



E-commerce

business. technology. society.

Fifth Edition

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Chapter 8

Ethical, Social, and Political Issues in E-commerce

Second Life Gets a Life: Discovering Law and Ethics in Virtual Worlds

Class Discussion

- Why is “mischief” in virtual worlds more difficult to stop? What constitutes mischief in Second Life?
- Which behaviors have been banned in Second Life?
- Is there a consensus regarding whether or not in-game gambling and other virtual crimes are also actual crimes? What is Second Life’s stance?
- How faithfully do you believe the law should be enforced in virtual worlds?

Understanding Ethical, Social, and Political Issues in E-commerce

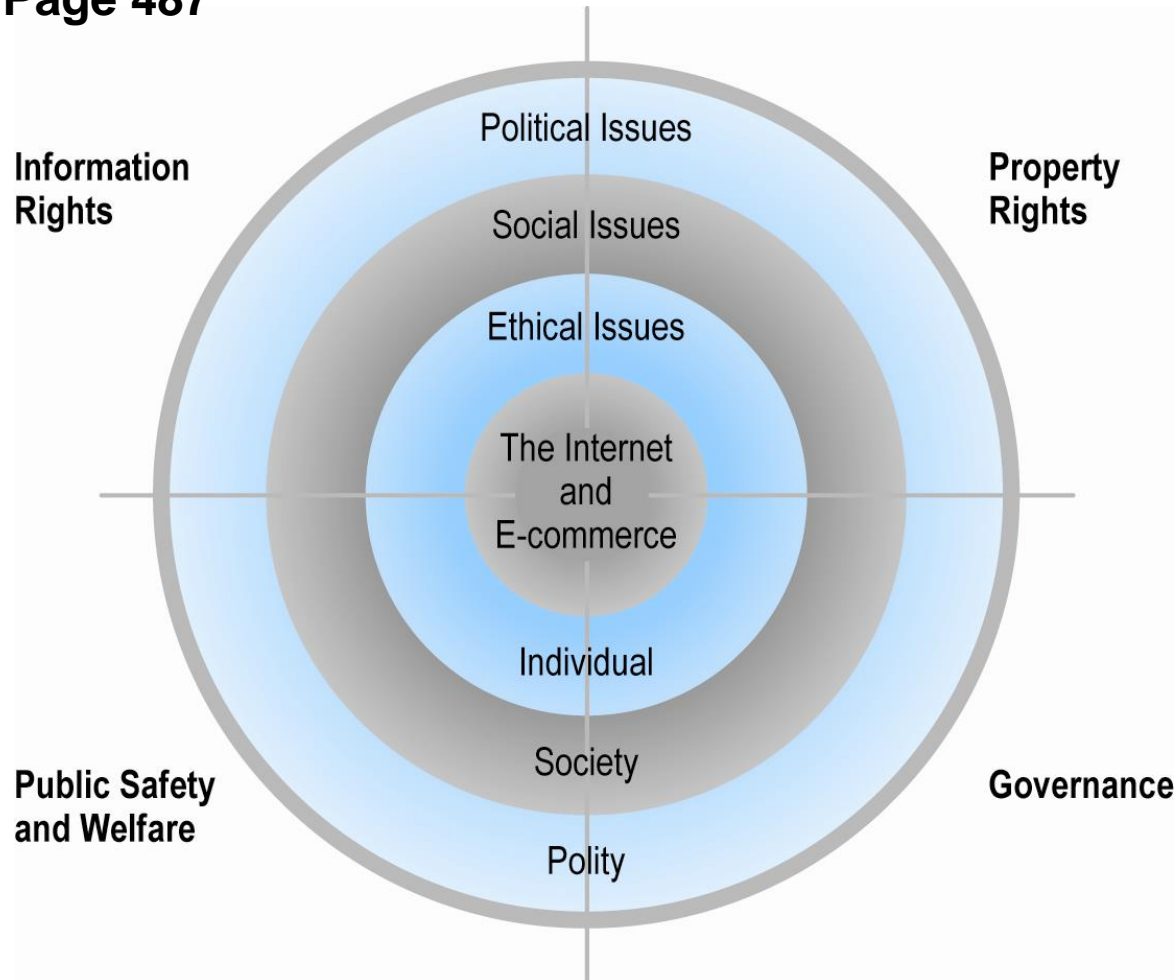
- Internet technology and its use in e-commerce disrupts existing social and business relationships and understandings
- Costs and benefits of technology must be carefully considered, especially when there are as yet no clear-cut legal or cultural guidelines

