

## ESSAY

### INTERNET ETHICS, AMERICAN LAW, AND JEWISH LAW: A COMPARATIVE OVERVIEW

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## INTRODUCTION

Societies are governed by codes of ethics. In developed societies, parts of these codes form a set of laws, enforceable by legal authorities, with or without assistance from the populace. At times, laws are crafted for the benefit of the powerful members of the society, ensuring preservation of their positions and property, while other constituents may ignore, actively disobey, or challenge laws they believe do not support their ethics. Developing and maintaining appropriate social norms is thus particularly critical for sustaining rapidly changing heterogeneous populaces.<sup>1</sup>

The Internet, devised for the purpose of interconnecting diverse computer networks of research and educational communities,<sup>2</sup> has become a global communication system that joins together widely disparate populaces with different ethical codes. The World Wide Web (WWW), hosted by the Internet, serves both to propagate existing ethos and to undermine them. Communities of the WWW, as well as their governments, are striving to establish fundamental guidelines. This Essay suggests that Jewish law contains principles that may be relevant to this endeavor.

Specifically, a comparative overview of elements of the ethics and regulation of speech in American law and Jewish law may help us understand ethical guidelines of online communities. We investigate the posting and retrieval of content containing libel (slander), gossip (scandal), unauthorized personal information (privacy violation), pornography, obscenity, and other objectionable material. Accountability, responsibility, and unethical business practices (such as piracy, identity theft, information theft, phishing, copyright violation, malicious destruction, or corruption of digital property) are tangential to our focus and, though related, remain largely beyond the scope of the Essay.

We first briefly review the history of the Internet in order to identify ways in which its development influenced and was influenced by pre-existing technologies. We then examine American and Jewish law in terms of speech (output and input of content) and privacy (in this Essay, restricted to output and input of personal content), and compare these to content guidelines on some prominent social networks. We claim that Jewish law and ethics, which place broader restrictions on speech than those in American law, have the potential to positively influence the

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1. See generally Lex Gill et al., *Towards Digital Constitutionalism? Mapping Attempts to Craft an Internet Bill of Rights* (Berkman Ctr. Res. Pub. No. 2015-15, 2015), <http://dx.doi.org/10.2139/ssrn.2687120>; Philip A. Wells, *Shrinking the Internet*, 5 N.Y.U. J.L. & LIBERTY 531 (2010).

2. See generally JOHN NAUGHTON, *A BRIEF HISTORY OF THE FUTURE: ORIGINS OF THE INTERNET* (2000).

norms of both traditional and social media.

Incorporating social norms can be particularly beneficial in the context of Internet-based ethics. First, to the extent that formal laws are unfair and/or ineffective, they can be supplemented by informal rules that better reflect the shared values of the community.<sup>3</sup> Second, because they have not been decreed by the government, informal rules are generally not subject to constitutional protections. Therefore, ethical restrictions that are accepted by the community potentially provide a means for placing broader limits on speech than would be permissible under governmental laws. In both respects, social norms share characteristics of Jewish ethics, which often rely on a consensus of communal obligation as a primary motivation for adherence,<sup>4</sup> and which include a range of obligations and prohibitions beyond those enacted in most legal systems.<sup>5</sup>

## I. THE DEVELOPMENT OF THE INTERNET: A BRIEF OVERVIEW<sup>6</sup>

### A. Communication

In the 1960s, the Defense Advanced Research Projects Agency (DARPA), the U.S. Department of Defense's research branch, funded research for a packet switched, decentralized internet. The resulting internet, the Advanced Research Projects Agency Network (ARPANET), connected existing computer networks. ARPANET's technologies differed from traditional communication networks. Shared channels replaced dedicated channels and packet switching replaced circuit switching,<sup>7</sup> so that resources would be more efficiently utilized during non-uniform traffic conditions. Dynamic routing of individual packets replaced predetermined session routes in order to integrate existing networks that did not predetermine routes and to make systems more resilient. As the Internet evolved from the ARPANET, its technologies

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3. In recent decades, an extensive body of literature has developed examining the relationship between law and social norms. *See, e.g.*, Bryan H. Druzin, *Social Norms as a Substitute for Law*, 79 ALB. L. REV. 67, 69 n.8 (2016).

4. *See, e.g.*, Samuel J. Levine, *Taking Ethical Obligations Seriously: A Look at American Codes of Professional Responsibility Through a Perspective of Jewish Law and Ethics*, 57 CATH. U. L. REV. 165, 200-01 (2007).

5. *See, e.g.*, Samuel J. Levine, *Taking Ethics Codes Seriously: Broad Ethics Provisions and Unenumerated Ethical Obligations in a Comparative Hermeneutic Framework*, 77 TUL. L. REV. 527, 542-43 n.56 (2003).

6. *See generally* JOHN NAUGHTON, A BRIEF HISTORY OF THE FUTURE: ORIGINS OF THE INTERNET (2000); *see also* Barry M. Leiner et al., *Brief History of the Internet*, INTERNET SOCIETY (2016), <http://www.internetsociety.org/internet/what-internet/history-internet/brief-history-internet>.

