

# ***Social Implications of a Computerized Society***

## **Chapter 3**

### **Free Speech**

Instructor: Oliver Schulte

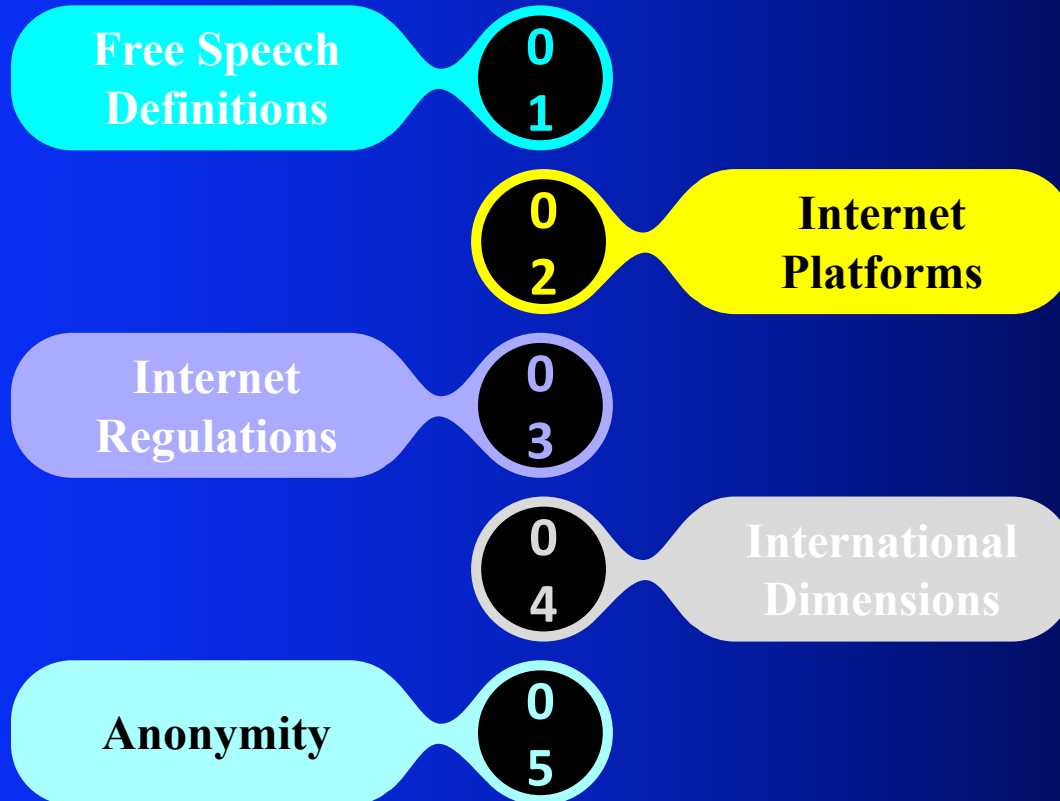
Simon Fraser University

# Outline

- Freedom of Speech: traditional views and issues.
- New internet-related issues:
  - enforcing existing restrictions on free speech.
  - legal status of internet companies: publisher or common carrier?
  - treatment of spam
  - Treatment of social media posts
- Anonymity: to what extent should internet users be anonymous?
- Access: who, if anyone, controls access to the net? And how?

# Lecture Plan

EXAMPLE WITH 5 PARTS



# Key Concepts

- Common Carrier
- Principles for liability of technology providers and platforms
- Government interference with free speech.

General Definition and Justification

# **Freedom of Speech**

# Freedom of Speech

- Canadian Charter:  
“Everyone has the following fundamental freedoms:...*b*) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.”
- Similar rights in all Western democracies.

# Free Speech Guidelines

- Distinguish speech from action.  
Advocating illegal acts is (usually) legal.
- Laws must not chill expression of free speech.
- Do not reduce adults to reading only what is fit for children.
- Solve speech problems by the least restrictive means.

# **Freedom of Speech as a Right (Deontology)**

- One of the main negative liberties (freedom to act).
- Promotes and protects other liberties (freedom to criticize the government, demand one's other rights).



# **Freedom of Speech: Utilitarian Perspective**

- J.S. Mill, “On Liberty”:  
Freedom of Speech promotes social welfare because it allows us to propose good policies and oppose bad ones.

