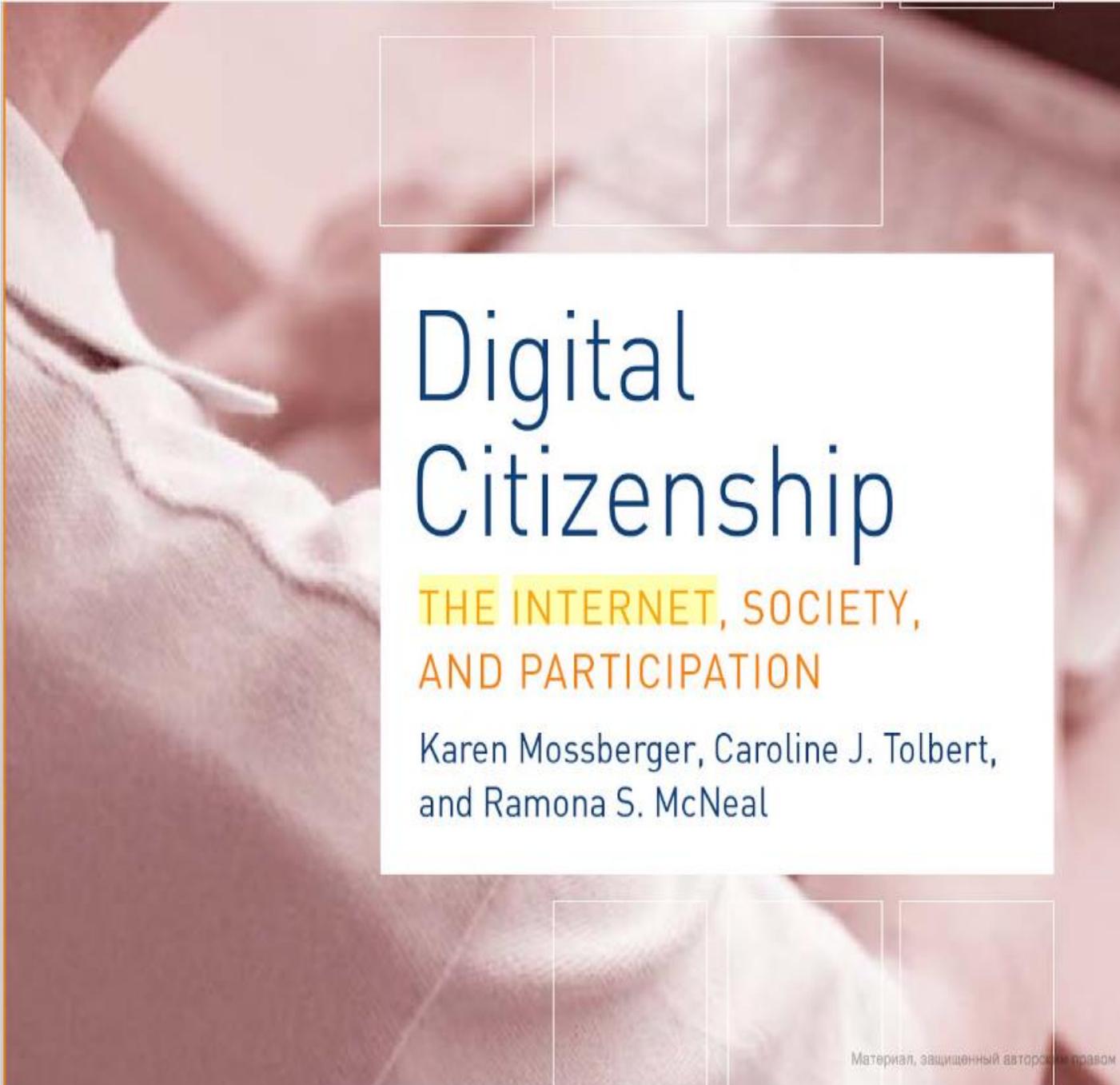
- **You must**
- identify the benefits of free expression for sustainable development
- identify risks and allocate responsibility for misuse of the Internet and computing
- Identify and apply techniques to maximize benefits and minimize risks to free expression via rights and the benefits of the Internet, computing and ICT

# Reno v ACLU 1996 (US)

- The record demonstrates that the growth of the Internet has been and continues to be phenomenal.
- As a matter of constitutional tradition, *in the absence of evidence to the contrary*, we presume that governmental regulation of the content of speech is more likely to interfere with the free exchange of ideas than to encourage it.
- The interest in encouraging freedom of expression in a democratic society outweighs ***any theoretical but unproven*** benefit of censorship.

