

0:00:00 [UNINTELLIGIBLE PHRASE] I've been asked to talk about 0:00:42.132 complex systems, which is kind of what you've 0:00:45.367 been studying all semester. And today I want to give you a 0:00:49.558 hint of another kind of complexity. 0:00:52.058 You have been doing the technical infrastructure for 0:00:55.808 essentially what has become the information age. 0:01:00 But the information age has just changed the world immensely 0:01:06.005 over the last 20 years and has run smack into another kind of 0:01:12.111 complexity. And that is the complexity of 0:01:16.183 how the stuff that we have all built as computer scientists and 0:01:22.493 engineers has created these enormous stressors in the way 0:01:28.193 people think about the legal structures and the regulatory 0:01:33.994 structures, the way people deal with the world. 0:01:40 And [UNINTELLIGIBLE PHRASE], but in order [to make use of 0:01:44.666 that?] you have to understand that suddenly you're dealing 0:01:49.416 with the real world. It's not just problem sets or 0:01:53.5 it's not just little theoretical issues of protocol or 0:01:58 authorization. It is real impact on people's 0:02:02.416 lives. And you run into people who 0:02:05.166 think differently. And, in particular, 0:02:08.25 you are going to have to learn to think about how lawmakers and 0:02:13.416 the law and lots of other institutions deal with this. 0:02:17.833 This lecture, if you like, 0:02:19.916 is partly a bit of an advertisement for 6.805 which, 0:02:24.166 of course, I teach in the fall. And what 6.805 really is about 0:02:29.25 is empowering you. What you have to understand is 0:02:34.692 [UNINTELLIGIBLE PHRASE] courses you take like 6.033, 0:02:39.269 you now know more about the information architecture that 0:02:44.294 makes the world work. And the most miniscule part of 0:02:48.871 humanity. And that can be a way to have 0:02:52.282 impact, but only if you understand how that impacts the 0:02:57.128 regulatory structure. Just to give you a tiny 0:03:01.875 example, about two weeks ago the MBTA put out for comments, 0:03:06.605 their new privacy policy which was stimulated by the fact that 0:03:11.579 the MBTA is planning on instituting a new fare system 0:03:15.819 that uses our FID tokens. And one of the things that went 0:03:20.386 into that policy is a whole bunch of criticism by a student 0:03:25.115 project team in 6.805 last fall who worked with the state 0:03:29.682 senator who was getting on the MBTA's case about not having 0:03:34.412 adequate privacy regulations. So this bunch of MIT students 0:03:39.837 essentially wrote the privacy regulations that are now being 0:03:43.575 sent out to the public in the State of Massachusetts. 0:03:46.869 That's a tiny example of the kind of thing that you are now 0:03:50.544 prepared to do better than almost anybody else in the 0:03:53.839 world. What I am going to talk about 0:03:56.056 today is how these new architectures, 0:03:58.337 the ones you've been studying, as you've already seen, 0:04:01.695 what happens when you have a big complex architecture, 0:04:05.053 you have to think about interactions of protocols and 0:04:08.347 their standards and their enormous unintended consequences 0:04:11.958 of things fitting together. That's what you've been doing, 0:04:17.023 for lots of the semester, is using understanding that. 0:04:20.598 But today I want to talk a little bit about how the same 0:04:24.307 thing happens with the legal architecture. 0:04:27.073 There are protocols, there are standards and there 0:04:30.378 are enormous, enormous unintended 0:04:32.536 consequences of people working on different parts of a complex 0:04:36.651 system. Well, I am not going to talk 0:04:40.24 about privacy today. That is a thing that the fall 0:04:44.16 course does. Today I want to talk about 0:04:47.199 regulating speech, you know, speech, 0:04:50 images, sounds, the way that society thinks 0:04:53.36 about that and sort of the mess that the Internet has created 0:04:58.16 around that. And so we can take like the 0:05:01.698 simplest picture. There is the Internet and there 0:05:04.716 is a source some place and there is a destination some place and 0:05:08.679 then there is this cloud that is the Internet that they are 0:05:12.327 communicating with. And that is the stupidest 0:05:15.094 simplest picture. You guys know infinitely more 0:05:17.987 about this picture. Just to unpeel the very first 0:05:21.006 level of that. You know that both the source 0:05:23.71 and destination are probably connected to the Net using an 0:05:27.295 Internet service provider. And then, of course, 0:05:31.449 inside that cloud that is all sorts of stuff. 0:05:34.637 There are Cisco switched and hubs and phone companies and all 0:05:38.985 sorts of things translating. You can fill out the complexity 0:05:43.26 of that picture right now, but let's stay even at the 0:05:47.028 simple one. Suppose something is happening 0:05:50 there that somebody doesn't like. 0:05:52.318 Somebody is downloading copyrighted music or something 0:05:56.159 and the recording industry hates that. 0:06:00 Somebody is sending threatening letters to somebody else. 0:06:04.917 Somebody is doing gambling at a place where you're not supposed 0:06:10.36 to gamble. Something that somebody doesn't 0:06:13.96 like. And let's think about we, 0:06:16.595 society, would like to figure out how you can stop that or 0:06:21.6 make it happen less by imposing regulation. 