# **Freedom Speech: Universalist/Golden Rule**

- “Freedom is always the freedom of those who disagree”. Rosa Luxemburg.
- “I disagree with what you say, but I will defend to the death your right to say it”. Voltaire.

# **Free-speech Principles**

- Advocating illegal acts is legal
- Does not protect libel and direct, specific threats
- Inciting violence is illegal
- Allows some restrictions on advertising
- Protect anonymous speech

# **Traditional Restrictions of Free Speech**

- discussion of bombs at airport
- laws against defamation
- Physical threats
- Nazi Slogans, Auschwitz denial in France.
- in Canada, advocating genocide or inciting hatred against any 'identifiable group' is an indictable offense.

# Hard Cases for Free Speech

- Obscenity vs. erotica.
- Spam.
- **Anonymous** speech is often viewed as bad manners, cowardly, anti-social---but it is protected by law.
- “Anonymous pamphleteering is not a pernicious, fraudulent practice, but an honourable tradition of advocacy and dissent. Anonymity is a shield from the tyranny of the majority.”
- Software

# Software As Speech

- In the 1990s, the U.S. government restricted publishing and posting encryption software.
- Several court cases, finally federal U.S. judge found that “for the purposes of First Amendment analysis, this court finds that source code is speech”.

# **Containing the Web**

# **Internet = More and more Free Speech (?)**

“For the first time in history, we have a many-to-many medium, in which you don’t have to be rich to have access, and in which you don’t have to win the approval of an editor or publisher to speak your mind. The Internet ... holds the promise of guaranteeing, for the first time in history, that the First Amendment’s protection of freedom of the press means as much to each individual as it does to Time Warner, or to Gannett, or to the New York Times.”

Mike Goodwin, 1994

See censorship survey on Canvas



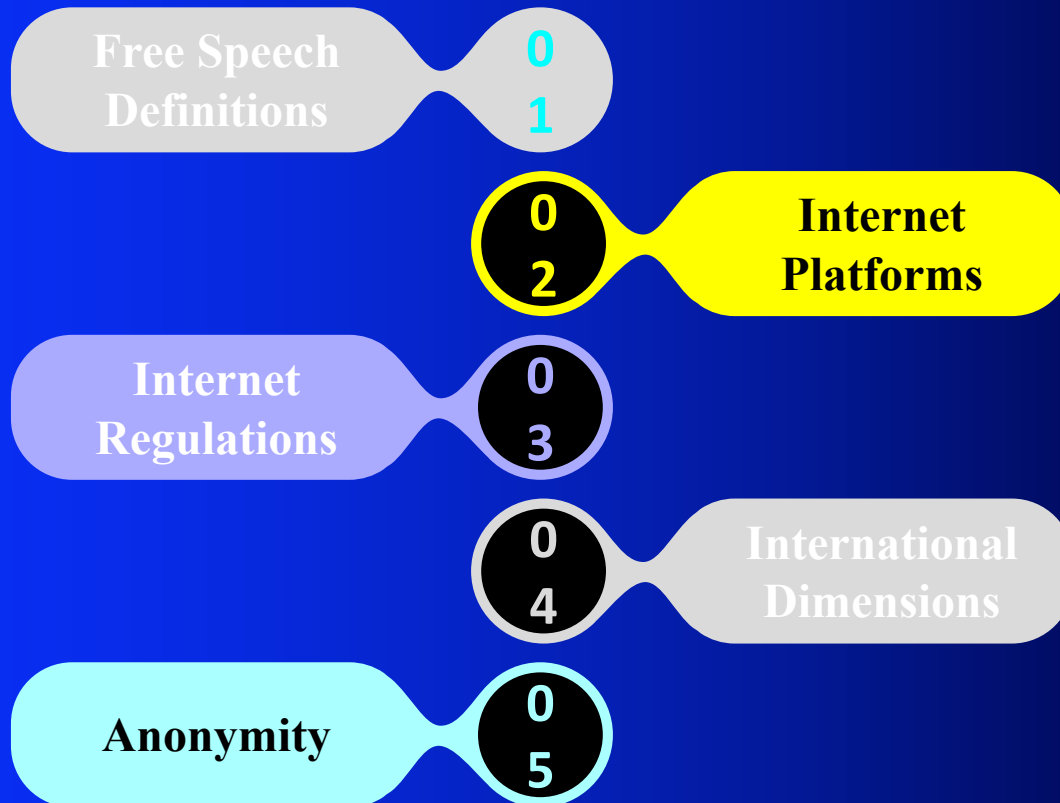
# New issues about free speech arising from the internet

## Outline

- Enforcement of **existing** restrictions on free speech.
- Attempts to **extend** restrictions for internet. International issues.
- Legal status of internet companies (ISPs, Google, Facebook, Twitter): broadcaster or common carrier?

