



Ethics, Law, and E-commerce





Understanding Ethical, Social, and Political Issues in E-commerce

- **Internet, like other technologies, can:**
 - ❖ Enable new crimes
 - ❖ Affect environment
 - ❖ Threaten social values
- **Costs and benefits must be carefully considered, especially when there are no clear-cut legal or cultural guidelines**



A Model for Organizing the Issues

- **Issues raised by Internet and e-commerce can be viewed at individual, social, and political levels**
- **Four major categories of issues:**
 - ❖ Information rights
 - ❖ Property rights
 - ❖ Governance
 - ❖ Public safety and welfare

The Moral Dimensions of an Internet Society

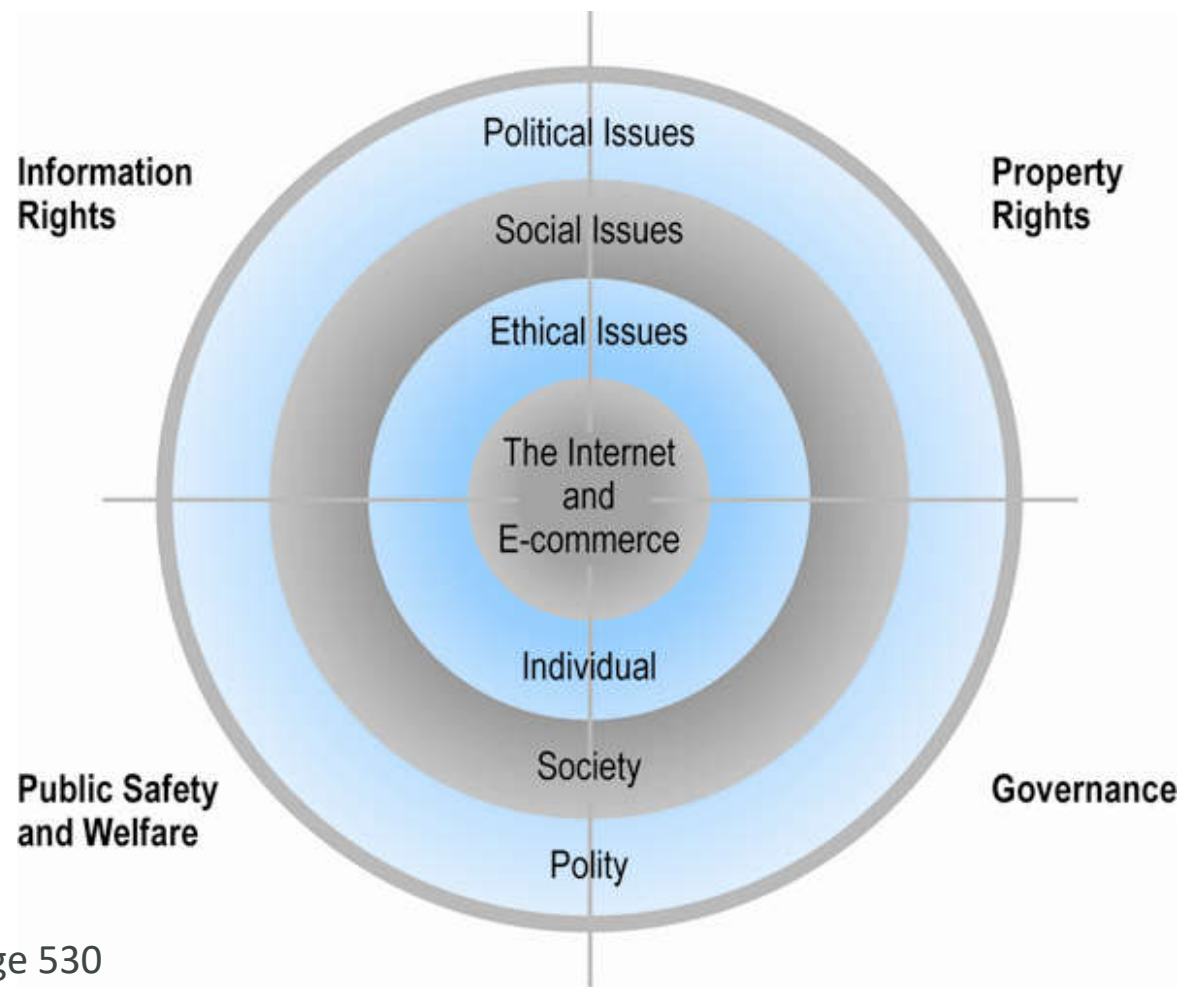


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Basic Ethical Concepts

■ Ethics

- ❖ Study of principles used to determine right and wrong courses of action

■ Responsibility

■ Accountability

■ Liability

- ❖ Laws permitting individuals to recover damages

■ Due process

- ❖ Laws are known, understood
- ❖ Ability to appeal to higher authorities to ensure laws applied correctly



Analyzing Ethical Dilemmas

■ Process for analyzing ethical dilemmas:

1. Identify and clearly describe the facts
2. Define the conflict or dilemma and identify the higher-order values involved
3. Identify the stakeholders
4. Identify the options that you can reasonably take
5. Identify the potential consequences of your options



Candidate Ethical Principles

- **Golden Rule**
- **Universalism**
- **Slippery Slope**
- **Collective Utilitarian Principle**
- **Risk Aversion**
- **No Free Lunch**
- **The *New York Times* Test**
- **The Social Contract Rule**



Privacy and Information Rights

■ Privacy

- ❖ Moral right of individuals to be left alone, free from surveillance, or interference from other individuals or organizations

■ Information privacy

- ❖ The “right to be forgotten”