0:06:25.287 And the question is in any of these transactions there are all 0:06:30.643 sorts of places that you can impose regulation. 0:06:36 You can go to the source and you can say, hey, 0:06:39.843 stop sending that pornography. You could go to the destination 0:06:45.053 and you would say, hey, stop pulling down that 0:06:48.896 copyrighted music. You could go to the ISPs. 0:06:52.569 I am sure nobody here has every downloaded copyrighted music 0:06:57.608 over the Internet. But you can imagine the RA 0:07:02.098 going to MIT and saying, hey, MIT, you are the ISP for 0:07:05.934 this connection, you put a stop to it. 0:07:08.611 You can even imagine somebody going to the cloud. 0:07:12.085 You can imagine congress passing a regulation, 0:07:15.342 or maybe you can imagine it, but unfortunately a lot of 0:07:19.25 congress can imagine passing a regulation that says something 0:07:23.592 like, hey, let's change those Cisco routers so that they won't 0:07:28.006 pass along copyrighted information without permission. 0:07:33 And everybody here, hopefully you are shrinking in 0:07:36.291 horror because you know about things like the end-to-end 0:07:39.985 principle, and you say oh, my God, that violates the 0:07:43.41 end-to-to principle in a horrible, horrible way. 0:07:46.567 But you don't think people in congress know about the 0:07:50.059 end-to-end principle. They need people like you guys 0:07:53.485 to explain it to them. That is the kind of thing that 0:07:56.977 you can become empowered to do. Within that context, 0:08:01.442 let's think about controlling what people can say and how 0:08:05.48 people can express themselves in words or music or images or 0:08:09.735 whatever. Somebody comes down and says. 0:08:12.475 hey, stop doing that. you really shouldn't post that

0:08:16.153 thing, it is bugging somebody to hell. 0:08:18.822 And you say oh, no, because I've got freedom of
0:08:22.139 speech. Let's look at freedom of 0:08:24.375 speech. Where does freedom of speech 0:08:26.899
come from in this country? The First Amendment. 0:08:31.916 This country has the First Amendment.
0:08:35.367 Congress shall make no law respecting the establishment of 0:08:40.83 religion, or abridging the
freedom of speech, 0:08:45.047 dot, dot, dot, dot, dot. 0:08:47.252 So let's spend a little bit thinking about that.
0:08:51.757 What does it mean when it says congress shall make no law? 0:08:57.22 Who is Congress?
Congress is congress. 0:09:01.745 Who else is restricted by the First Amendment? 0:09:05.484 Is the State of
Massachusetts congress? 0:09:08.642 When the State of Massachusetts passes a law that says you may
0:09:13.711 not post this certain kind of information, you may not post 0:09:18.531 harassing information on the
Internet, well, 0:09:22.105 let me be more precise, could they do it within the 0:09:26.26 confines of the First
Amendment? We know that congress is 0:09:32.526 congress. How about the State of 0:09:35.789
Massachusetts, are they congress? 0:09:39.157 It actually turns out the State of Massachusetts is congress for
0:09:45.789 the First Amendment. The Constitution is the law of 0:09:51.052 the land. The Constitution says what
it 0:09:55.052 says. It says congress cannot do it. 0:10:00 And the Supreme Court has interpreted congress to
mean the 0:10:04.596 State of Massachusetts. How about if the City of 0:10:08.387 Cambridge passes a law that
says you cannot send these kinds of 0:10:13.387 things? Well, it turns out the City of 0:10:16.37 Cambridge is,
too. 0:10:17.741 It turns out the First Amendment covers most 0:10:21.209 governmental things in the US. How
about MIT? 0:10:24.758 Could MIT, for example, have a rule that says that? 0:10:30 0:10:35 Can there be an MIT
regulation that says that? 0:10:39.032 How many people think there could be? 0:10:42.258 And, by could, I mean
without violating the 0:10:46.021 Constitution. How many people think MIT could 0:10:49.964 do that? How many
people think MIT 0:10:52.921 cannot? You go and take them to court 0:10:56.146 and say it is unconstitutional.
How about UMass Boston? 0:11:01.96 Could UMass Boston have a regulation like that without 0:11:06.479
violating the First Amendment? What do you think? 0:11:10.571 How many people think it could? How many
people think it 0:11:15.26 couldn't? How many people have no idea? 0:11:18.5 Well, sort of have no idea is the
right answer. 0:11:22.421 But it kind of turns out that this language actually comes 0:11:27.281 exactly from a
policy at the University of Michigan ten years 0:11:32.396 ago which was struck down by the court. 0:11:37 That
was, whatever we call these things, 0:11:39.84 harassment policy or something. That was actually struck down
0:11:44.21 by the court. And what the judge said was, 0:11:47.196 look, this might be a good idea and we might
like it, 0:11:50.983 but in this country government institutions like by extension 0:11:55.352 of the State of
Michigan and the University of Michigan are 0:11:59.577 constrained by the First Amendment. 0:12:03 MIT is not.