A Model for Organizing the Issues

- Issues raised by Internet and e-commerce can be viewed at individual, social, and political levels
- Four major categories of issues:
 - Information rights
 - Property rights
 - Governance
 - Public safety and welfare

The Moral Dimensions of an Internet Society

Figure 8.1, Page 487



Basic Ethical Concepts

■ Ethics

- Study of principles used to determine right and wrong courses of action

■ Responsibility

■ Accountability

■ Liability

- Laws permitting individuals to recover damages

■ Due process

- Laws are known, understood
- Ability to appeal to higher authorities to ensure laws applied correctly

Analyzing Ethical Dilemmas

- Process for analyzing ethical dilemmas:
 1. Identify and clearly describe the facts.
 2. Define the conflict or dilemma and identify the higher-order values involved.
 3. Identify the stakeholders.
 4. Identify the options that you can reasonably take.
 5. Identify the potential consequences of your options.

Candidate Ethical Principles

- Well-established ethical principles can be used to help determine actions when confronted with an ethical dilemma:
 - Golden Rule
 - Universalism
 - Slippery Slope
 - Collective Utilitarian Principle
 - Risk Aversion
 - No Free Lunch
 - The *New York Times* Test (Perfect Information Rule)
 - The Social Contract Rule

Privacy

■ Privacy:

- Moral right of individuals to be left alone, free from surveillance or interference from other individuals or organizations

■ Information privacy:

- Includes both the claim that certain information should not be collected at all, as well as the claim of individuals to control the use of whatever information is collected about them

E-commerce and Privacy

- Major ethical issue related to e-commerce and privacy:
 - Under what conditions should we invade privacy of others?
- Major social issue:
 - Development of “expectations of privacy” and privacy norms
- Major political issue:
 - Development of statutes that govern relations between recordkeepers and individuals

Information Collected at E-commerce Sites

- Personally identifiable information (PII):
 - Data that can be used to identify, locate, or contact an individual
- Anonymous information:
 - Demographic and behavioral information that does not include any personal identifiers
- Almost all e-commerce companies collect PII and use cookies to track clickstream behavior

Profiling and Behavioral Targeting

■ Profiling

- Creation of digital images that characterize online individual and group behavior

■ Anonymous profiles

- Identify people as belonging to very specific and targeted groups

■ Personal profiles:

- Add personal identifiers

■ Advertising networks can:

- Track consumer behavior and browsing behavior on the Web
- Dynamically adjust what user sees on screen
- Build and refresh high-resolution data images or behavior profiles of consumers

Profiling and Behavioral Targeting (cont'd)

- Deep packet inspection
 - Records every keystroke at ISP level of everyone and uses information to make suggestions, target ads
- Weblining:
 - Charging some customers more for products based on profiles
- Network advertising firms:
 - Web profiling serves consumers and businesses
- Critics:
 - Profiling undermines expectation of anonymity and privacy
- Consumers:
 - Significant opposition to unregulated collection of personal information

The Internet and Government Invasions of Privacy

- Various laws strengthen ability of law enforcement agencies to monitor Internet users without knowledge and sometimes without judicial oversight
 - CALEA, PATRIOT Act, Cyber Security Enhancement Act, Homeland Security Act
- Government agencies are largest users of private sector commercial data brokers
- Retention by ISPs of user data a concern

Legal Protections

- May be explicitly granted or derived from constitutions (U.S., Canada, Germany)
- May also be found in common law (U.S., England)
- In U.S., also found in federal and state laws and regulations
 - First amendment – guarantees freedom of speech and association
 - Fourth amendment – protects against unreasonable search and seizure
 - Fourteenth amendment – guarantees due process