- ❖ Claims:
 - Certain information should not be collected at all
 - Individuals should control the use of whatever information is collected about them
- ❖ Behavioral tracking on the Internet, social sites, and mobile devices



Privacy and Information Rights (cont.)

■ Threats to privacy

- ❖ Personal information collected by commercial Web sites
- ❖ Personal information collected by government authorities
- ❖ Impact of mobile devices
 - Tracking people's locations and movements
 - Tracking personal behavior



Information Collected at E-commerce Sites

■ Data collected includes

- ❖ Personally identifiable information (PII)
- ❖ Anonymous information

■ Types of data collected

- ❖ Name, address, phone, e-mail, social security
- ❖ Bank and credit accounts, gender, age, occupation, education
- ❖ Preference data, transaction data, clickstream data, browser type



Social Networks and Privacy

■ Social networks

- ❖ Encourage sharing personal details
- ❖ Pose unique challenge to maintaining privacy

■ Facebook's facial recognition technology and tagging

■ Personal control over personal information vs. organization's desire to monetize social network



Mobile and Location-Based Privacy Issues

■ Smartphone apps

- ❖ Funnel personal information to mobile advertisers for targeting ads
- ❖ Track and store user locations
- ❖ Track users' use of other apps

■ U.S. Supreme Court rules that police need warrant prior to searching a cell phone for information



Profiling and Behavioral Targeting

■ Profiling

- ❖ Creation of digital images that characterize online individual and group behavior
- ❖ Anonymous profiles
- ❖ Personal profiles

■ Advertising networks

- ❖ Track consumer and browsing behavior on Web
- ❖ Dynamically adjust what user sees on screen
- ❖ Build and refresh profiles of consumers

■ Google's AdWords program



Profiling and Behavioral Targeting (cont.)