We can argue whether or not it 0:12:07.593 is a good idea, but it is not unconstitutional 0:12:12.634 for MIT to do
that. Now, you might ask do you guys 0:12:18.124 have less solid guarantees of freedom of speech than students
0:12:24.846 at UMass Boston? Well, yeah, probably. 0:12:30 There are lots of things that congress, and by the
extension 0:12:34.944 of congress, cannot prohibit. But what are some things that 0:12:39.804 congress can
prohibit? What are some kinds of speech 0:12:44.078 or images or things that you actually can have laws
against? 0:12:49.022 What do you think? Are there any limits to this at 0:12:53.128 all? What do you think?
0:12:54.972 Is there any kind of thing that you have limits? 0:13:00 0:13:05 This is about speech. This is not about
actions. 0:13:08.012 Are there kinds of speech or images of things? 0:13:10.897 Child pornography. We cannot
actually possess 0:13:13.717 child pornography in this country. 0:13:15.833 We will get back to that in a second.
0:13:18.141 Anything that can be defined as interstate commerce? 0:13:21.41 No, that just means you cannot
reregulate it. 0:13:24.23 I am asking what are some examples of stuff you cannot 0:13:27.628 post on the
Internet. Libel or slander. 0:13:31.541 There is a whole bit of that copyright infringement we talk 0:13:36.8 about.
How about pornography? 0:13:39.339 You get in trouble for posting pornography on the Internet. 0:13:44.598
Can that be prohibited under state law? 0:13:48.044 It turns out it depends what you mean by pornography.
0:13:52.759 In fact, if we sort of elevate up from pornography to what is 0:13:58.199 normally called, you know,
pornography is bad, 0:14:02.279 but really bad. The word for really bad in US 0:14:07.089 law is obscenity. And it
turns out, 0:14:09.538 well, let's see if you know. Do you think there is a legal 0:14:13.645 definition of obscenity
or is it like hey, it is really bad 0:14:17.824 stuff? How many think there is a 0:14:20.057 formal legal definition
when the court looks at something and 0:14:24.38 says it is obscene? And how many think it is like 0:14:27.838
really bad stuff? The first people are right. 0:14:31.915 There actually is, in this country, 0:14:34.328 a legal
definition of obscenity which was established in a case 0:14:38.727 called Miller v. California in the '70s.
0:14:41.494 And it says this is the definition of obscenity 0:14:44.758 according to the law. It is called the Miller
Test. 0:14:48.305 It says something is obscene if it satisfied all of the 0:14:52.137 following three things. A three
have to be true. 0:14:55.472 The first one is that it depicts sexual activity in a 0:14:59.161 patently offensive way.
So like it is not an anatomy 0:15:04.914 book. That is sort about what the 0:15:08.245 stuff is. The second one is
how people 0:15:12.096 react to it. It is a very interesting test. 0:15:16.468 It says would the average person
applying contemporary 0:15:21.985 community standards find that that appeals to the prurient 0:15:27.918
interest? It is sort of saying it is not 0:15:31.833 the extreme guys that are really sensitive and it is not the guys
0:15:35.745 who will just tolerate everything. 0:15:37.762 It is the average person applying contemporary
community 0:15:41.124 standards. And then the third one is, 0:15:43.325 what people used to say, utterly devoid
of any 0:15:46.075 scientific, literary, artistic or political value. 0:15:49.07 That is sometimes called the Slap Test in
law. 0:15:51.821 So there is a thing called obscenity. 0:15:55 And, according to the law, the Supreme Court,
0:15:57.74 actually in the Miller case, found it constitutional for 0:16:01.167 there to be laws against transmitting
obscene material, 0:16:04.531 and somebody said it, before interstate commerce. 0:16:07.521 So interstate
commerce is not prohibited but it is the hook by 0:16:11.321 which you can prohibit something. 0:16:14 0:16:34 So
it is 1994 and Robert and Carlene Thomas have a cute 0:16:39.124 little family business in Milpitas, California.