Informed Consent

- Consent given with knowledge of all the material facts needed to make a rational decision
- Two models:
 - Opt-in
 - Opt-out
- Many U.S. e-commerce firms merely publish information practices as part of privacy policy without providing for any form of informed consent

The FTC's Fair Information Practices Principles

- U.S. Federal Trade Commission:
 - Conducts research and recommends legislation to Congress
- FTC Fair Information Practice Principles (1998):
 - Notice/Awareness (Core)
 - Choice/Consent (Core)
 - Access/Participation
 - Security
 - Enforcement
- Guidelines, not laws

FTC's Fair Information Practice Principles

Notice/Awareness	Sites must disclose information practices before collecting data. Includes identification of collector, uses of data, other recipients of data, nature of collection (active/inactive), voluntary or required, consequences of refusal, and steps taken to protect confidentiality, integrity, and quality of the data
Choice/Consent	There must be a choice regime in place allowing consumers to choose how their information will be used for secondary purposes other than supporting the transaction, including internal use and transfer to third parties. Opt-in/Opt-out must be available.
Access/Participation	Consumers should be able to review and contest the accuracy and completeness of data collected about them in a timely, inexpensive process.
Security	Data collectors must take reasonable steps to assure that consumer information is accurate and secure from unauthorized use.
Enforcement	There must be in place a mechanism to enforce FIP principles. This can involve self-regulation, legislation giving consumers legal remedies for violations, or federal statutes and regulation.

FTC Recommendations Regarding Online Profiling

Principle	Recommendation
Notice	Complete transparency to user by providing disclosure and choice options on the host Web site. “Robust” notice for PII (time/place of collection; before collection begins). Clear and conspicuous notice for non-PII.
Choice	Opt-in for PII, opt-out for non-PII. No conversion of non-PII to PII without consent. Opt-out from any or all network advertisers from a single page provided by the host Web site.
Access	Reasonable provisions to allow inspection and correction.
Security	Reasonable efforts to secure information from loss, misuse, or improper access.
Enforcement	Done by independent third parties, such as seal programs and accounting firms.
Restricted Collection	Advertising networks will not collect information about sensitive financial or medical topics, sexual behavior or sexual orientation, or use Social Security numbers for profiling.

The European Directive on Data Protection

- Privacy protection much stronger in Europe than in United States
- European approach: Comprehensive and regulatory in nature
- European Commission's Directive on Data Protection: Standardizes and broadens privacy protection in European Union countries
- Department of Commerce safe harbor program for U.S. firms that wish to comply with Directive

Private Industry Self-Regulation

- Safe harbor:
 - Private, self-regulating policy and enforcement mechanism that meets objectives of government regulations and legislation, but does not involve government regulation or enforcement
 - e.g. Privacy seal programs (TRUSTe, BBB Reliability Seal)
- Industry associations include:
 - Online Privacy Alliance (OPA)
 - Network Advertising Initiative (NAI)
- Privacy advocacy groups
 - e.g. Epic.org



