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Meatspaces, Cyberspaces, and (Relative) Expressive Freedom

Posted By [Timothy Zick](#) On September 18, 2008 @ 11:45 am In [First Amendment](#) | [1 Comment](#)

From time to time I see commentary suggesting that expression might actually be *less* free, or may become less free, in cyberspaces than it is in traditional physical or “meat” spaces. Consider, for example, the opening of this [AP story](#) ^[1]: “Rant all you want in a public park. A police officer generally won’t eject you for your remarks alone, however unpopular or provocative. Say it on the Internet, and you’ll find that free speech and other constitutional rights are anything but guaranteed.” I was reminded of this issue recently when I saw that YouTube’s [guidelines](#) ^[2] apparently now include a [ban](#) ^[3] on terrorism-training videos. This newest addition to the “content bans” already in place on this and countless other sites prompted me to consider whether the concern that speech might actually be less free on the Web than in the streets and other physical places might have some merit.

The problem, of course, is that there is no way to accurately measure “relative liberty” in our physical and virtual realms. But we can make some very general observations.

For example, content bans like those in the YouTube guidelines are far more prevalent in cyberspaces than physical ones. (There is, of course, no constitutional prohibition on such bans in cyberspace, at least in privately governed virtual communities.) As a result, there is a vast amount of expression — “hate speech,” “gross” or distasteful” content, sexually explicit but non-obscene expression, encouragement that falls short of unlawful incitement, etc. — that is (purportedly) banned in many places on the Web, like YouTube, but that would be constitutionally protected in physical places.

But concerns that virtual spaces are becoming less free than physical forums as a result of this and other limits seem somewhat alarmist, and probably incorrect. Having spent considerable time recently examining the exercise of expressive liberties in public places, I would take issue with the assumptions in the AP story quoted above. Expressive liberties are hardly “guaranteed” in physical forums. Content restrictions are, after all, merely one form of speech regulation. I found many cases in which speakers were removed from public spaces or denied access, sometimes based on content, but more often owing to failure to meet one or more detailed procedural requirements that apply to public expression. Indeed, expression that would routinely be fully protected in cyberspaces is often restricted or prohibited in physical ones. Nevermind the sexually explicit but non-obscene expression that flourishes on the Web. Think of the mall patron who is tossed out for wearing an “inappropriate” t-shirt. Or the sidewalk counselor or funeral protester displaced by various time, place, and manner restrictions. The issues of “order” and “offense” at the center of these and other “meatspace” cases are essentially irrelevant in cyberspaces.

Thus, whatever one might think of the “[fences](#)” ^[4] being erected in the various frontiers of cyberspace, they do not come close to replicating the often repressive bureaucracy that affects speech in physical places. That is not to say that cyberspace restrictions cannot or will not become repressive in this sense. But as they develop, many cyber-limits are likely to be counteracted by user/speaker tactics that have no real-space analogues. Moreover, as the YouTube “ban” on terrorism-training videos shows, one of the substantial differences between cyber- and physical places is the sheer amount of alternative space available for broadcasting content that might be banned in certain places. While a limit or ban on expression in a particular physical place may effectively prohibit broadcast of the message, the videos and other content displaced from one cyber-forum will likely be posted *someplace*. In First Amendment terms, there are far fewer physical than virtual “alternative forums.” Physical space is simply more finite; and the public physical space that might support expressive activities has been shrinking for years.

These are, of course, only a few issues that must be considered in even beginning to compare “relative” liberties with reference to place. Perhaps the better approach is not to engage in the comparative effort at all. Owing to their unique characteristics, physical and virtual spaces can often complement and supplement one another. Whatever their separate

merits and flaws, *together* our physical and virtual spaces comprise a healthy and robust expressive culture.

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http://www.concurringopinions.com/archives/2008/09/meatspaces_cybe.html

URLs in this post:

[1] AP story: <http://www.firstamendmentcenter.org/news.aspx?id=20268>

[2] guidelines: http://www.youtube.com/t/community_guidelines

[3] ban: <http://www.firstamendmentcenter.org/news.aspx?id=20525>

[4] fences: <http://www.firstamendmentcenter.org/commentary.aspx?id=20286>

[5] : <http://civilities.net/PONAR>

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