0:16:43.489 And what they do is run a thing called the Amateur Action 0:16:48.802 Bulletin Board system. Back
before we had Internet and 0:16:53.832 ISPs. people had these bulletin boards you would dial up. 0:17:00 They

ran the Amateur Action Bulletin Board system. 0:17:04.117 And they distributed from that, well, stuff that you wouldn't 0:17:09.159 show around in polite company. In fact, their logo was we are 0:17:14.201 the nastiest place on earth in 1994. 0:17:17.142 Well, two years ago, 1992, they got raided by the 0:17:21.176 Milpitas police who said, God, you've got all this smut 0:17:25.714 around. We are going to close you down. 0:17:30 They protested. The police looked at it and 0:17:34.39 said, well, it is bad stuff but it is not obscene by the 0:17:40.139 standards of Milpitas, California, we will leave you 0:17:45.47 alone. Now we are back in 1994. 0:17:48.606 There is a knock on the door and in come the Milpitas police 0:17:54.773 accompanied by the US Postal Inspectors. 0:18:00 And Robert and Carlene are accused of transmitting obscene 0:18:06.309 material using a means of interstate communication, 0:18:11.845 namely a computer and a modem and a phone line, 0:18:16.937 to transmit obscene materials interstate. 0:18:21.365 And they are accused of transmitting them interstate to 0:18:27.343 David Deremer. Who is David Deremer? 0:18:32.157 They don't know who this guy is. 0:18:35.342 It turns out that David Deremer is a postal inspector in 0:18:40.993 Memphis, Tennessee. And he gets a complaint from 0:18:45.821 somebody in Western, Tennessee saying there is this 0:18:50.958 awful smut on the Internet, can't the US Postal Authority 0:18:56.712 do anything about it? He takes his computer and dials 0:19:02.424 up Welcome to Amateur Action Bulletin Board, 0:19:05.786 the nastiest place on earth, and here are some titillating 0:19:10.244 little pieces of stuff that you can get from us. 0:19:13.919 But, if you really want the good stuff, send in \$55, 0:19:17.907 register and join. He sends in his phone number, 0:19:21.582 addressed and an assumed name with his \$55. 0:19:24.867 A couple days later he gets a call from Robert Thomas saying 0:19:29.481 hi, thanks for your \$55 bucks. Here is your password, 0:19:35.014 good to town, have fun, welcome to the 0:19:38.401 nastiest place on earth. So he downloads some stuff and 0:19:43.345 then files a complaint against them because of this 0:19:47.922 transmission of this material interstate from Milpitas, 0:19:52.866 California to Memphis, Tennessee. 0:19:55.795 The police come, they arrest the Thomas's, 0:19:59.549 they impound all their stuff and go on trial before a jury in 0:20:05.042 Memphis, Tennessee which convicts them of transmitting 0:20:09.894 material that is obscene by the community standards of Memphis, 0:20:15.57 Tennessee, which are different from the community standards of 0:20:21.154 Milpitas, California. So what do you think of that? 0:20:27.685 Do you think that is OK? [UNINTELLIGIBLE PHRASE] 0:20:50 Is Thomas in Tennessee or is he in California, 0:20:52.385 that is the question. They appeal their conviction 0:20:54.982 and they lose. And the judge basically says, 0:20:57.261 well, I don't quite want to decide this, but notice dum dum 0:21:00.282 that you had the guy's phone number so you knew where he was 0:21:03.409 when you called him. So you should have been aware 0:21:07.911 that this stuff was going to Memphis, Tennessee. 0:21:12.63 Three years in jail under that. Let's move away from 0:21:17.751 pornography or obscenity for a minute. 0:21:21.465 Here is another thing that is illegal. 0:21:25.18 It is illegal to traffic in that stuff. 0:21:30 It is illegal to traffic in that stuff, that is Hitler's 0:21:35.432 something birthday commemorative stamp, in France. 0:21:40.271 It is OK in the US, but in France it is illegal to 0:21:45.111 traffic a Nazi memorabilia. And in 2000, 0:21:48.962 this is on the Yahoo Auction, actually this page isn't up 0:21:54.493 anymore, some folks in France filed a lawsuit against Yahoo 0:22:00.222 for allowing people in France to connect to Yahoo in the US and 0:22:06.345 order Nazi memorabilia. You might want to compare that 0:22:12.16 with the Amateur Action Case, but that case is still going 0:22:16.263 on. It has gone back and forth. 0:22:18.423 It is widely complicated because it involves 0:22:21.519 international law and French courts and US courts. 0:22:25.048 It is still going on since 2000. 0:22:28 There is an article that came out two weeks ago that talks 0:22:31.88 about this case being argued in front of the Ninth Circuit in 0:22:35.965 California. Enormously complex stuff 0:22:38.348 because what does this stuff mean in a world where distance 0:22:42.297 is meaningless? I mean you guys know there are 0:22:45.361 McDonald's in Missouri where you drive up to this window and you 0:22:49.651 put in your order and there is a camera and you say what your 0:22:53.736 order is. And then you drive around and 0:22:56.323 you pick up your stuff at the kitchen. 0:23:00 There are McDonald's in Missouri where that transaction 0:23:03.576 from you ordering it goes to a McDonald's call center in 0:23:07.219 Colorado which pieces the thing together, sends it back to the 0:23:11.26 kitchen at the McDonald's you are at in Missouri. 0:23:14.439 And, by the time you drive around the McDonald's to pick 0:23:18.082 this thing up, your order is ready. 0:23:20.334 And, because this call center in Colorado does a whole bunch 0:23:24.242 of them and has people who are trained, it is cheaper for 0:23:27.951 McDonald's and faster to route this transaction from Missouri 0:23:31.925 to Colorado in the time you are driving around the building than 0:23:36.098 it would be if they ran the thing through the kitchen. 