Insight on Business
Chief Privacy Officers
Class Discussion

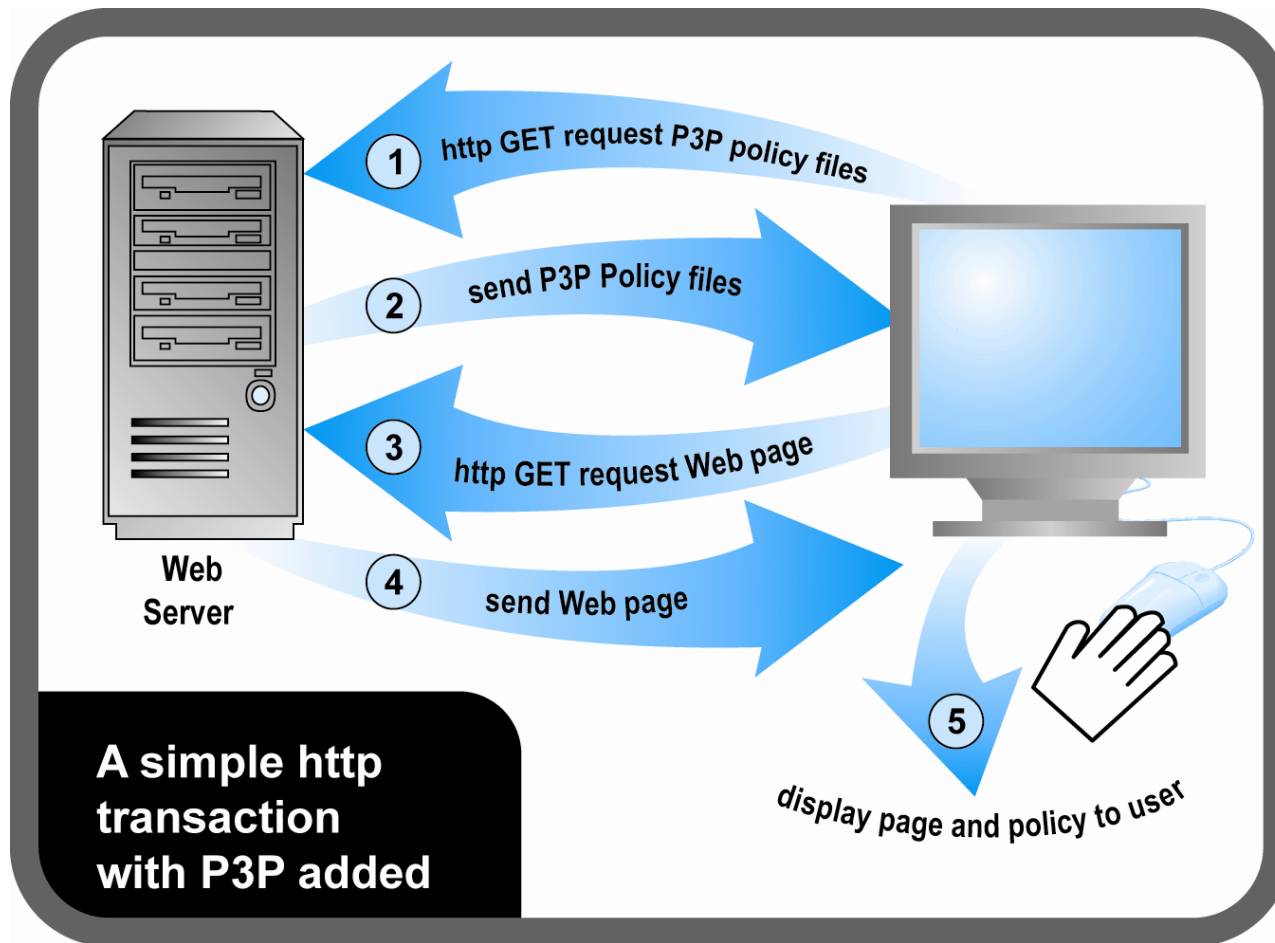
- What does a Chief Privacy Officer do?
- Why do corporations need a CPO?
- What is a “privacy audit?”
- Why did ChoicePoint hire a CPO?
- How do federal laws like Graham-Leach Bliley and HIPPA influence corporate privacy practices?
- What is a “legalistic” approach to privacy as opposed to a “pro-consumer” approach?