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# **Status of Internet Platforms**

# **Enforcement of existing restrictions: Legal Approaches**

- Often difficult to enforce restrictions on **individuals**:
  - anonymity on the internet (supported by remailers, anonymizing software).
  - easy to open websites, e-mail accounts.
  - privacy protection limits gvt access to records of on-line activity.
- Governments go after **businesses** that provide internet communication.

# The Conceptual Challenge

- Traditional Distinction:
  - publisher/broadcaster (e.g., MacLean's, CBC).
  - common carrier (e.g., Telus).
- Publishers:
  - liable for content
  - right to freedom of expression
  - right not to publish
- common carrier:
  - not liable for content
  - must give universal access

# Discussion Question

- Are internet companies like Google, Facebook, E-Bay publishers or common carriers? Do they fit these categories?

# **A New Kind of Animal**

- Internet communication companies are not common carriers.
  - can block access, e.g. spammers.
  - Ebay: no Ku Klux clan memorabilia
- Internet companies are not publishers/broadcasters: not liable for content (“Safe Harbor” in North America)

# **Are internet companies simply technology providers?**

Cons:

- Companies keep interacting with users, not just sell technology once.
- They often control most of the communication in their niche, e.g. a website blocked from Google will be missed by many people.



# Company Liability for Content

- An important **general principle** (North America): If a technology has substantive legal uses, the technology provider is **not** liable for illegal uses. (“guns don’t kill people...”).
- Internet companies like Google are viewed as technology providers, so not liable for illegal uses.
- But increasing gvt pressure for more regulation:
  - guarantee access for legal content (like common carrier)
  - restrict access for illegal content and criminal activities (drug-dealing, sex trafficking); like a publisher
- Is there a new claim right to equal access to communication platforms? See Goodwin.

# Discussion Case

- Joe Regan hosts the world's biggest podcast (11M listeners) on Spotify
- [Open letter](#) from physicians complaining about Covid misinformation on his podcast. (Jan 12, 2022)
- Jan 29: Neil Young, Joni Mitchell, Nils Lofgren pull their music from Spotify
- Jan 30: Spotify CEO announces that COVID 19 podcasts will feature links to Spotify Covid 19 hub

# Discussion Questions

- Is Joe Regan “presenting both sides”? Should he be doing that? Is he exercising his right to free speech?
- Is his content Spotify’s responsibility? Should they remove it? Are the links to other Covid 19 information enough?
- Do you support Neil Young’s ultimatum to Spotify?
- Consider this case from the pov of utilitarianism, deontology (rights)

# Similar Cases

- Former President Trump has been banned from Twitter, Facebook, and other social media platforms.
- For asserting that the 2020 presidential election was “stolen”
- Should Facebook/Twitter do something about climate change deniers?