- **Deep packet inspection**

- **Business perspective:**

- ❖ Increases effectiveness of advertising, subsidizing free content
- ❖ Enables sensing of demand for new products and services

- **Critics' perspective:**

- ❖ Undermines expectation of anonymity and privacy



The Internet and Government Invasions of Privacy

- **NSA documents released by Snowden**
- **Government agencies are largest users of private sector commercial data brokers**
- **Various laws strengthen ability of law enforcement agencies to monitor Internet users without knowledge, sometimes without judicial oversight**
 - ❖ CALEA, USA PATRIOT Act, Cyber Security Enhancement Act, Homeland Security Act
- **Encryption features implemented by Apple, Google for mobile phones**



Legal Protections

■ In United States, privacy rights explicitly granted or derived from:

❖ Constitution

- First Amendment—freedom of speech and association
- Fourth Amendment—unreasonable search and seizure
- Fourteenth Amendment—due process

❖ Specific statutes and regulations (federal and state)

❖ Common law



Informed Consent and Notice

- **U.S. firms can gather and redistribute transaction information without individual's informed consent**
 - ❖ Illegal in Europe
- **Informed consent:**
 - ❖ Opt-in
 - ❖ Opt-out
 - ❖ Many U.S. e-commerce firms merely publish information practices as part of privacy policy or use opt-in as default



The FTC's Fair Information Practices

■ Guidelines (not laws)

- ❖ Used to base assessments and make recommendations
- ❖ Sometimes used as basis for law (COPPA)

■ Fair Information Practice principles

- ❖ Notice
- ❖ Choice
- ❖ Access
- ❖ Security
- ❖ Enforcement
- ❖ Restricted collection



The FTC's Fair Information Practices (Cont.)

■ New privacy framework (2010)

- ❖ Scope
- ❖ Privacy by design
- ❖ Simplified choice
- ❖ Greater transparency

■ 2012 Report: Industry best practices

- ❖ Do not track
- ❖ Mobile privacy
- ❖ Data brokers
- ❖ Large platform providers
- ❖ Development of self-regulatory codes



The European Data Protection Directive

■ European approach:

- ❖ Privacy protection much stronger than in United States
- ❖ Comprehensive and regulatory in nature
- ❖ European Commission's Directive on Data Protection (1998):
 - Standardizes and broadens privacy protection in European Union countries

■ Department of Commerce safe harbor program:

- ❖ For U.S. firms that wish to comply with directive

■ 2014 E.U. package of reforms

- ❖ Right to be forgotten
- ❖ Easier access to data
- ❖ Default opt-out provisions, clear opt-in statements



Private Industry Self-Regulation

■ Safe harbor programs:

- ❖ Private policy mechanism to meet objectives of government regulations without government involvement
- ❖ Privacy seal programs (TRUSTe)

■ Industry associations include:

- ❖ Online Privacy Alliance (OPA)
- ❖ Network Advertising Initiative (NAI)
- ❖ Ad Choices Program

■ Privacy advocacy groups

■ Emerging privacy protection business

- ❖ Reputation.com, Avira Social Network Protection, and so on



Technological Solutions

- **Spyware blockers**
- **Pop-up blockers**
- **Secure e-mail**
- **Anonymous remailers**
- **Anonymous surfing**
- **Cookie managers**
- **Disk/file erasing programs**
- **Policy generators**
- **Public key encryption**



Intellectual Property Rights

- **Intellectual property:**
 - ❖ All tangible and intangible products of human mind
- **Major ethical issue:**
 - ❖ How should we treat property that belongs to others?
- **Major social issue:**
 - ❖ Is there continued value in protecting intellectual property in the Internet age?
- **Major political issue:**
 - ❖ How can Internet and e-commerce be regulated or governed to protect intellectual property?



Intellectual Property Protection

■ Three main types of protection:

- ❖ Copyright
- ❖ Patent
- ❖ Trademark law

■ Goal of intellectual property law:

- ❖ Balance two competing interests—public and private

■ Maintaining this balance of interests is always challenged by the invention of new technologies



Copyright

- **Protects original forms of expression (but not ideas) from being copied by others for a period of time**
- **“Look and feel” copyright infringement lawsuits**
- **Fair use doctrine**
- **Digital Millennium Copyright Act, 1998**
 - ❖ First major effort to adjust copyright laws to Internet age
 - ❖ Implements WIPO treaty that makes it illegal to make, distribute, or use devices that circumvent technology-based protections of copyrighted materials
 - ❖ Safe-harbor provisions