7. *See* Leiner et al., *supra* note 6.

adapted to the hosting of media applications and social interactions. For example, mechanisms were developed that mimicked circuit switching and that scheduled data according to traffic classes. On the other hand, traditional telephone networks adopted many mechanisms of computer networks. For example, the analog transmission backbone of telephone networks was replaced by the Integrated Services Digital Network's digital technologies, cell (small fixed-size packet) switching supported landlines, and digital transmission became available for the local loop. Thus, both traditional and Internet-based utilities benefited from integrating the other's communication technologies.

### *B. Architecture and Synchronization*

Early telephone and computer network architectures were hierarchical. Engineers analyzed expected traffic patterns and potential routes, determining network topology and static paths accordingly. The Public Switched Telephone Network (PSTN) used a 5-level hierarchical static path allocation policy based on the availability of switches at the next lower levels. Connection requests that competed for busy switches were discarded. On the other hand, ARPANET's routing decisions were dynamically based on distances between Interface Message Processors (IMPs). These metrics were continually recomputed according to distributed communication between IMPs. IMPs stored packets until they could be forwarded around portions of the ARPANET that became temporarily degraded and cooperated in making routing decisions without centralized or hierarchical controllers. As the Internet grew, and as its topology became more irregular, neither of the above methods was sufficient on its own. To handle increased complexity, both PSTN and Internet topologies were organized into hierarchical regions with redundant high bandwidth connections between regions at the top levels. Within each region, data movement was cooperatively and dynamically determined. Thus, both traditional and Internet-based routing benefited from the integration of the other's architectural and synchronization technologies.

### *C. Security*

Senator Albert Gore, Jr. led the enactment of the High Performance Computing Act of 1991, which found the need for "[a] high-capacity, flexible, high-speed national research and education computer network."<sup>8</sup> Although initially the Internet was funded for research and education, it was eventually handed over to tier-one Internet service providers (NSPs) for maintenance and commercialization. Transmission Control

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8. High Performance Computing Act, 15 U.S.C. § 5501 (1991).

Protocol/Internet Protocol (TCP/IP) became the operating system for all Internet users. The World Wide Web—a network of clients, servers, and corresponding protocols—was installed at the Application Layer of the TCP/IP protocol suite. These protocols, which were developed for an open and friendly community of educated users, had to handle a widely heterogeneous and frequently hostile environment. Their mechanisms proved inadequate in eluding organized crime, government sponsored exploits, and amateur hackers. Computer professionals continuously had to update their defenses to protect vulnerable protocols installed on WWW servers and over four billion devices in the “Internet of Things.”<sup>9</sup> Traditional security mechanisms, such as biometric authentication, were integrated into Internet security. On the other hand, network cybersecurity mechanisms were incorporated into home and city-wide security systems. Thus, both traditional and Internet-based services benefited from the integration of each other’s security technologies.

#### D. *Commercial and Non-Commercial*

Early computer networks were maintained for commercial purposes. AT&T had a monopoly over most of the telephony services in the United States. Private networks were formed by linking network architectures (such as Systems Network Architecture or Digital Network Architecture) into the AT&T telecommunication network. The ARPANET, on the other hand, was developed for education and research, with commercialization initially opposed by its community.<sup>10</sup> Yet, by the 1990s, the Internet had been extensively commercialized. NSPs maintained the Internet backbone and leased direct or indirect access to subscribers. Domain names were bought and sold for commercial purposes. Pop-up ads were integrated into web sessions. Search engines and software cookies gathered data on customer sales patterns. On the other hand, traditional communities benefited from the maintenance of the Internet and its hosting of open-source tools and commercial search engines. Thus, both traditional and Internet-based communities benefited from the integration of commercial and non-commercial technologies.

#### E. *Ethical Standards*

The WWW has been quickly adopted by consumers for social and commercial utilization. The “computer revolution” has had a significant

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9. Press Release, *Gartner Says 4.9 Billion Connected “Things” Will Be in Use in 2015* (Nov. 11, 2014) (on file with Gartner, Inc.); see also Neil Gershenfeld et al., *The Internet of Things*, SCIENTIFIC AM., Oct. 2004, at 76.

10. JAN SANDRED, *MANAGING OPEN SOURCE PROJECTS: A WILEY TECH BRIEF 9* (Cary Sullivan et al. eds., 2001).

effect on our lifestyles and behavior, sometimes with negative consequences. Our shopping habits as well as our socializing habits have changed. With the ability to distance ourselves from direct contact with others, many of us have blurred our social graces, behaving in ways that are not acceptable to our family and neighbors. Social networking sites have been utilized to bully, slander, and otherwise harm people.<sup>11</sup> In order to forestall such behavior and “to balance the needs, safety, and interests of a diverse community,”<sup>12</sup> prominent online communities have integrated traditional moral ethics into guidelines for their content. Users of social media have been influenced by these guidelines.