# **Are web platforms like utilities?**

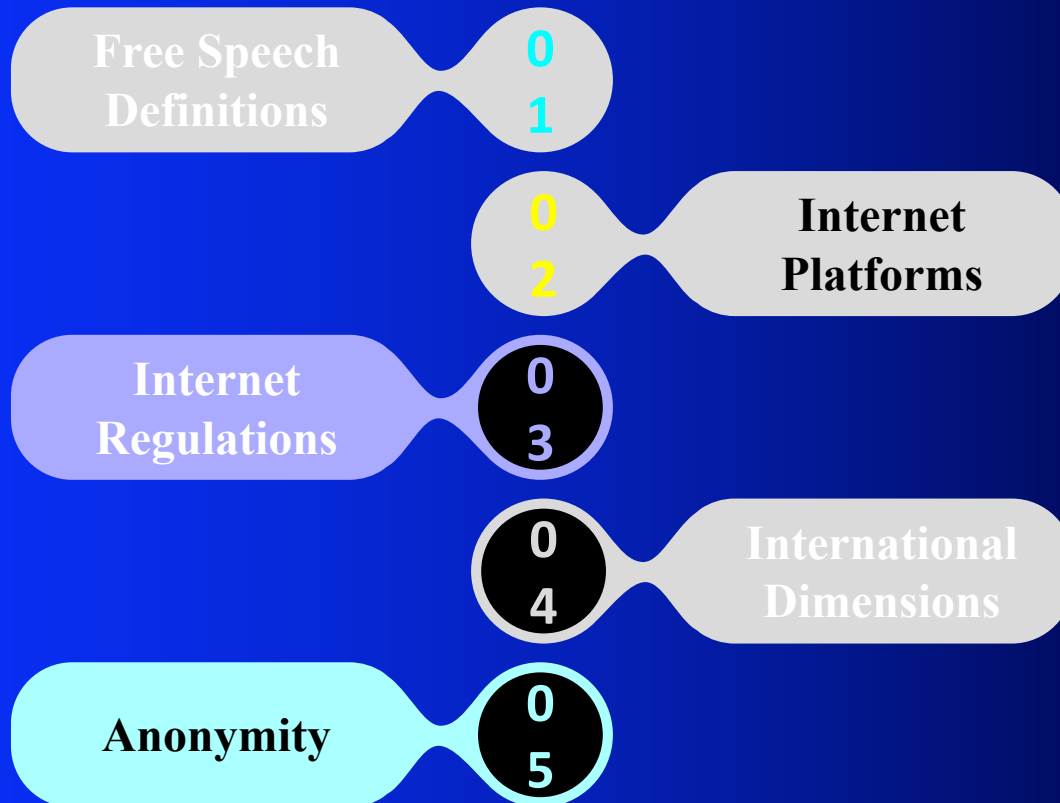
- A utility provides general infrastructure for society and economy
  - e.g. water, electricity, roads
- Close relationship with the government
  - Protection from competition
  - Subsidies, rate setting
  - Regulation

# Emerging Compromise (?)

- Platforms are a public space
  - Although they are privately owned
- new claim right to equal access to communication platforms
  - Like a driver's license gives you a right to drive on public roads
- The access right can be revoked when misused
  - Limits “freedom of reach” not “freedom of speech”
  - Like revoking driver's licence for traffic violations
- Can platform rule enforcement scale to 100M users?
  - Hard problem for AI algorithms, can be gamed: amplification

# Lecture Plan

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# **Regulating the Internet**



# Censorship and Companies

- Californian BBS operators were prosecuted in Tennessee for pornographic content posted on their bulletin board.
- Yahoo and its CEO were sued by French government for Nazi memorabilia sold on their auction site.
- Google has complied with Chinese censorship laws about criticizing the gvt, reporting on natural disasters, and talking about censorship.

# German's “Facebook law”

- In 2017, Germany passed the Netzwerkdurchsetzungsgesetz
- Applies to social networks with >2M users
- Company is liable for removing illegal content: hate speech, copyright violation, personality appropriation
- Company must respond quickly to complaints: 24 hours for blatant violations, 7 days for investigations
- May have to reveal identity of posters to support lawsuits.
- High fines for violation, up to 50M Euros.
- Critics point to chilling effects

# **Technological Approaches**

- In Canada, filters block access to pornographic sites in libraries, schools.