0:23:41 You have to ask, in a world like that, 0:23:44.68 that's the world that we are all making with the Internet. 0:23:50.35 And what do these laws mean? That is a little bit about 0:23:55.722 obscenity and contemporary standards. 0:24:00 In 1995, most people in this country were barely aware that 0:24:06.469 there was an Internet. And the way most people in the 0:24:12.269 country learned in 1995 that there was a thing called the 0:24:18.515 Internet was this way. That is Time Magazine from July 0:24:24.426 1995. You guys think it is funny. 0:24:29 Time Magazine teaching people about the Internet. 0:24:31.742 Sex is everywhere these days, in books, magazines, 0:24:34.542 films, television, music videos and bus stop 0:24:37 perfume ads. Americans have become so 0:24:39.057 endured to the open display of eroticism and the arguments for 0:24:42.542 why it enjoys special status under the First Amendment that 0:24:45.857 they hardly notice it is there. But something about the 0:24:48.942 combination of sex and computers seems to make otherwise worldly 0:24:52.542 wide adults a little crazy. And if you think things are 0:24:57.429 crazy now, still quoting from the article in 1995, 0:25:01.838 wait until the politicians get hold of a report coming out this 0:25:07.417 week. A research team at Carnegie 0:25:10.296 Mellon University has conducted an exhaustive study of online 0:25:15.695 porn. Who is downloading? 0:25:17.854 What turns them on? And feelings are sure to pour 0:25:22.173 out. And, low and behold, 0:25:24.333 published a study about online porn where they carefully 0:25:29.282 studied the habits of average Americans, who I think were CMU 0:25:34.68 undergraduates, using Usenet. 0:25:39 And they found out interesting conclusions. 0:25:42.23 One is they found out that Robert and Carlene were actually 0:25:46.692 doing really well. They were pulling in over \$1 0:25:50.23 million a year in their

business out in Milpitas. 0:25:53.923 And the other is 83.5% of all images posted on Usenet are 0:25:58.23 pornographic. June 26, 1995, 0:26:00.88 Senator Charles Grassley, who is still in the senate, 0:26:04.149 right up on the floor of the senate, Mr. 0:26:06.601 President, there is an article from Time Magazine and an 0:26:10.058 article that I ask unanimous consent to have printed in the 0:26:13.705 Congressional Record. Mr. 0:26:15.214 President, this morning I want to speak on a topic that has 0:26:18.86 received a lot of attention around here lately. 0:26:21.752 My topic is cyber porn. Mr. 0:26:23.387 President, Georgetown University has released a 0:26:26.278 remarkable study conducted by researchers of Carnegie Mellon 0:26:29.988 University. This study raised important 0:26:33.95 questions about the availability and the nature of cyber porn. 0:26:38.355 The University surveyed 900,000 computer images. 0:26:41.75 Of these 900,000, 83.5% of all computerized 0:26:44.783 photographs available on the Internet are pornographic. 0:26:48.683 I want to repeat that, 83.5%, these are all on the 0:26:52.222 Internet and are pornographic according to the Carnegie Mellon 0:26:56.627 study. I believe congress must act and 0:27:00.883 do so in a constitutional manner to help parents who are under 0:27:06.558 assault this day and age. There is a flood of vial 0:27:11.116 pornography and we must act now to stem the growing tide. 0:27:16.325 And, indeed, congress acted and passed a law 0:27:20.325 the Communications Decency Act. You want to look at the words 0:27:25.906 of this, they are quite important 0:27:30 It basically said that anybody who makes available to someone 0:27:35.619 under the age 18 years things that are patently offensive 0:27:40.864 measured by contemporary community standards, 0:27:44.984 dot, dot, dot, or knowingly allows a 0:27:48.262 telecommunications facility to be used for that purpose shall 0:27:53.882 be fined under title 18 or imprisoned for not more than two 0:27:59.314 years. This is called the Display 0:28:03.191 Provision of the Communications Decency Act passed into law at 0:28:08.334 the beginning of 1996. And notice what it is doing in 0:28:12.718 terms of our picture. It is saying there is bad stuff 0:28:17.101 going on. Who can get hammered? 0:28:19.63 The person sending it? The ISP who knowingly makes 0:28:23.761 that stuff available? Cisco who is building the 0:28:27.639 routers? Maybe. 0:28:30 This became part of US law. They also added another thing 0:28:34.958 that was kind of interesting. They added a thing called the 0:28:40.093 Good Samaritan Provision of the Act which says nobody who is an 0:28:45.583 ISP, that was to help these poor guys who were feeling very 0:28:50.718 nervous, shall be treated as the publisher of bad stuff if the 0:28:56.119 information came from somewhere else. 0:28:59.307 And I will come back to that in a minute. 0:29:04 0:29:09 Why did they add that? Well, it is 1990 and there is a 0:29:14.256 bulletin board system called CompuServe. 0:29:18.123 Is CompuServe still around? Does anybody know? 0:29:22.586 It got bought by AOL? CompuServe was one of the early 0:29:27.743 ones. And CompuServe had a bunch of B 0:29:31.314 boards. And they had a thing called 0:29:35.548 Rumorville or someone was using CompuServe to post a thing 0:29:40.93 called Rumorville which was part of their journalism forum. 0:29:46.405 Another guy named Robert Blanchard starts up another 0:29:51.22 online publication called Scuttlebutt, and it was designed 0:29:56.601 to compete with Rumorville. Rumorville then starts 0:30:01.907 publishing defamatory statements about Blanchard and Scuttlebutt. 