Digital  
citizenship

consider our  
colleagues  
here:



# Digital Citizenship

THE INTERNET, SOCIETY,  
AND PARTICIPATION

Karen Mossberger, Caroline J. Tolbert,  
and Ramona S. McNeal

- *Warning, Will Robinson...*

- ***...given the nature of the Internet, is pervasiveness and its power ... we must be careful in its application of the principles of free speech to the Internet.***

- *Packingham v. North Carolina*, 137 S. Ct. 1730, 1773 582 US \_\_\_, 198 L. Ed. 2d 273 – (2017) “...the internet offers an unprecedented degree of anonymity and easily permits a would-be molester to assume a false identity. The Court is correct that we should be cautious in applying our free speech precedents to the internet. Ante, at 1736”

# Expression and the Internet- Issues with The Newest Tool of Digital ICT

- There are growing challenges to the reliability and trustworthiness
- Opinion disguised as fact, biased sources of information and error lead to bad decisions .
- Students and those new to the Internet were most likely to fall prey;
  - Social media sites were the top sources of bad information.
  - Dow Jones And the Special Libraries Association, "Bad info: Unreliable Information from Web Leads Many Businesses to Bad Decisions, Missed Opportunities According to Survey," (2011)

- The Internet and Computing have made everyone
  - a mass speaker, a “press” and publisher unto themselves
  - with a right to speak and to receive speech
  - everyone becomes a conduit or avatar of information, whether a natural person or a corporate entity

# But what is coming?

- Goldsmith of Harvard has argued that free expression on the Internet has
  - not only failed to reach its full potential, despite promotion by the government of the United States,
  - but may face further challenges.

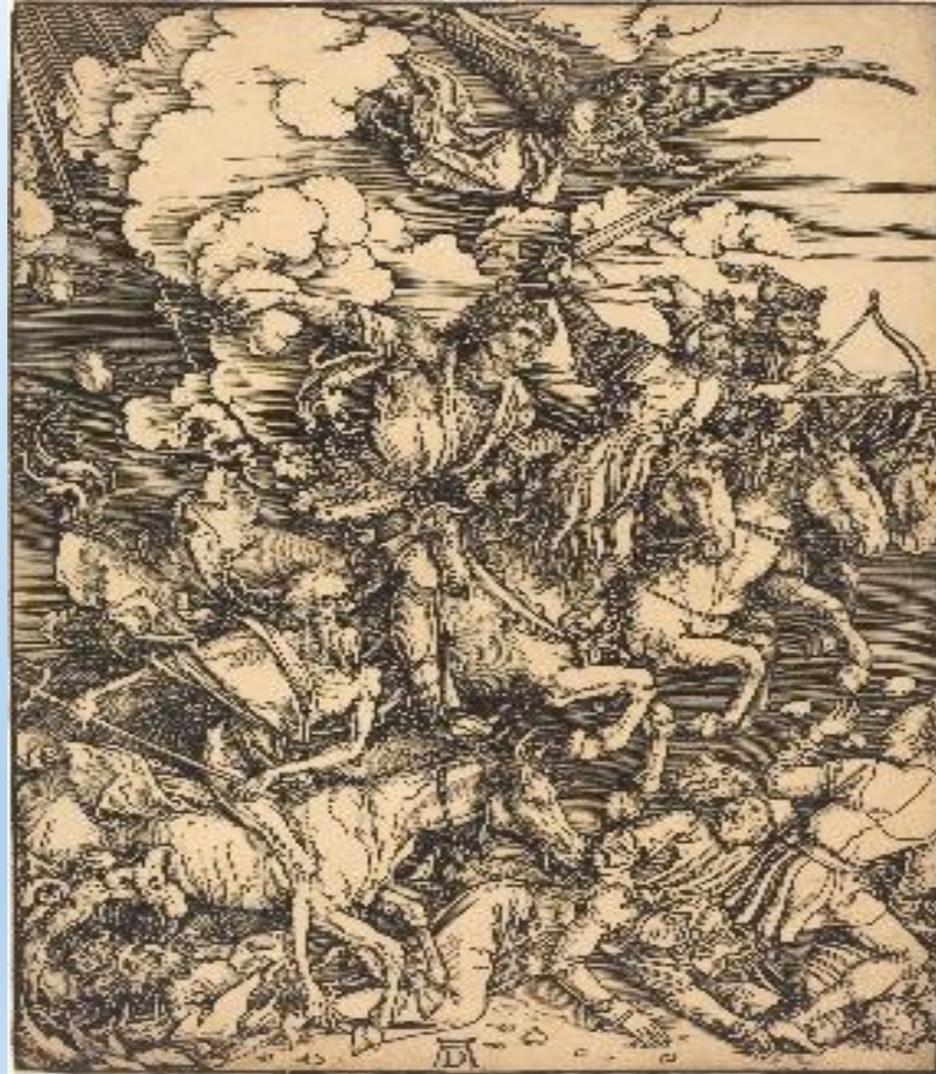
# Threats - the Irony Of Free Expression Under The Modern Internet