A 2011 study found that 69% of teenagers believe teens are “mostly kind” to each other on social media sites.<sup>13</sup> However, 88% of these teenagers “witnessed mean or cruel behavior on the sites,” and 80% have defended the victims of such activity.<sup>14</sup>

Social media sites have become training grounds for character development, teaching members to challenge those that do harm. This, in turn, assists traditional communities in maintaining their social norms. On the other hand, the organizers of some of the largest social media sites have adopted and maintained these guidelines (at least in part) because it is commercially beneficial to alienate as few community members as possible. Thus, both traditional and Internet-based communities have benefited from integrating each other’s ethical standards.

## II. ETHICS OF CONTENT OUTPUT AND INPUT BASED ON THE U.S. CONSTITUTION

### A. Speech

As a basic principle premised upon a variety of justifications, American law strongly supports free (*i.e.*, largely unrestricted) speech, with relatively few exceptions.<sup>15</sup> The First Amendment requires that

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11. *Teens, Kindness and Cruelty on Social Network Sites*, PEW RESEARCH CENTER (Nov. 9, 2011), <http://www.pewinternet.org/2011/11/09/teens-kindness-and-cruelty-on-social-network-sites-2/> [hereinafter *Pew Study*].

12. *Facebook Community Standards*, FACEBOOK, <https://www.facebook.com/communitystandards> (last visited Nov. 14, 2016).

13. *Pew Study*, *supra* note 11.

14. *Id.*

15. See, e.g., Vincent Blasi, *Free Speech and Good Character*, 46 UCLA L. REV. 1567 (1999); Vincent Blasi, *The Teaching Function of the First Amendment* (Book Review), 87 COLUM. L. REV. 387 (1987); Lee C. Bollinger, *Free Speech and Intellectual Values*, 92 YALE L.J. 438 (1983); Kent Greenawalt, *Free Speech Justifications*, 89 COLUM. L. REV. 119 (1989); Martin H. Redish, *The Value of Free Speech*, 130 U. PA. L. REV. 591 (1982); Robert Post, *Participatory Democracy and Free Speech*, 97 VA. L. REV. 477 (2011); G. Edward White, *The First Amendment Comes of Age: The Emergence of Free Speech in Twentieth-Century America*, 95 MICH. L. REV.

“Congress shall make no law . . . abridging the freedom of speech.”<sup>16</sup> Nevertheless, American law does allow restrictions on free speech in a variety of circumstances,<sup>17</sup> including among others, defamation,<sup>18</sup> child pornography,<sup>19</sup> obscenity,<sup>20</sup> fighting words,<sup>21</sup> and “true threats.”<sup>22</sup> In addition, the government may regulate speech through time, place, or manner limitations,<sup>23</sup> and may impose a broader degree of restrictions on commercial speech.<sup>24</sup>

American courts have likewise upheld governmental restrictions on Internet “speech.”<sup>25</sup> Although exclusion from First Amendment protection does not in itself make speech illegal, it does allow the enactment of laws to make exempted speech illegal or difficult to propagate. For example, the Children’s Internet Protection Act (CIPA) and the Neighborhood Children’s Internet Protection Act (NCIPA), enacted in 2000, do not prohibit Internet content directly.<sup>26</sup> Rather, these Acts restrict federal funding to libraries and schools that do not block or filter content deemed dangerous for child use.<sup>27</sup> Online output or input of child pornography, on the other hand, is directly prohibited by federal law.<sup>28</sup>

### B. Privacy

The U.S. Supreme Court has developed an extensive jurisprudence

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299 (1996).

16. U.S. CONST. amend. I.

17. *See generally* James Weinstein, *A Brief Introduction to Free Speech Doctrine*, 29 ARIZ. ST. L.J. 461 (1997).

18. *See, e.g.*, *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

19. *See, e.g.*, *New York v. Ferber*, 458 U.S. 747 (1982).

20. *See, e.g.*, *Miller v. California*, 413 U.S. 15 (1973); *Roth v. United States*, 354 U.S. 476 (1957).

21. *See, e.g.*, *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942); *Brandenburg v. Ohio*, 395 U.S. 444, 448 (1969).

22. *See, e.g.*, *Virginia v. Black*, 538 U.S. 343, 359 (2003).

23. *See, e.g.*, *Ward v. Rock Against Racism*, 491 U.S. 781, 798 (1989); *Kovacs v. Cooper*, 336 U.S. 77, 82 (1949).

24. *See, e.g.*, *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n of N.Y.*, 447 U.S. 557, 562 (1980).

25. *See, e.g.*, *United States v. Am. Library Ass’n*, 539 U.S. 194, 204 (2003). *See generally* JOSHUA L. BRUNTY & KATHERINE HELENEK, *SOCIAL MEDIA INVESTIGATION FOR LAW ENFORCEMENT* (2013).

26. *See* 20 U.S.C. § 9134 (2000); 47 U.S.C. § 254(h) (2000).