0:30:07.456 The whole this is a scam. They are no good. 0:30:11.098 They rip off their stories by copying them from Rumorville, 0:30:16.127 dot, dot, dot. And Blanchard goes and sues 0:30:19.682 CompuServe. You guys are letting this stuff 0:30:23.323 happen. It is hurting my business. 0:30:26.184 Now, what is he suing them for? He is suing them under a law 0:30:31.976 called defamation. Another little piece of law. 0:30:35.223 This is another thing that you can get in trouble for. 0:30:38.964 Defamation is something, again, all three things, 0:30:42.352 is false, you communicate to somebody else and causes damage. 0:30:46.588 There are two kinds of defamation. 0:30:48.917 There is the stuff that you say which is slander and the stuff 0:30:53.223 that you write that is libel. So Blanchard goes and sues 0:30:57.105 CompuServe for defamation. And it is one of the basic 0:31:02.131 first rulings on Internet defamation law, 0:31:05.409 Cubby v. CompuServe. 0:31:06.967 The judge basically says tough, CompuServe is just like a 0:31:11.557 bookstore and they have some books there and they don't 0:31:15.983 really know what is in those books. 0:31:18.77 You cannot really hammer them for what is in their books. 0:31:23.36 They neither knew nor had any reason to know what was in that 0:31:28.278 stuff. Go sue Rumorville but 0:31:32.333 CompuServe is off the hook. In terms of our picture of 0:31:38.222 regulation, the court is saying for defamation it is that. 0:31:45 0:31:55 Well, there are some poor innocent people. 0:31:57.865 You. You're sitting there, 0:31:59.612 you're logged into CompuServe, you read some awful thing about 0:32:03.876 Rumorville, she is supposed to get hammered for that? 0:32:08 Other people who are just sort of knowing that the source was 0:32:12.647 coming from there. That was 1990, 0:32:15.126 five years later. Five years later the Internet 0:32:18.69 is growing. There is concern about 0:32:21.246 pornography. It is not only the uber geeks 0:32:24.422 who were using CompuServe, there was a company called 0:32:28.45 Prodigy. Prodigy still exists. 0:32:31.769 Prodigy was a bulletin board. They advertised themselves as a 0:32:36.825 family friendly service. Hi, guys, there is this 0:32:40.786 Internet. You can join Prodigy. 0:32:43.314 It is kind of safe for your kids. 0:32:46.011 And the way they did that is they had chat rooms and hired 0:32:50.814 people to moderate their chat rooms, and if any bad stuff 0:32:55.533 happened the moderator would cut it off. 0:33:00 So Prodigy is running the family-oriented B board service. 0:33:04.18 And there is a company that is an investment banking place 0:33:08.361 called Stratton-Oakmont. And somebody on one of the 0:33:12.029 Prodigy bulletin boards starts publishing stuff about 0:33:15.843 Stratton-Oakmont. They don't know who this 0:33:18.85 somebody is. It is anonymous. 0:33:20.904 Stratton-Oakmont is a bunch of crooks. 0:33:23.618 The president was in jail. This offering they are going to 0:33:27.799 do is a fraud. And Stratton-Oakmont goes and 0:33:32.528 sues Prodigy because whoever was posting it was anonymous. 0:33:37.497 They go sue Prodigy, and Prodigy says hey, 0:33:41.071 guys, we went through this. This is Cubby v. 0:33:44.82 CompuServe all over again. Go find the people who are 0:33:49.353 doing it, get on their backs, we are clean. 0:33:53.015 And the New York State Court of Appeals say uh-uh, 0:33:57.287 you're not the same because you are moderating those chat rooms. 0:34:04 You are taking responsibility for what is being said there. 0:34:09.42 Therefore, you have liability because you are doing the 0:34:14.467 moderation. You. in fact. 0:34:16.71 are libel as the publisher of that stuff because you are

0:34:21.85 controlling it. 0:34:24 0:34:30 It is quite comforting for freedom of speech to let ISPs 0:34:34.342 get off the hook. In response to this, 0:34:37.263 every university lawyer at any place that had an Internet went 0:34:42.078 to the administration and said hey, guys, don't control what 0:34:46.736 the students are doing. Whatever you do don't control 0:34:50.842 it because, as soon as you do, you are liable. 0:34:54.394 It certainly happened at MIT, and I assume very place else. 0:35:00 But what is it doing in terms of our picture here? 0:35:03.983 Our poor ISPs who were off the hook now get targeted in a way 0:35:08.861 big-time. Coming back to the 0:35:11.056 Communications Decency Act, why was there that Good 0:35:15.121 Samaritan Provision? Well, congress was sitting 0:35:18.861 there saying well, gee, not only do we want to 0:35:22.52 regulate pornography and stop that but we really would like 0:35:27.235 the ISPs to help us. We would like them to filter 0:35:31.808 this stuff out. So it is the policy, 0:35:34.069 and this is part of the law, of the US that there should be 0:35:37.815 filtering. And we want to encourage 0:35:40.011 parents and ISPs and everybody to keep this smut off the 0:35:43.563 network. On the other hand, 0:35:45.242 that was right after the Prodigy decision. 