- Yemini: “[it] provides more expressive capacity to individuals than ever before, also systematically diminishes their liberty to speak.”
- His taxonomy of the forces destructive of freedom of expression:
  - interference from multiple sources:
  - state-encouraged private interference;
  - multiple modes of interference;
  - new-media concentration;
  - lack of anonymity; and
  - lack of inviolability.

# But to Digress to Our Metaphor: Free Expression and the Horsemen of the Infocalypse

thanks to the National Gallery of Art (US) for their open source project, results shown here

- 



# Is It Just Exaggeration?

- As a metaphor of the information “Infocalypse” it seems gross exaggeration , a weak competitor with Death, Famine, War and Conquest, the Four Horsemen of the Apocalypse, in the Internet Age.
- What about the trinity of super
  - connectivity (the Internet),
  - data collection and storage, and
  - powerful analytics (Big Data)
- Kinetic response for the use of cyber power another exaggeration?

# The Four Horsemen

- Can the Digital Information Age compete with
  - Death
  - Famine
  - War
  - Conquest?
- Or Is it just Good People v. Bad People?
- Regardless, it is about *people and their lives, yes?*

# Who Are The New Horsemen Of The Infocalypse?

- a variety of banners: Ubiquitous computing, Pervasive computing, Big data, The Smart city, the Internet of Things.
- consider the malign new alignments of the Infocalypse:
  - State Regulation,
  - Information Commerce,
  - old-fashioned Criminals, and
  - our own Naïve Human Condition.

# The State, and Things to Come

- National “Firewalls”
- Bastion access points
- Massive analytics

# Commerce

- a certain neutrality towards speech rights
- primary methods of expression around the world are mostly owned by private enterprises
- With the growth of transnational data services, from Alphabet's Google to FaceBook, subject to the laws of those nations within those nations.
  - Further, some nations assert extraterritorial jurisdiction

- pressure from legislative bodies, including in the United States, for service providers to police the content on their sites.
- In the United States the service providers have been protected by Communications Decency Act section 230 safe harbor
- But CDA section 230 is a legislative safe harbor that the legislature can change
  - *Doe v. Backpage.com, LLC*, 817 F.3d 12, 18-24, 29 (1st Cir.2016) (affirming dismissal based on section 230 despite appellants' "persuasive case" that the defendant "tailored its website to make sex trafficking easier." That court stated further "If the evils that the appellants have identified are deemed to outweigh the First Amendment values that drive the CDA, the remedy is through legislation, not through litigation."
  - Thus FOSTA/SESTA

# Criminals

- United States, freedom of expression may be balanced against other, compelling interests.
- criminal or tortious conduct falls outside of First Amendment protections and is subject to regulation
- FOSTA-SESTA legislation holds service providers responsible for the use of their services by those providing commercial sex services through sex trafficking and indenture.

- still a scienter requirement of “knowing” facilitation of the illegal conduct, the promotion or facilitation or assistance to prostitution or sex trafficking,
- but that is a jury issue to decide that leaves the service provider at jeopardy until the final verdict.
- Some opine that this is a stalking horse for even broader online censorship
  - that backdoors regulation of primary speakers through penalties for the third-party service providers, no matter how neutral, that provide the venue for their speech.

- Other risks to free expression from efforts to control criminal activity come
- efforts to enhance information security.
- significant difficulties for transnational protection and prosecution.

# Us

- irresponsible use hurts others and promotes governmental efforts to limit and regulate such irresponsible speech
- there are few venues or programs to promote responsible or accountable use.
  - there are few traditions of proper conduct reinforced by accountability.
- There are few effective systems of accountability, especially where identity in the online world may be hidden

# What to do?

- What should we do?
- What should the state/commerce/community do?
- What should you do?