Technological Solutions to Privacy Invasion on the Web

- Spyware, cookie, pop-up blockers
- Platform for Privacy Preferences (P3P):
 - Comprehensive technological privacy protection effort sponsored by W3C
 - Standard for communicating to users a Web site's privacy policy
 - Compares site policy to user's preferences or to other standards such as FTC's FIP guidelines or EU's Data Protection Directive
 - Works through user's Web browser

How P3P Works

Figure 8.2(A), Page 511



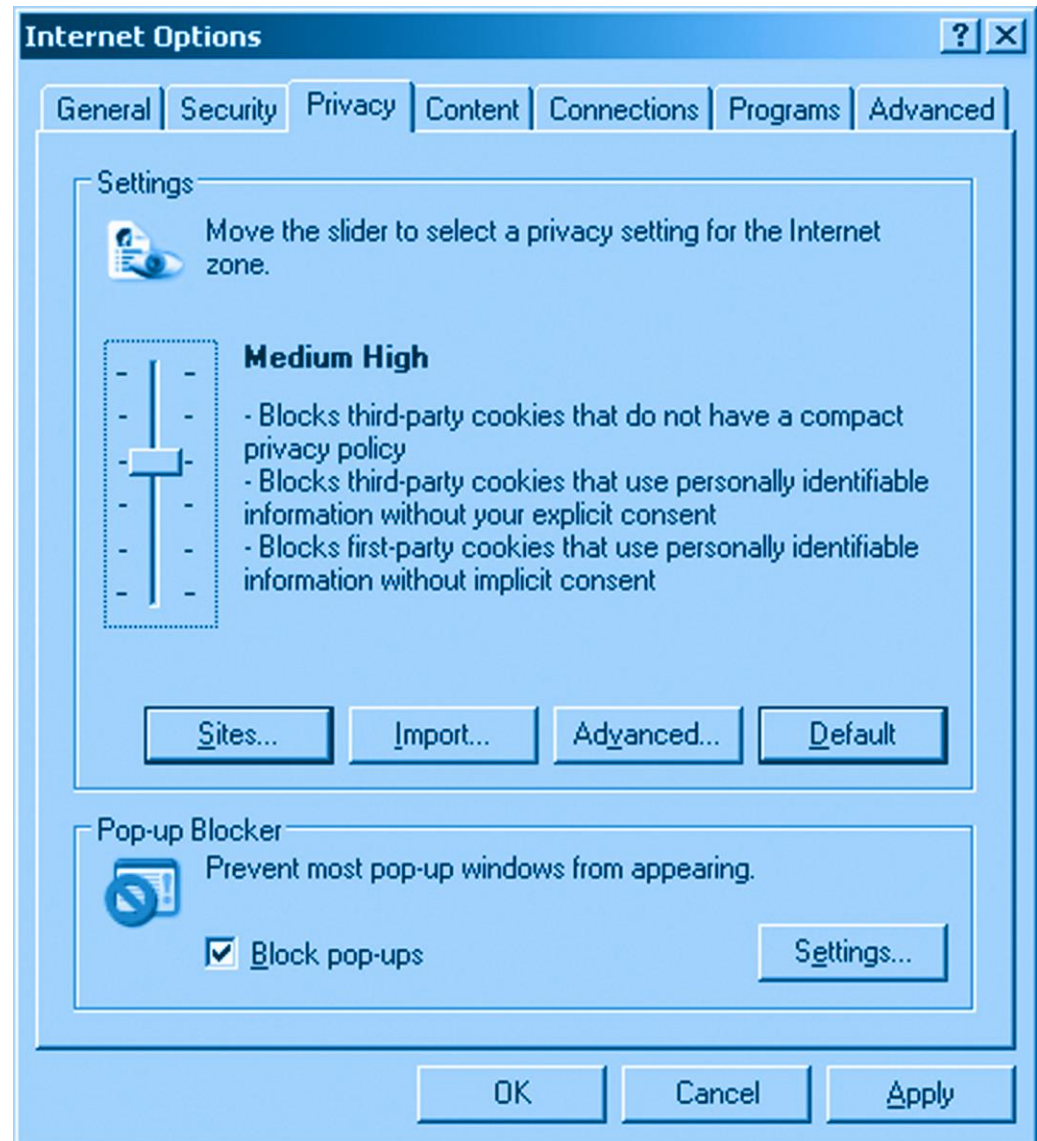
SOURCE: W3C Platform for Privacy Preferences Initiative, 2003.