# Issues with Filters

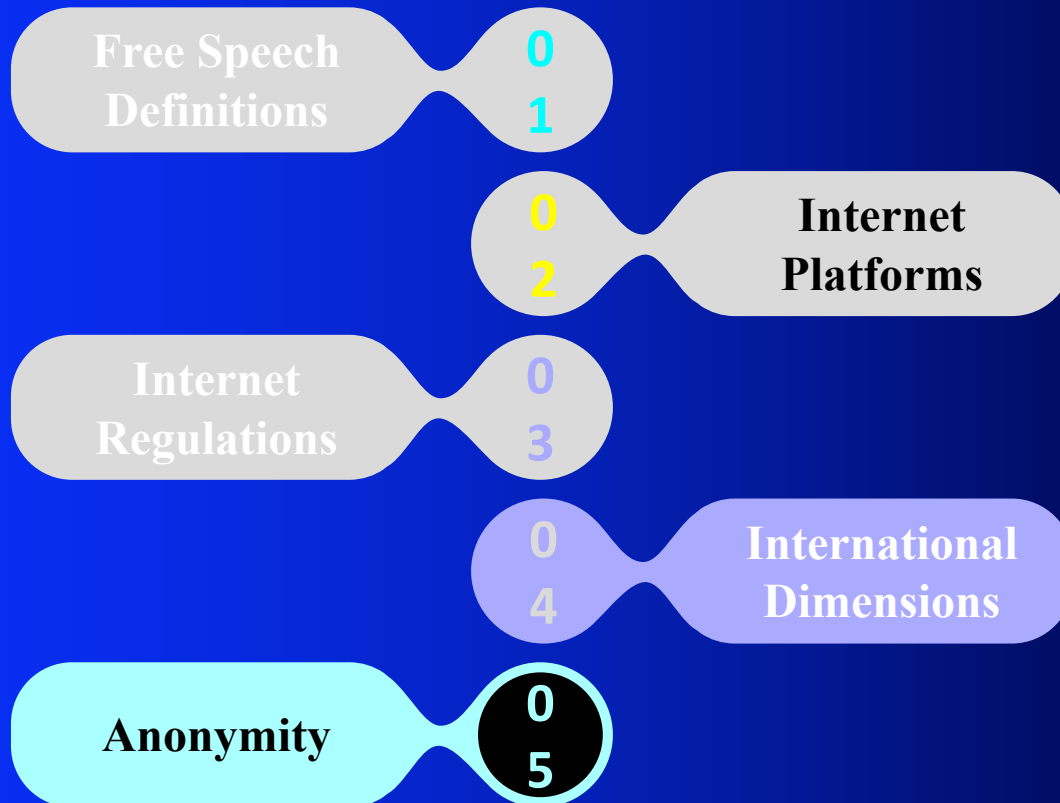
- Hard to eliminate both false positives and false negatives, despite machine learning.
  - False positives: Beaver College, Yale U biology department website.
  - False negatives (about 91%): files within documents.
- Private use is fine, but gvt mandate is restrictive considering the false positives (e.g., in libraries).
- Important **general principles**:
  - Adults should not be restricted to only what is suitable for children.
  - The government should use the **least intrusive means** to enforce the law (e.g., filters rather than shut down ISPs).

# Discussion Question

- Child/parent advocates argue that the internet poses a new kind of danger to children poses it brings pornographic content directly into the home. Do you agree that there is a new threat? Do you think the new threat requires new solutions? What solutions would you favour (e.g., technical, economic, legal)?

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# **The global internet**

# Censorship vs. Freedom

Tools for communication, tools for oppression

- Authoritarian governments have impeded flow of information and opinion throughout history.
- The vibrant communication of the Internet threatens governments in countries that lack freedom of speech.
- Some countries own the Internet backbone within their countries
  - block specific sites and content at the border
- Some countries ban all or certain types of access to the Internet



# Examples

- Chinese regulations prohibit “producing, retrieving, duplicating, and spreading information that may hinder public order”.
- China has more than 2M people monitoring the web.
- Banned discussion of Mossack Fonseca paradise papers (tax evasion leaks)
- In December 2007, China's government announced a policy that all new video sites must be owned or controlled by the government.
- In Russia, bloggers with more than 3000 daily readers must register with the government and provide their home address -> chilling effect
- Also Iran, Turkey.

# The Internet is Global

- Avoiding censorship: the global nature of the Net allows restrictions (or barriers) in one country to be circumvented by using networks in other, less restrictive countries.
- Creating censorship: the global nature of the Net makes it easier for one nation to impose restrictions on others.
- Examples:
  - U.S. outlawed sports gambling
  - France requires Google to enforce the right to be forgotten for all searches anywhere.

# **International Dimension**

- What if Google is liable for certain content under French law or Chinese law? Do we end up with the lowest common denominator?
- Possible technological solution: geo-targeting (as with on-line music, dvds).

# Discussion Question

Will the Internet and related communication technologies be tools for increasing political freedom, or will they give more power to governments to spy on, control, and restrict their people?