27. *See, e.g.*, *Consumer Guide, Children’s Internet Protection Act (CIPA)*, <https://transition.fcc.gov/cgb/consumerfacts/cipa.pdf>; *American Library Association, The Children’s Internet Protection Act (CIPA)*, <http://www.ala.org/advocacy/advleg/federallegislation/cipa>.

28. *See, e.g.*, *Citizen’s Guide to U.S. Federal Law on Child Pornography*, <http://www.justice.gov/criminal-ceos/citizens-guide-us-federal-law-child-pornography>.

revolving around a broadly construed “right to privacy.”<sup>29</sup> It should be noted, however, that the term “privacy” does not appear in the text of the Constitution, and the constitutional right to privacy protects the individual against governmental infringement but not against infringement by non-governmental agents.

In this Essay, we limit the scope of our consideration of privacy to protection from unauthorized posting or retrieval of personal information, which can be endangered by unrestricted speech. The Children’s Online Privacy Protection Act (COPPA),<sup>30</sup> which went into effect in 2000, specified requirements that must be met by web site operators before collecting information about children. American law, however, does not prohibit the posting of adults’ or children’s personal information online if the information is correct. Indeed, online communities encourage community members to post personal information as part of their profile<sup>31</sup> and it is common for one community member to post information or pictures of another.

### C. Conflict

Is there an irreconcilable conflict between free speech and privacy?<sup>32</sup> Does the United States rate free speech too highly in allowing personal and hurtful information about another person (even if true) to be posted and to remain posted indefinitely? Is it true that “you can’t erase speech in the digital age?”<sup>33</sup> Should citizens have “the right to be forgotten?”<sup>34</sup> The European Court of Justice considers the right of citizens to privacy and to a limitation on the posting of personal information to outweigh the right to post and retrieve such content. It is more important for citizens to have privacy than it is to know most types of personal information about their neighbors.<sup>35</sup> European citizens can demand the removal of results of searches for their names if information is irrelevant or inflammatory, unless operators of the search engine decide that the data is important for

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29. See, e.g., Samuel J. Levine, *Unenumerated Constitutional Rights and Unenumerated Biblical Obligations: A Preliminary Study in Comparative Hermeneutics*, 15 CONST. COMMENT. 511, 517-20 (1998).

30. See 15 U.S.C. §§ 6501-05 (2000).

31. See, e.g., Nathan Petrashek, *The Fourth Amendment and the Brave New World of Online Social Networking*, 93 MARQ. L. REV. 1495 (2010).

32. See, e.g., Jeffrey Toobin, *The Solace of Oblivion*, NEW YORKER, Sept. 29, 2014.

33. See, e.g., Nicole Alston et al., *Facebook, Google, and the Future of Free Speech*, Aspen Ideas Festival, 2014, <https://www.youtube.com/watch?v=7LH-dt72RTM>.

34. See, e.g., Jeffrey Rosen, *The Right to Be Forgotten*, 64 STAN. L. REV. ONLINE 88 (2012).

35. See, e.g., Marie-Andree Weiss, *Regulating Freedom of Speech on Social Media: Comparing the EU and the US. Approach*, <https://law.stanford.edu/projects/regulating-freedom-of-speech-on-social-media-comparing-the-eu-and-the-u-s-approach/>.



public policy.<sup>36</sup>

In the United States, with few exceptions, the First Amendment guarantees wide protection for human discourse. Courts must decide under which circumstances protection can be denied, depending upon content and content retrievers. Accordingly, these limitations are minimal and generally support free speech over personal privacy. The General Assembly of the United Nations also includes in its Declaration of Human Rights the right of freedom of speech and expression.<sup>37</sup> Yet, European countries, in general, place stronger restrictions on speech than the United States. For example, countries have ruled that denial of the Holocaust is illegal.<sup>38</sup>

### III. ETHICS OF SPEECH ACCORDING TO JEWISH LAW

In contrast to many aspects of American free speech jurisprudence, Jewish law cautions against unrestricted speech and mandates that individuals undertake various measures to curb their speech. Jewish tradition identifies three broad categories of prohibited speech:<sup>39</sup>

#### A. *Idle Gossip (Rechilus)*

It is prohibited to engage in conversations about an absent person with a third party for no worthwhile reason, even if the content appears innocuous. Such conversations violate the privacy of the person spoken about, who has not given consent, and both the speaker and the listener

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36. See, e.g., Lawrence Siry & Sandra Schmitz, *A Right To Be Forgotten? - How Recent Developments in Germany May Affect the Internet Publishers in the US*, 3 EUR. J.L. & TECH. 1 (2012):

In Germany, as well as other European countries, individuals who have been convicted of crimes, yet who have served their sentence and paid their debt to society, are entitled to protection of their privacy. While media coverage of their crimes, including their identities, might be warranted at the time of the offense, as time passes the weight given to their right to privacy increases and the weight given to the media's freedom of expression and the public's right to know wane. Essentially, these individuals obtain a right to be forgotten.