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Slide 8-25

Internet Explorer 7's Implementation of P3P

Figure 8.2(B),
page 512





Insight on Technology
**The Privacy Tug of War:
Advertisers Vs. Consumers**
Class Discussion

- What are some of the technologies being used to invade privacy?
- What are some of the technologies being used to protect privacy?
- Do you accept the trade off between privacy invasion and “free” Web content?
- Do consumers support the idea of giving up personal information in return for “free” content?

Intellectual Property Rights

- Intellectual property:
 - Encompasses all tangible and intangible products of human mind
- Major ethical issue:
 - How should we treat property that belongs to others?
- Major social issue:
 - Is there continued value in protecting intellectual property in the Internet age?
- Major political issue:
 - How can Internet and e-commerce be regulated or governed to protect intellectual property?

Types of Intellectual Property Protection

- Three main types of intellectual property protection:
 - Copyright
 - Patent
 - Trademark law
- The goal of intellectual property law is to balance two competing interests—the public and the private
- Maintaining this balance of interests is always challenged by the invention of new technologies

Copyright: The Problem of Perfect Copies and Encryption

- Copyright law: Protects original forms of expression (but not ideas) from being copied by others for a period of time
- Look and feel copyright infringement lawsuits involve distinction between an idea and its expression
- Fair use doctrine: Under certain circumstances, permits use of copyrighted materials without permission
- Digital Millennium Copyright Act of 1998 (DMCA): First major effort to adjust copyright laws to Internet age
 - DMCA implements WIPO treaty that makes it illegal to make, distribute, or use devices that circumvent technology-based protections of copyrighted materials

Patents: Business Methods and Processes

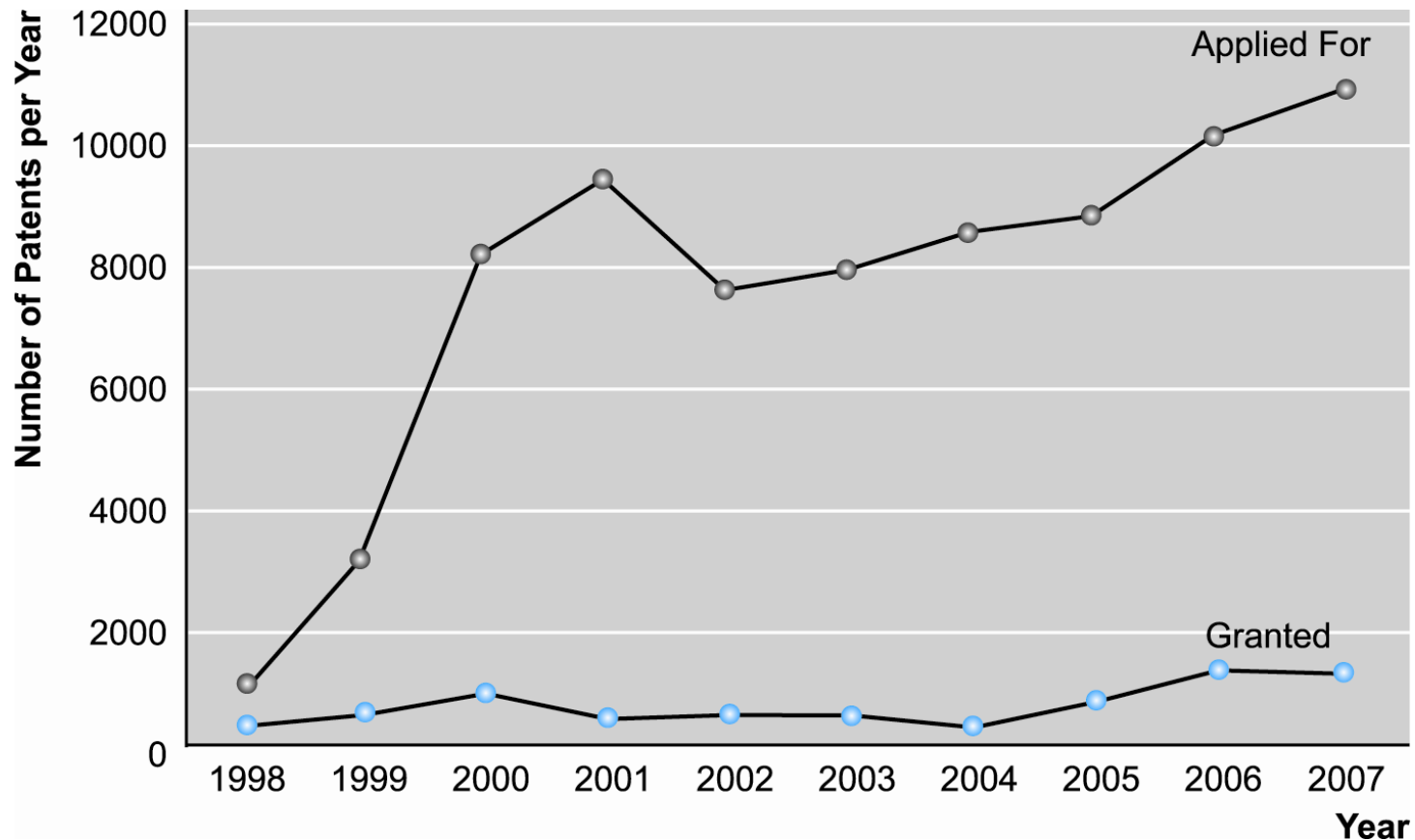
- Patents: Grants owner a 20-year exclusive monopoly on ideas behind an invention
 - Machines, man-made products, compositions of matter, processing methods
 - Invention must be new, non-obvious, novel
- Encourage inventors
- Stifle competition by raising barriers to entry