Patents

- **Grant owner 20-year monopoly on ideas behind an invention**
 - ❖ Machines
 - ❖ Man-made products
 - ❖ Compositions of matter
 - ❖ Processing methods
- **Invention must be new, non-obvious, novel**
- **Encourages inventors**
- **Promotes dissemination of new techniques through licensing**
- **Stifles competition by raising barriers to entry**



E-commerce Patents

- **1998 *State Street Bank & Trust vs. Signature Financial Group***

- ❖ Business method patents

- **2014 *Alice Corporation:***

- ❖ Supreme Court rules that software does not make a basic business method or abstract idea patentable

- **E-commerce patents**

- ❖ Amazon: One-click purchasing
- ❖ Akamai: Internet content delivery global hosting system
- ❖ Google: Search technology, location technology

Theft and Innovation: The Patent Trial of the Century

- Do you agree with the jury finding that Samsung violated Apple's patents in the Samsung Galaxy design?
- Should “trade dress” patents cover basic shape elements, such as round-cornered squares used for icons?
- The Apple “look and feel” has inspired the “look and feel” of many other Web sites and devices. How is this different from the Samsung case?



Trademarks

- **Identify, distinguish goods, and indicate their source**
- **Purpose**
 - ❖ Ensure consumer gets what is paid for/expected to receive
 - ❖ Protect owner against piracy and misappropriation
- **Infringement**
 - ❖ Market confusion
 - ❖ Bad faith
- **Dilution**
 - ❖ Behavior that weakens connection between trademark and product



Trademarks and the Internet

- **Cybersquatting and brand-jacking**
 - ❖ Anticybersquatting Consumer Protection Act (ACPA)
- **Cyberpiracy**
 - ❖ Typosquatting
- **Metatagging**
- **Keywording**
- **Linking and deep linking**
- **Framing**



Who Governs the Internet and E-commerce?

■ Mixed mode environment

- ❖ Self-regulation, through variety of Internet policy and technical bodies, co-exists with limited government regulation

■ ICANN : Domain Name System

■ Internet can be easily controlled, monitored, and regulated from a central location



Taxation

- **Non-local nature of Internet commerce complicates governance and jurisdiction issues**
- **Sales taxes**
 - ❖ Governments in Europe and U.S. rely on sales taxes
- **MOTO retailing tax subsidies**
- **E-commerce tax subsidy**
- **Internet Tax Freedom Act**

Internet Sales Tax Battle

- **Given the nature of the Internet, should sales tax be based on the location of the consumer rather than the seller?**
- **Why is there a struggle to define the nature of “small business”? How big is a “small business”?**
- **Are bricks-and-clicks retailers disadvantaged by local sales tax laws?**



Net Neutrality

■ Net neutrality (Open Internet)

- ❖ All Internet activities charged the same rate, regardless of bandwidth used

■ Differentiated pricing strategies

- Cap pricing (tiered plans)
 - Speed tiers
- Usage metering
 - Congestion pricing
- Highway (“toll”) pricing

■ Comcast slows users for certain traffic

■ FCC's 2010 Open Internet Order

■ Netflix-Comcast agreement



Public Safety and Welfare

- **Protection of children and strong sentiments against pornography**
 - ❖ Passing legislation that will survive court challenges has proved difficult
- **Efforts to control gambling and restrict sales of drugs and cigarettes**
 - ❖ Currently, mostly regulated by state law
 - ❖ Unlawful Internet Gambling Enforcement Act

The Internet Drug Bazaar

- **What's wrong with buying prescription drugs online, especially if the prices are lower?**
- **What are the risks and benefits of online pharmacies?**
- **Should online pharmacies require a physician's prescription?**
- **How do online pharmacies challenge the traditional business model of pharmacies and drug firms?**
- **What are the challenges in regulating online pharmacies?**
- **Who benefits and who loses from online pharmacies?**