*Id.*

37. General Assembly of the United Nations (1948-2008), *Universal Declaration of Human Rights*, <http://www.ohchr.org/EN/UDHR/Documents/60UDHR/bookleten.pdf/>.

38. See, e.g., Michael Bazylar, *Holocaust Denial Laws and Other Legislation Criminalizing Promotion of Nazism*, <http://www.yadvashem.org/yv/en/holocaust/insights/pdf/bazylar.pdf>.

39. See generally DANIEL Z. FELDMAN, FALSE FACTS AND TRUE RUMORS: LASHON HARA IN CONTEMPORARY CULTURE (2015); ZELIG PLISKIN, GUARD YOUR TONGUE: A PRACTICAL GUIDE TO THE LAWS OF LASHON HORA BASED ON CHOFETZ CHAYIM (1975).

are deemed to have violated the prohibition.

### B. Truthful but Negative Gossip (*Lashon hara*)

It is prohibited to disparage other people, even with truthful information, whether they are present or not, unless there is a valid justification for the information to be known. If the person who is disparaged is present and embarrassed, whether others are present or not, the disparaging speech is considered equivalent to a physical assault.<sup>40</sup>

### C. Slander (*Motzi shem ra*)

Spreading malicious lies is, in some ways, the most consequential of the three prohibitions. There are numerous sources in Jewish law, many grounded in the Biblical texts that warn against harmful speech and privacy violations.<sup>41</sup>

For example:

- “You shall not be a gossipmonger among your people.”<sup>42</sup>
- “Each of you shall not aggrieve his fellow.”<sup>43</sup>
- “It is forbidden to remind people of their earlier sins or embarrassing aspects of their past.”<sup>44</sup>
- “Guard your tongue from evil and your lips from speaking deceit.”<sup>45</sup>
- “Post a sentry for my mouth, God; guard the door of my lips.”<sup>46</sup>
- “He that goes about as a tale-bearer reveals secrets; but he that is of a faithful spirit conceals a matter.”<sup>47</sup>
- “Whoever keeps his mouth and his tongue, keeps his soul from trouble.”<sup>48</sup>
- “Death and life are in the power of the tongue; and they that indulge it shall eat the fruit thereof.”<sup>49</sup>

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40. RABBI NOSSON SCHERMAN, *THE CHUMASH: THE STONE EDITION* 37 (1993).

41. Not surprisingly, similar ethics can be found in Christian and other religions as well. See, e.g., Stephen Smith, *Open Bible: Our Speech* (Oct. 28, 2016), [http://www.openbible.info/topics/our\\_speech](http://www.openbible.info/topics/our_speech).

42. *Leviticus* 19:16.

43. According to Jewish legal tradition, this verse refers to speech. *Leviticus* 25:17.

44. Daniel Sandground, *Parasha Behar/Bechukosai: The Gift and the Curse* (Oct. 28, 2016), [www.shortvort.com](http://www.shortvort.com). Based on *Leviticus* 25:17, embarrassing people, especially in front of others, is a particularly serious prohibition.

45. *Psalms* 34:13.

46. *Psalms* 141:3.

47. *Proverbs* 11:13.

48. *Proverbs* 21:23.

49. *Proverbs* 18:21.

- “May God excise all lips of smooth talk, the tongue that speaks boastfully.”<sup>50</sup>

The magnitude of the prohibitions on speech in Jewish law is premised, in part, on the potentially positive nature of speech. For example, Jewish tradition has always been dependent on speech for teaching the words of the Torah, for bringing cheer to the sick and the elderly, for maintaining communities, and even for warning kings or Pharaohs to change their behaviors.<sup>51</sup> Rabbinical study is “characterized by debate,”<sup>52</sup> with students building their knowledge from hundreds of years of recorded debate.<sup>53</sup> In contrast, prohibited speech that harms others is damaging not only to those spoken about, but also to the speaker and the listener.

In the context of respecting the privacy of others, Jewish law includes various sources prohibiting both input and output of immodest behavior, somewhat similar to American prohibitions on child pornography.<sup>54</sup> For example:

- “Remember all of the commandments of God and perform them, and not explore after your heart and after your eyes after which you stray.”<sup>55</sup>
- “When a camp goes out against your enemies, you shall guard against anything evil.”<sup>56</sup>
- “Unveil my eyes that I may perceive wonders from Your Torah.”<sup>57</sup>
- “A haughty look and a proud heart--the tillage of the wicked is sin.”<sup>58</sup>
- “The hearing ear and the seeing eye, God has made even

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50. *Psalms* 12:3.

51. See *Exodus* 4:14 (explaining how Aaron was given the duty of speaking to Pharaoh).

52. Matthew Stone, *A Comparison of Free Speech in American and Jewish Law*, CHICAGO KENT SCHOOL OF LAW 4 (2007-2008), <https://www.kentlaw.iit.edu/Documents/Institutes%20and%20Centers/ILH/matthew-stone.pdf>.

53. See *id.* at 1.

54. See *59 Bible Verses about Our Speech*, OPEN BIBLE.INFO, [http://www.openbible.info/topics/our\\_speech](http://www.openbible.info/topics/our_speech) (showing similar ethics in Christian religions).