# *Remember Your Case:*

*1) The Law,*

*2) The Facts,*

*3) The Forum!!!!*

# *First, the Law*

- In Law
  - Absolute?
  - Equity?
  - *Proportionality?*
- Consider Article 38 of the Statute of the ICJ
- Consider U.S. “strict scrutiny”
  - a "compelling governmental interest," and
  - narrowly tailored the law to achieve that interest
    - And actually accomplishes that

# A note on proportionality

- Restrictions/regulations

- need to be suitable and apt and able to achieve the goal
  - (Suitability: Zwecktauglichkeit).
- necessary to achieve such goals, not going beyond what is required
  - (Necessity: Erforderlichkeit).
- appropriate, balancing the purpose and impact
  - (Proportionality in a narrow sense: Zumutbarkeit).
  - **See** Thomas Cottier, Roberto Echandi, Rafael Leal-Arcas, Rachel Liechti, Tetyana Payosova, Charlotte Sieber-Gasser, “The Principle of Proportionality in International Law,” Working Paper No 2012/38 | December 2012, Swiss National Centre for Competence in Research, [https://www.wti.org/media/filer\\_public/9f/1b/9f1bd3cf-dafd-4e14-b07d-8934a0c66b8f/proportionality\\_final\\_29102012\\_with\\_nccr\\_coversheet.pdf](https://www.wti.org/media/filer_public/9f/1b/9f1bd3cf-dafd-4e14-b07d-8934a0c66b8f/proportionality_final_29102012_with_nccr_coversheet.pdf), accessed 23 June 2019

# the Facts

- one estimate:

- March, 2019-4.4 billions of the world's 7.7 billion are internet users
  - Africa showing the strongest growth from around 2% in 2005 to 24% in 2018
- But,
  - ITU noted that significant inequalities remain worldwide for women, girls, older people, indigenous populations and those in poor regions
- So, why does this matter?

# The Forum

- Legislature
- Administrative Process
- Courts
  - Ah, what about the press, the Internet, Vkontacte...

# *Case Problem 1*- identify the benefits, if any, of free expression for sustainable development in the digital age

- #1 – identify the benefits of free expression for sustainable development
- in the digital age?
  - Introduce yourself to your colleagues
  - As a team analyze and identify these benefits, if any, and
  - Report back on your analysis.

# *Discussion*

- the benefits of free expression for sustainable development in the Digital Age are...

# Practice Note: we must balance...

- from whence comes, passes and goes the information-jurisdiction,
- what good comes from this, and
- what injuries may come?

Sooooooooooooooooooooo

- Blue Whale & Momo?
- The Dark Web?
- Other concerns?

# Case Problem 2- Risk Analysis

- # 2- what are
  - i) the risks, if any, and
  - ii) allocated responsibility for misuse of the Internet and computing
    - Talk with your team
    - Conduct your analysis
    - Report back
      - Question- why allocate responsibility?

# Discussion-Risk Analysis

- What are the risks of free expression in the digital age?
- Map to specific consequences of the misuse of computing systems and resources
- Who is responsible?

# James Bridle, *Something Is Wrong with the Internet*

• <https://medium.com/@jamesbridle/something-is-wrong-on-the-internet-c39c471271d2>

What concerns me is not just the violence being done to children here, although that concerns me deeply. What concerns me is that this is just one aspect of a kind of infrastructural violence being done to all of us, all of the time, and we're still struggling to find a way to even talk about it, to describe its mechanisms and its actions and its effects. As I said at the beginning of this essay: this is being done by people and by things and by a combination of things and people. Responsibility for its outcomes is impossible to assign but the damage is very, very real indeed.

. . .

This essay forms one strand of my book *New Dark Age* (Verso, 2018). You

# How to build responsibility?

- The primary vectors for responsible conduct, the family and the schools, may not be fully empowered for this.
- Families-parents, grandparents, uncles and aunts-may not have the knowledge themselves the proper use nor the intense engagement of their children in the near daily presentation of new technologies.
- Families and community institutions for accountability-the parents, the community itself, and the local constabulary-do not have the knowledge, training or skills to hold accountable those who misuse this.
  - Regardless of which criminological theory may most effectively describe the situation, there is little deterrence nor incapacitation serving to help support prevention and recovery from misconduct.

# Exercise -How to Protect Rights and Benefits

- Identify and define techniques to protect the rights and the benefits of free expression with the Internet, computing and ICT



# Discussion- Protecting Rights and Benefits

# Excellent Work!

## For The Future- Your Solutions Are Needed!

- If we wish to protect free expression and its benefit for sustainable development we have to look at each of these dimensions together.
- This may lead to new paradigms and require enhanced surveillance antithetical to traditions of privacy and personal autonomy.
- We as citizens must use the Internet systems competently and responsibly, and to teach our children and students in communities how to use them so.
  - This is an area immediate and radical action is needed if we are to remain the people we are and want to be



*Thank you!*

- Final thoughts?