0:35:47.89 And all the ISPs said hey, wait a minute, 0:35:50.474 that's not going to work. So they passed this Good 0:35:53.639 Samaritan Provision which was trying to let them get off the 0:35:57.449 hook. It is actually a little bit 0:36:00.886 more complicated than that because this had to do with the 0:36:04.868 republicans and the democrats and stuff that got worked out in 0:36:09.131 committee and different bills of which pieces were taken from 0:36:13.323 other bills and put together. Winston Churchill once said 0:36:17.235 that anyone who likes sausages or law should never watch either 0:36:21.567 of them being made. And the Communications Decency 0:36:24.991 Act is a little bit like that. Well, the law got passed in 0:36:28.973 February 1996. The whole civil liberties were 0:36:33.551 all going nuts. Everybody who was looking at 0:36:37.208 Internet law went nuts. If you take 6.805 there is a 0:36:41.546 long story about what eventually turned out to be a major, 0:36:46.394 major decision in First Amendment law, 0:36:49.541 which I won't go into here, where the net result was the 0:36:54.219 Supreme Court decided that the Display Provision of the 0:36:58.811 Communications Decency Act was unconstitutional. 0:37:04 They said the community standards are too broad. 0:37:08.053 If you apply that it means the standard of the most restrictive 0:37:13.401 community will start replying across the whole country. 0:37:18.059 And it turns out the government can pass laws to protect kids 0:37:23.234 access to stuff, but they say in this case, 0:37:26.857 by this desire to protect kids, you are restricting adults from 0:37:32.204 what they should be able to get. Anyway, a long, 0:37:37.389 very, very important First Amendment decision, 0:37:41.559 Reno v. ACLU. 0:37:42.671 The Supreme Court ruling came down and everybody was happy, 0:37:48.046 civil liberty groups, everybody jumped up and down 0:37:52.586 and said the Internet is a zone of free speech, 0:37:56.849 which brings us to Ken. We are back in 1995. 0:38:02.352 It is April 19, 1995. 0:38:04.705 We just went through the tenth anniversary of a really horrible 0:38:12 thing in US history. Does anybody know what it is, 0:38:17.764 almost exactly ten years ago? No. 0:38:21.529 The bombing of the courthouse in Oklahoma City, 0:38:26.941 April 19, 1995. I guess you guys remember that. 0:38:33.496 About a week later appears on AOL an announcement that says 0:38:40.037 hey, naughty Oklahoma t-shirts, visit Oklahoma, 0:38:45.225 it's a blast and lots of cruder things about referring to the 0:38:51.992 kids who had been killed in that bombing and all sorts of stuff. 0:39:00 Visit Oklahoma, it's a blast, 0:39:03.01 call Ken for naughty Oklahoma t-shirts. 0:39:07.096 And there in the message is the phone number of Ken Zeran who is 0:39:13.87 just a guy who lives in Seattle. Well, lots of people call Ken. 0:39:20.537 They call him angry and upset with obscene phone calls, 0:39:26.344 threatening phone calls. They tell him about this thing 0:39:32.066 he did. How could you possibly do that, 0:39:34.684 you bastard? So he calls AOL and says come 0:39:37.508 on, I didn't put this up. It has this stuff that has got 0:39:41.297 my name on it. Take it down and publish a 0:39:44.053 retraction. Mr. 0:39:45.017 Zeran, we sort of have to look into this. 0:39:47.773 And you have to understand that we don't actually know who had 0:39:51.975 this account because they are anonymous. 0:39:54.662 And it is not our policy to publish retractions, 0:39:57.9 but we will sort of do it. And maybe we will turn off the 0:40:03.871 account and check into it. The next day more slogans. 0:40:08.848 Naughty Oklahoma, we have t-shirts, 0:40:12.102 we have bumper stickers. Visit Oklahoma, 0:40:15.834 it's a blast, call Ken. 0:40:17.94 And, by the way, there is a real demand for 0:40:21.96 these things so if you call and the line is busy make sure you 0:40:27.798 call back. By April 30th Ken Zeran is 0:40:32.025 getting an abusive phone call every two minutes. 0:40:35.685 May 1st, KXRA, a local Oklahoma radio station 0:40:39.113 says you know what is going on in Seattle? 0:40:42.306 There is this guy who is publishing stuff selling 0:40:46.045 t-shirts making fun of our kids who died in the blast two weeks 0:40:50.874 ago. His name is Ken Zeran. 0:40:52.899 Why don't you tell him what you think about him? 0:40:56.56 Here is phone number. Here is his address. 0:41:01 The police are guarding Zeran's house now. 0:41:05.205 Well, Zeran finally gets in touch with KXRA and they publish 0:41:11.256 the announcement that it is a mistake. 0:41:15.051 They broadcast a retraction of that. 0:41:18.641 And by the end of May Zeran is down to only 15 threatening 0:41:24.487 phone calls a day. So over the next months he gets 0:41:29.512 a lawyer and sues AOL. He says you guys are negligent. 0:41:36.17 I called you about this thing, it was causing me harm, 0:41:41.59 it was on your thing, you did not take action, 0:41:46.193 it took a real long time for them to shut off these accounts 0:41:52.227 and you guys are guilty of negligence. 0:41:56.011 And AOL's lawyers go hey, hey. 0:42:00 Actually, the law hadn't been struck down by then. 0:42:03.93 Look at this provision that congress has passed into law. 0:42:08.422 I don't care what you said we did. 0:42:11.069 We didn't provide that information. 0:42:13.796 We have no liability for it. And the court agrees with them. 0:42:18.529 And it turns out, by the way, that when congress 0:42:22.299 struck down the Communications Decency Act, they struck down 0:42:27.032 that Display Provision. But there is nothing 0:42:31.104 unconstitutional about that. You can argue whether or not it 0:42:34.364 is a good idea, but there is nothing 0:42:36.298 unconstitutional about it. This thing is still part of US 0:42:39.392 law. 0:42:40 0:42:50 The lawsuit was actually at the beginning of '96. 0:42:55.274 It sort of went through this whole thing. 0:43:00 I think it was the beginning of 1996 because there was a lot of 0:43:05.502 arguing going back and forth with AOL between when it was 0:43:10.473 done. It took several months. 0:43:12.958 So AOL says I don't care if we are nealient.