55. *Numbers* 15:39 (referring to maintaining and respecting modesty by shielding one’s eyes from immodest sights under Jewish legal tradition).

56. *Deuteronomy* 23:10 (including an obligation to guard one’s eyes from seeing inappropriate sights under Jewish legal tradition).

57. *Psalms* 119:18 (entailing the responsibility both to shield one’s eyes from immodest sights and to unveil them to see the glory of God’s work).

58. *Proverbs* 21:4 (teaching that the eye and the heart are potential agents of sin that can lead a person away from righteousness).

both of them.”<sup>59</sup>

Internet hosted technologies, including social media, e-mail, and pornography, are thus often potentially inconsistent with Jewish law and ethics, in part because their anonymity and ease of access facilitate the spreading and obtaining of harmful speech and sights. Some sectors of the Jewish community proscribe Internet use altogether. Others utilize the Internet for sermons on how to improve oneself by guarding one’s tongue and shielding one’s eyes.

#### IV. ETHICS OF SPEECH ACCORDING TO SOCIAL MEDIA

Freedom of speech (within guidelines) is a positive attribute for online communities, since the major goals of social networks, obtaining and connecting members, are dependent upon member activity. On the WWW, however, you are a member of a number of communities that can restrict online behavior.

- (1) The U.S. government can enact laws for the posting, retrieving, and filtering of content within its bounds, as long as these are in accordance with constitutional protections. The government monitors and records behavior, which may inhibit free usage of speech.<sup>60</sup>
- (2) Many countries have stronger restrictions regarding posted content within their domain.<sup>61</sup>
- (3) American federal and state governments can pass laws that restrict content as long as these are in accordance with federal and state law.
- (4) Internet Service Providers can filter out content that is deemed to be offensive or illegal.
- (5) Online communities can regulate content.

We examine the guidelines of three social networks, Facebook, YouTube, and Reddit, in terms of acceptable content and social mores. Several of these guidelines can be compared to areas of Jewish ethics that have been previously discussed. Each of these communities obey government laws for its sites within that government’s domain, although content that is removed from a site will typically be available elsewhere. Social networks also rely on feedback from their members in determining

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59. *Proverbs* 20:12 (referring to God providing humans with the ability to output (speak and write) and to input (hear and see) and thus requiring humans to claim responsibility and accountability for the use and misuse of this ability).

60. Petrashek, *supra* note 31, at 1510.

61. See Alston et al., *supra* note 33.

whether content is desirable. How do administrators determine whether content satisfies guidelines and government laws?<sup>62</sup> This question has been and probably will continue to be heatedly debated. In examining the guidelines, we will raise a number of comparisons to areas of Jewish law and ethics, which may help illuminate these continuing debates.

### A. Facebook

Facebook currently dominates the social networking market with over one billion registered accounts. In order to make people “feel safe,” Facebook has developed Community Standards.<sup>63</sup> Guidelines specify that content be removed if it is deemed to violate Community Standards. Speech that poses risk of physical harm or safety violations does not satisfy those guidelines.<sup>64</sup> Facebook allows members “to speak freely on matters and people of public interest, but remove[s] content that appears to purposefully target private individuals with the intention of degrading or shaming them.”<sup>65</sup> This restriction is an example of an accepted norm among an online community that parallels the Jewish ethical restriction against embarrassing people.

Facebook has additional restrictions. Although members must use their real names, they are not allowed to “publish personal information about others without their consent.”<sup>66</sup> This restriction is a privacy consideration demonstrating a concern similar to Jewish ethical restrictions on *rechilut* and *lashon hara*. Facebook supports full time monitoring of contents by a legal team and government relationship specialists.<sup>67</sup> Members are encouraged to flag content that they deem offensive and Facebook employees check flagged content around the clock for violations of standards and potential removal from the site. Contributors of removed content can appeal decisions. Alternatively, Facebook personnel will suggest appropriate language for the flaggers to use to encourage the posters themselves to remove the content.<sup>68</sup> Similar to various Jewish social norms, Facebook considers these content contributors to be members of their community who should be helped to improve themselves.

Facebook does not allow hate speech, which is defined as a serious attack on a person or group of people based on religion, national origin,

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62. *See id.*

63. *Community Standards, Encouraging Respectful Behavior*, FACEBOOK <https://www.facebook.com/communitystandards>.

64. *See id.*

65. *Id.*

66. *Id.*

67. *See id.*

68. *See id.*

race, sex, disabilities, sickness, or sexual orientation.<sup>69</sup> American law, by contrast, does not prohibit speech that debases or insults groups of people unless the speech incites violence or becomes a threat of imminent violence. However, according to Jewish ethics, hate speech, even if true, is forbidden.

Facebook prohibits the posting of nudity and pornography, since these are contrary to “the needs, safety, and interests of a diverse community.”<sup>70</sup> Again, similar provisions are not found in American law, yet shielding one’s eyes from immodest sights is an important principle in Jewish law and ethics.