E-commerce Patents

- Business methods patents
 - Internet basic infrastructure, software developed via public programs, not patented
 - 1998 Federal court upheld claims to business method patent
 - U.S. Patent Office, European Patent Convention hold different standards
 - Examples:
 - Amazon's One-click purchasing
 - DoubleClick's Dynamic delivery of online advertising

Internet and E-commerce Business Method Patents

Figure 8.3, Page 523



SOURCE: United States Patent and Trademark Office, 2008

Patent Reform

- Patent “trolls” – companies that collect patents and seek to enforce them
- 2007 House of Representatives patent reform bill
 - Change patent system from “first to invent” to “first to file”
 - New calculations for damages
 - Way to challenge out of court

Trademarks: Online Infringement and Dilution

■ Trademark:

- Mark used to identify and distinguish goods, and indicate their source
- Protects public by ensuring it gets what it pays for/expects to receive
- Protects trademark owner against piracy and misappropriation

■ Infringement: Use of trademark that

- Creates confusion with existing marks, causes consumers to make market mistakes, or
- Misrepresents origins of goods

Trademarks: Online Infringement and Dilution (cont'd)

- Dilution: Any behavior that weakens the connection between trademark and product
- Federal Trademark Dilution Act (1995)
 - Extends protection to owners of famous trademarks against dilution

Trademarks and the Internet

- Cybersquatting: Registration of domain name or other Internet use of existing trademark for purpose of extorting payments from legitimate owners
- Cyberpiracy: Same behavior as cybersquatting, with intent of diverting traffic from legitimate site to infringing site
- Metatagging: Using other's trademarks as metatags in misleading or confusing manner
- Keywording: Using other's trademarks as keywords on search engines in a misleading or confusing manner
- Deep linking: Bypassing target site's home page and linking directly to content page
- Framing: Displaying content of another site within frame or window

Governance

- Involves issue of social control
- Primary questions:
 - Who will control Internet and e-commerce?
 - What elements will be controlled and how?
- Stages of governance and e-commerce
 - Government Control Period (1970–1994)
 - Privatization (1995–1998)
 - Self-Regulation (1995–present)
 - Government Regulation (1998–present)

Who Governs E-commerce and the Internet?

- Currently in a mixed mode policy environment where self-regulation, through variety of Internet policy and technical bodies, co-exists with limited government regulation
- ICANN
- U.S. government vs. ITU
- Not true that Internet cannot be controlled. In fact, Internet can be very easily controlled, monitored, and regulated from a central location (such as done by China, Singapore, etc.)

