User-Generated Content Online: Legitimate power or the Wild West?

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Abstract

The 'new' cyberspace (Web 2.0) facilitates global accessibility for ordinary citizens through websites such as YouTube, MySpace, Flickr, Facebook, FourDocs and Wikipedia. The result is an explosive growth of user-generated content, together with the emergence of new 'virtual communities'. This environment is one which creates endless new possibilities. It also presents many challenges, especially related to law and regulation.

User-generated content exists in a large variety of forms, such as photographs, videos, podcasts, articles and blogs allowing users to express their creativity and register their comments on anything imaginable. This has resulted in users gaining unprecedented power to initiate and influence change on various social, cultural, political and economic issues in the non-virtual world. Examples of the extent of the power of these citizens include, ousting a sex predator from public office, exposing inappropriate behaviour resulting in election defeat, influencing musical and artistic tastes, detailing first-hand accounts of war, influencing book readers on a national scale, and creating global celebrities. This power appears to emanate from a ground swell of popular culture rooted in the western democratic value of free speech/expression, together with the decline of trust in traditional organisations (such as established media) and institutions of governance. TIME magazine's edition of January 1st 2007, profiles many citizens of this new digital democracy including a whistle-blogger, web-artist, social-networker, military-blogger, web-chef, book critic, web-celebrity, 'Intertainer', and Wikipedia author among others.

This paper examines the development and use of user-generated content and this new 'virtual community', with a view to analysing the legal challenges that currently arise, or may arise in the future. In assessing the power of user-generated content, the paper attempts to discuss whether some parts of the new digital democracy may be akin to the Wild West, where video 'shooters', and bloggers (some with sharpened 'web-pencils'), freely roam cyberspace, unfettered with disregard for law and regulation.

The paper first discusses the many factors which have given rise to the widespread use of user-generated content, and the ensuing virtual community. It then gives a taxonomy of user-generated content, classifying types of content and the intended purpose of such content. It also gives examples of possible 'dangers' where traditional legal rules may be inadequate to address certain types of online activity. Citing various researched case studies and legal cases, the paper discusses many of the legal challenges which this new virtual community brings. These challenges are widespread and relate to intellectual property, liability, defamation, pornography, hate speech, privacy, confidentiality and jurisdiction among others. The paper also looks at the legal position of web hosts and internet service providers, and whether or not they effectively 'police' Web 2.0. The paper's ultimate aim is to question whether current contractual provisions, legislation and general legal thinking adequately address the many legal challenges discussed. It will question whether traditional legal theory is even desirable in this new world, or whether it is time to move on to a different notion from 'the world as we know it'. Finally the paper attempts to make some suggestions on the way forward.