Many of Facebook’s policies are enforced globally with differing restrictions, since many countries have stronger restrictions on speech. For example, it is against Turkish law to insult Mustafa Kemal Ataturk, and Holocaust denial is against French, German, and Austrian law. Facebook lawyers review content in each country, and material deemed illegal is removed from sites in that country. Facebook periodically issues a Government Requests Report detailing government requests to remove content based on local laws.<sup>71</sup> As long as demands are in compliance with that government’s laws, Facebook will remove specified content in sites of that country. Clearly, Facebook administrators and their lawyers have to make decisions here, as they do for the removal of content in general. “At the moment, many of the most important decisions about online content, access, and speech are concentrated in the hands of a few private actors.”<sup>72</sup> Although profit is always involved, a strong factor influencing Facebook administrators appears to be community guidelines based on social norms.

### B. YouTube

YouTube is another widely used social media site, providing viewers free access to millions of videos. YouTube provides strong guidelines for “respecting” the community and relies on the member community to identify content that does not satisfy these guidelines.<sup>73</sup> Community members contribute and comment on content and, like Facebook members, can flag content that they deem to be objectionable. Teams of reviewers check flagged content. At the same time, community guidelines specify that free speech be protected, even if controversial or offensive, as long as the content is within community guidelines.

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69. *See id.*

70. *Id.*

71. *Government Requests Report*, FACEBOOK, <https://govtrequests.facebook.com/>.

72. Alston et al., *supra* note 33.

73. YouTube Community Guidelines, <http://www.youtube.com/yt/policyandsafety/communityguidelines.html>.

YouTube Guidelines include:<sup>74</sup>

- Respect copyrights.
- No spam, misleading metadata (such as tags, titles to increase number of views), scams. Not surprisingly, unfair business practices are similarly prohibited by Jewish law and ethics.
- No hateful content that promotes or condones violence against specified individuals or groups. This provision seems to parallel the prohibition on input or output of *lashon hara* in Jewish law and ethics.
- No harmful or dangerous content, specifically that which might encourage dangerous activity. No violent or gory content, except in a news or documentary context that is carefully documented.
- No pornographic or sexually explicit content. Again, this provision parallels the obligation to shield one's eyes according to Jewish ethics.
- Child exploitation is reported to law enforcement.
- No threats, stalking, harassment, privacy invasion, etc. This prohibition shares some principles with the prohibition on input or output of hate or embarrassing speech under Jewish law and ethics.

Submitted material and reports are reviewed carefully. If terms of use are violated, perpetrators may be removed from YouTube membership. Reviewers are chosen on the basis of their knowledge of the local communities. For example: pornography is reviewed differently in Northern Europe (perhaps as art) than in the Middle East. Similar to American law, YouTube states that “free expression is not absolute” and “free speech must be protected even if it is offensive.”<sup>75</sup> A valid court order is required for removal of content (unless the content is deemed contrary to YouTube’s guidelines) and a request from an authorized agency is obeyed if the claim is recognized.<sup>76</sup> YouTube provides standards for posted material and reviews reports carefully. The community rates videos and flags content that is considered to be against community standards, as well as content that is liked. Feedback is used to form the ethos of the YouTube community.<sup>77</sup> Community feedback

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74. *See id.*

75. *Id.*

76. *See YouTube Community Guidelines*, YOUTUBE; *YouTube Help: Other Legal Issues*, YOUTUBE, [https://support.google.com/youtube/answer/6156383?hl=en&ref\\_topic=6154211](https://support.google.com/youtube/answer/6156383?hl=en&ref_topic=6154211) (last visited Oct. 30, 2016).

77. *See id.*

provides ratings for member content and behavior on YouTube as it does in many other social media sites, including Facebook and eBay,<sup>78</sup> thus strengthening social norms.

### C. Reddit

Reddit is a social media site in which members mainly link to content on other sites, although they also share their own content with their virtual community and vote on content relevance.<sup>79</sup>

Reddit content guidelines include:<sup>80</sup>

- Don't spam. This provision resembles the prohibition against *rechilus* in Jewish law and ethics.
- Don't engage in vote manipulation.
- Don't post someone else's personal information. This provision parallels the prohibition on input or output of *lashon hara* under Jewish law and ethics.
- Don't post child pornography or sexually suggestive content about minors. This provision parallels the prohibition on input or output of *lashon hara* under Jewish law and ethics.

Reddiquette, Reddit's informal guidelines, include:<sup>81</sup>

- Adhere to the same standards of behavior online that you follow in real life. Thus, Reddit seems to promote traditional social norms.
- Don't engage in illegal activity.
- Don't conduct personal attacks on other commentators; don't insult others; don't be (intentionally) rude. This provision resembles the prohibition not to use *lashon hara* against the community.
- Tag posts containing explicit material, such as nudity or horrible injuries, as Not Safe for Work (NSFW) to warn others before reading them.
- Keep submission titles factual and opinion free.