Taxation

- Issue of taxation of e-commerce sales illustrates complexity of governance and jurisdiction issues
- National and international character of Internet sales wreaking havoc on traditional taxation schemes in U.S. based on local commerce and local jurisdictions
- October 2007: Congress extended tax moratorium on “multiple or discriminatory taxes on electronic commerce” for an additional seven years
- Unlikely that comprehensive, integrated rational approach to taxation issue will be determined for some time to come

Net Neutrality

- Currently, all Internet traffic treated equally – all activities charged the same rate, no preferential assignment of bandwidth
- Internet backbone providers would like to charge differentiated prices and ration bandwidth by pricing or speed (bandwidth controls)

Public Safety and Welfare

- Protection of children and strong sentiments against pornography
 - Passing legislation that will survive court challenges has proved difficult:
 - Communications Decency Act struck down
 - Children's Online Protection Act struck down (but still be considered by lower courts)
 - Children's Internet Protection Act upheld by Supreme Court (requires schools and libraries to install technology protection measures)
- Efforts to control gambling and restrict sales of drugs and cigarettes
 - Currently mostly regulated by state law
 - Unlawful Internet Gambling Enforcement Act

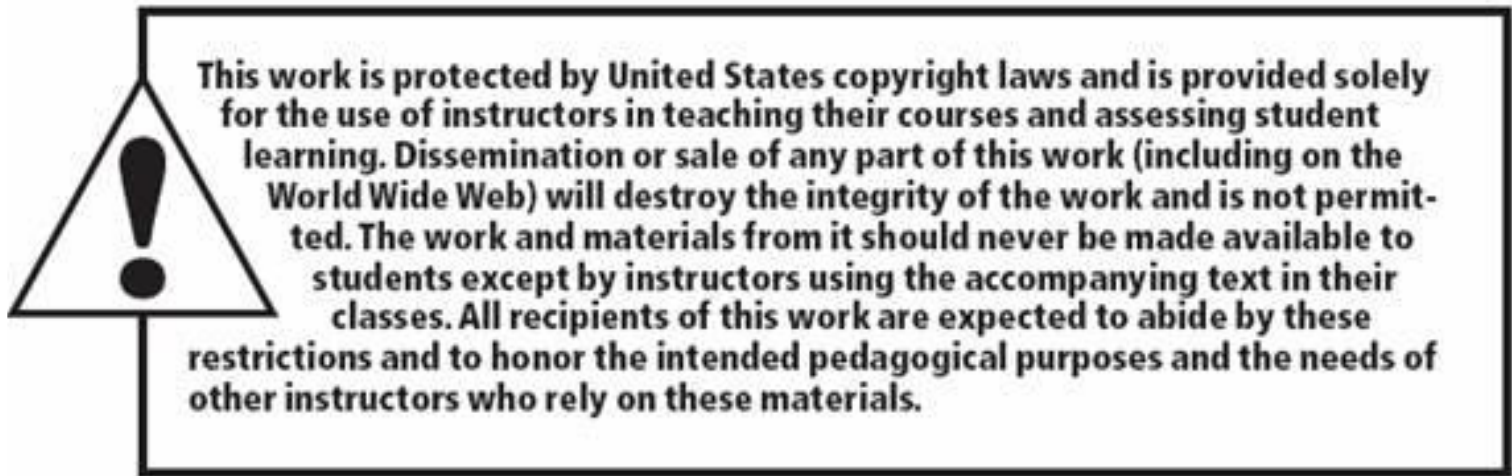


Insight on Society

The Internet Drug Bazaar

Class Discussion

- What's wrong with buying prescription drugs online, especially if the prices are lower?
- What are the risks and benefits of online pharmacies?
- Should online pharmacies require a physician's prescription?
- How do online pharmacies challenge the traditional business model of pharmacies and drug firms?
- Why hasn't effective federal legislation been adopted?
- Who benefits and who loses from online pharmacies?



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