0:43:16.863 we are free. It is not our problem. 0:43:19.881 It gets worse. 2001, Jane Doe, 0:43:22.455 in an anonymous lawsuit, sues AOL on behalf of her 0:43:26.804 teenage son, John Doe. It is anonymous. 0:43:31.474 They are protecting him because he is a minor. 0:43:35.62 And she is suing AOL. She lives in Florida. 0:43:39.49 It turns out there was a guy named Richard Russell, 0:43:44.097 who by that time was in prison, as you will see for obvious 0:43:49.441 reasons, who advertised on AOL to find kids who would come to 0:43:54.97 his house. And he filmed them in 0:43:57.826 pornographic acts, including Jane Doe's son, 0:44:01.788 John Doe. And sold this stuff over the 0:44:07.249 Internet on AOL. Jane Doe sues AOL, 0:44:11.194 you guys are making money from trafficking in child 0:44:16.996 pornography, in pornographic pictures of my son. 0:44:22.45 Now we're talking child pornography. 0:44:26.511 AOL says hey, hey, the Good Samaritan 0:44:30.689 Provision, title 19, section 230, 0:44:34.402 we are not liable. This is 2001. 0:44:38.95 This bounced around in the courts for about three years and 0:44:43.189 finally went to the Florida Supreme Court. 0:44:46.186 And the Florida Supreme Court agreed with AOL. 0:44:49.475 It ain't the greatest thing, but that is what the law says, 0:44:53.714 you are not liable as an ISP if you are not the provider of that 0:44:58.318 information. That is a two to one decision 0:45:02.709 in the Florida Supreme Court. The minority opinion by Judge 0:45:08.128 Lewis, the guy just went ape. He said this is nuts. 0:45:12.8 How could it conceivably have been the intent of congress, 0:45:18.126 in a law that was motivated by protecting kids from pornography 0:45:23.919 on the Internet, that a consequence of that law 0:45:28.217 is now that somebody who is trafficking in child pornography 0:45:33.729 is actually immunized? But that is the current state 0:45:39.177 of the world. And you see what it comes from. 0:45:42.48 It comes from looking at this very complex system of 0:45:46.309 regulations and the interaction between First Amendment Law and 0:45:50.963 defamation law and the fact that you can apply regulations. 0:45:55.318 You want to partly immunize those ISPs, but you don't want 0:45:59.597 to let them off free. And you end up with exactly the 0:46:04.471 same kinds of unintended consequences that happen 0:46:08.297 whenever you monkey with any complex system. 0:46:11.724 It is not a whole lot different from the kind of stuff you have 0:46:16.666 seen on the technology side when you are talking about how the 0:46:21.528 technical base of the Internet works. 0:46:24.398 So where does that leave us? Well, I guess in terms of the 0:46:28.942 law, it kind of leaves us there in a very, very confused state. 0:46:35 And getting more and more confused because what has 0:46:39.266 happened recently, this whole thing is now mixed 0:46:43.276 in international law. If you go search on Google for 0:46:47.627 stuff from the Taiwan Ministry of Defense you will find that in 0:46:52.918 the US. Will you find it in China? 0:46:55.733 No. Google China has a different 0:46:58.378 search. Will you find it if you somehow 0:47:02.115 are able to log into US Google from Beijing? 0:47:05.05 Yeah, you would see it. What kind of liability is 0:47:08.326 there? You're personal liability with 0:47:10.783 the Chinese government, is it Google who is going to 0:47:14.264 get hammered in their trade agreements in terms of China? 0:47:18.086 We don't know. What is going to happen with 0:47:20.952 France and Yahoo? This whole picture has become 0:47:25.612 even much, much more complex as a consequence of all of us 0:47:30.747 engineers making this Internet which has effectively made 0:47:35.792 distance vanish. So where does that leave us? 0:47:39.756 It leaves us with you, I guess, and where I started. 0:47:44.351 You guys have enormous power that comes from the stuff you 0:47:49.486 have learned in this course. You have the ability to go out 0:47:55.7 and really, really influence the world by making stuff, 0:48:00.561 by explaining to people stuff they don't know, 0:48:04.611 like the end-to-end principal is one. 0:48:07.852 And it is really a question of would you like to grab that 0:48:12.983 power and take advantage of it? But, in order to do that, 0:48:18.023 you need to understand this other piece of the world. 0:48:22.704 OK. Thank you.