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78. See, e.g., Daniel B. Levin, *Building Social Norms on the Internet*, 4 YALE J. L. & TECH. 97, 125-26 (2002).

79. *Voting*, Reddit.com, <https://www.reddit.com/wiki/voting> (last visited Dec. 5, 2016); Rules on Voting, Reddit.com, <https://www.reddit.com/r/Voting/wiki/index> (last visited Dec. 5, 2016).

80. *Reddit Content Policy*, REDDIT, <http://www.reddit.com/help/contentpolicy> (last visited Oct. 30, 2016).

81. *Reddiquette*, REDDIT, <http://www.reddit.com/wiki/reddiquette> (last visited Oct. 30, 2016).



- Base your vote on the content of the post.

Although Reddit members can “friend” each other, the basic goal of Reddit members appears to be front page ranking of their content. Formal guidelines are minimal. Even “Don’t engage in illegal activity” is an informal rule. Nudity is not prohibited. More of the informal rules are about voting than about content. Reddit’s social norms appear to be more concerned with encouraging competition (such as how to get greater recognition for content) than cooperation (such as how to maintain friendships within the community).<sup>82</sup>

Several communities in the United States are beginning to side with European concepts of privacy and “being forgotten.” California has passed a law to require web sites to offer minors an “eraser button” that allows them to remove embarrassing information that they themselves have posted.<sup>83</sup> Some of the most popular media sites, including Facebook, Twitter, Instagram and Vine, allow users of any age to delete data that they have posted, including photographs.<sup>84</sup> Will social media sites give minors the ability to erase personal information that is posted by others? Will social media guidelines set a time limit on posts that contain unfavorable material about minors? Many issues must still be resolved.

## CONCLUSION

We recognize that there are communities on the Internet that support detrimental ethos. We accept the fact that U.S. law generally protects hurtful content in an effort to promote “free” speech. While access to the Internet eases the spread of hate speech, the result need not cause an increase in violence. Ethical guidelines set by social media can positively influence young members of traditional communities. At the same time, traditional communities that promote values similar to Jewish ethics, in preventing harmful speech and privacy violations, can have a beneficial effect on social media guidelines.

We have chosen social media to represent the Internet community as

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82. A recently formed company, imzy, has declared that “We believe in the power of communities . . . . We want you to find a place where you belong—wholly, comfortably, and unequivocally.” Cf. About Us, IMZY.COM, <https://www.imzy.com/about>; Davey Alba, *Imzy: Can an Ex-Reddit Exec Really Hack the Online Abuse Problem*, WIRED (May 24, 2016), <http://www.wired.com/2016/05/imzy/>; Mike Isaac, *Imzy is a Kinder, Gentler Reddit: If it Can Stay that Way*, N.Y. TIMES (June 8, 2016), [http://www.nytimes.com/2016/06/09/technology/imzy-is-a-kinder-gentler-reddit-if-it-can-stay-that-way.html?\\_r=0](http://www.nytimes.com/2016/06/09/technology/imzy-is-a-kinder-gentler-reddit-if-it-can-stay-that-way.html?_r=0).

83. Kathleen Miles, *Teens Get Online ‘Eraser Button’ With New California Law*, HUFFINGTON POST, (Mar. 3, 2014), [http://www.huffingtonpost.com/2013/09/24/teens-online-eraser-button-california\\_n\\_3976808.html](http://www.huffingtonpost.com/2013/09/24/teens-online-eraser-button-california_n_3976808.html).

84. *Id.*

probably the most broadly influential of Internet-based applications. Many social media sites have set up guidelines for the removal of all content that is in violation of traditional community standards. Such guidelines are generally stricter than American laws, blocking most hate speech as well as obscenity and nudity. The potential significance of social norms resembling aspects of Jewish ethics becomes apparent when examining posted guidelines.

Members of social media communities typically flag violations of guidelines and therefore assume duties of the “policemen” of the sites.<sup>85</sup> They also provide feedback on their preferred content, thus assuming duties of the “legislators” of the sites. They may even contact the posters of objectionable content directly and explain why that content should be removed, thus assuming the duties of teachers. Members have interfered with bullying and other harmful behavior,<sup>86</sup> thus promoting ethical behavior within their communities. At the same time, social media communities have adopted the ethos of traditional communities in order to satisfy the diverse populations from which they draw their members. Guidelines are tailored to make their members “feel safe” and to satisfy “the needs, safety, and interests of a diverse community.”<sup>87</sup> Both traditional and Internet-based communities are benefiting from each other’s ethical standards.

Of course, it is the organizers of social media who decide whether they will profit from allowing pornography, bullying, violence and other objectionable content. At this time, most social media sites contain ethical guidelines that are stricter than American laws because their communities have made their objections clear. Members should therefore strongly express their preferences, perhaps requesting increased restrictions, so that social media will continue to protect communal norms.

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85. Cf. Wells, *supra* note 1.

86. Cf. *Pew Study*, *supra* note 11.

87. Cf. *Community Standards*, *supra* note 63.