# Aiding foreign censors and repressive regimes

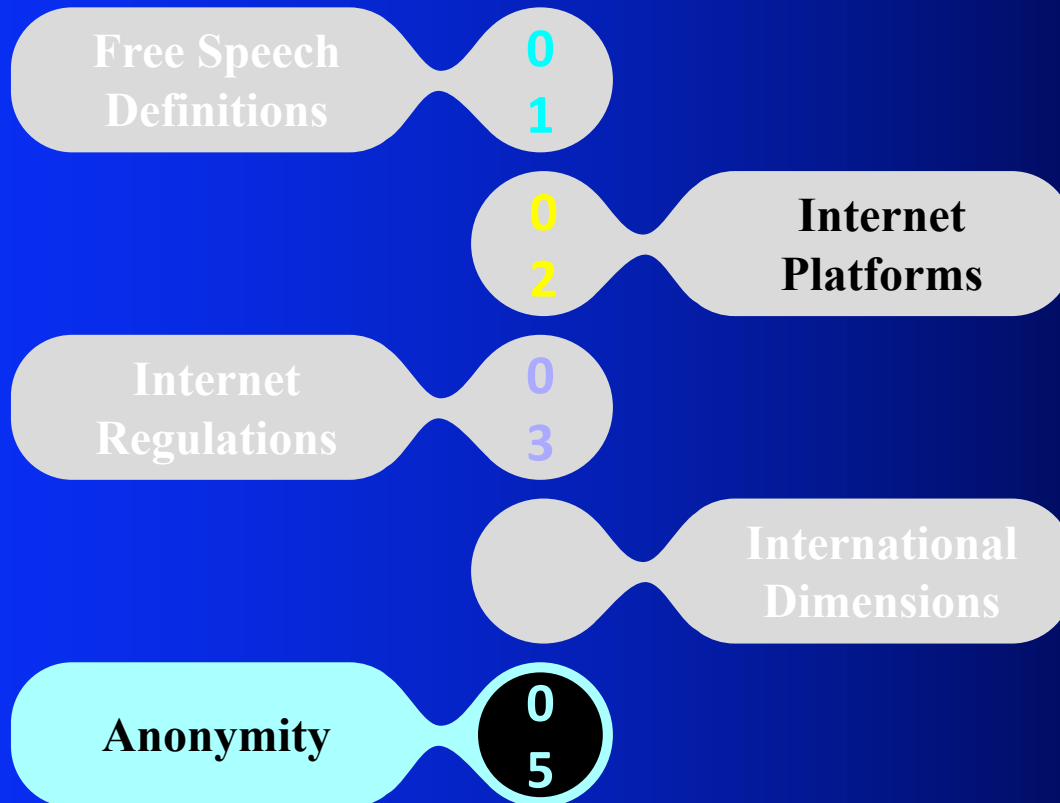
- Google in China:
  - 2006 introduced restricted google.cn
  - 2010: stopped after hack attack on Gmail accounts of Chinese activists
  - 2018: new discussion of Project DragonFly
  - Market share now only 3.8%
- Microsoft provided modified version of Skype for China to allow surveillance

# Discussion Question

- Should companies like Google aid countries like China in enforcing their national censorship laws?
- Should companies like Google support the same rights for foreigners as for North Americans?
- What would be a utilitarian analysis?  
Deontologist based on rights?

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***Anonymity***



# **Anonymity on the web**

- Most web postings are anonymous (user name only).
- Important for privacy (gay chat room, reviews, opinions). Also used by government agencies (CIA) for anonymous surveillance.
- Supported by re-mailers and anonymizing software.

# Concerns with Anonymity

- It hides crime/criminals
- Glowing reviews (eBay or Amazon.com) may actually be from the author, publisher, seller, or their friends. Similarly, bad reviews may be from competitors, stock market manipulators.
- Enables on-line attacks in comments and social media

# **Discussion Question:**

## **Government against Anonymity**

- As with anti-encryption legislation, U.S. and European countries working on laws that require ISPs to maintain records of the true identity of each user and maintain records of online activity for potential use in criminal investigations
- Do you agree with this policy? In addition to your own opinion, look at it from utilitarian, rights-based and universalist perspective.



**Conclusion**

# Summary

- Free Speech Principles:
  - strong negative right
  - speech must not be chilled
- Liability: broadcasters vs. common carriers
- The internet globalizes free speech challenges and restrictions
- Anonymity is strongly protected
- Approaches to Spam (not covered)