

Professor Raphael Cohen-Almagor, Chair in Politics, University of Hull—written evidence (FEO0003)

Communications and Digital Committee Inquiry into freedom of expression online

How should good digital citizenship be promoted? How can education help?

Vision for Internet Regulation

The forefathers of the Internet devised it as a free information highway. Freedom of expression was paramount. Indeed, freedom of expression is essential. But freedom of expression is not absolute and it is not the only value that should guide us. A balance needs to be struck between freedom of expression, on the one hand, and no less important value: social responsibility, on the other.

We should make a plea for Netcitizenship, for conducting one's affairs on the Internet with a sense of social responsibility. Netcitizens are good citizens of the Internet. These are Internet users with a sense of social responsibility. People have wider moral and social responsibilities to their community. These are dictated by social norms and by one's conscience. Some things are not to be done. Common standards of civility and decency compel us to keep some activities private. People live within a community and understand that actions have consequences. Most of our conduct is other-regarding in one way or another, affecting the lives of other people. Acting responsibly means acting with foresight: Seeing that offensive and harmful consequences of one's conduct that can be avoided are, indeed, avoided.

Responsibility and accountability are important as sometimes people and organizations seek independence from their responsibilities. Ambrose Bierce, an American journalist and satirist, described responsibility as a "detachable burden easily shifted to the shoulders of God, Fate, Fortune, Luck or one's neighbor. In the days of astrology it was customary to unload it upon a star."¹ In the Internet age, Netusers unload it upon cyberspace. Here an interesting phenomenon emerged that confuses the concept of moral and social responsibility. In the offline, real world, people know that they are responsible for the consequences of their conduct, speech as well as action. In the online, cyber world, we sometimes witness unfortunate responsibility shake-off. The Internet has a disinhibition effect. The freedom allows language one would dread to use in real life, words one need not abide by, imagination that trumps conventional norms and standards.²

Netcitizenship is composed of three layers: legal, moral and social responsibility:

¹ Ambrose Bierce, *The Devil's Dictionary*, 1911, at <http://www.alcyone.com/max/lit/devils/>

² R. Cohen-Almagor, *Confronting the internet's Dark Side: Moral and Social Responsibility on the Free Highway* (Washington DC.: Woodrow Wilson Center Press and Cambridge University Press, 2015).

Legal responsibility refers to addressing the issue by agencies of the state. Through its various institutions, the state sees fit to provide and administer certain services. It does not leave them for the citizens. For example, the state is responsible for securing its borders against external attacks and to provide security for citizens inside its borders. For that purpose, there are army and police forces, acting in accordance with legally binding decrees that clarify what is allowed in the administration of security. A further example concerns the administration of justice: The state is responsible for establishing courts to settle disputes between individuals, and grievances between citizens and agencies of the state.³

In *moral responsibility*, the personal responsibility of the agent to conscience is at issue, with appeals to moral consideration. Certain forms of conduct fall within the realm of morality rather than law. Being mean to others is not illegal yet it contradicts basic norms of civility. In the liberal world, sexting, for instance, is accepted when conducted between consenting adults. People may debate the morality of the conduct but it is legal. Sexting becomes morally and legally problematic when consent is lacking and more so when sexting abuses and exploits children. It is assumed that there is a causal connection between the agent and the action or the consequences of the action, and that the action was intentional. When people perform a morally significant act, we may think that they may deserve praise. When they fail to perform a morally significant act we may blame them for omission.⁴

An understanding of responsibility as protecting individual rights and avoiding the infliction of unjustifiable harm on others is the very basis of liberal morality that presupposes the existence of inviolable individual rights. Responsibility in the sense of honouring interpersonal obligations and responding to the needs of others is a matter of personal choice and of social convention.⁵ In other words, moral responsibility is often interconnected to social responsibility. Irresponsible conduct that violates basic trust between people about keeping private what should be private is immoral and undermines social conventions and norms, first and foremost those of respect for others, and not harming others.

Lastly, the concept of *social responsibility* assumes that autonomous agents understand the options before them, have access to evidence required for making judgments about the benefits and hazards of each option, and able to weigh the relative value of the consequences of their choice. Social responsibility further assumes that people are not islands to themselves. We live within a community and have some responsibilities to it. The responsibilities are positive and negative. That is, we have a responsibility to better the society in which we live, and a responsibility to refrain from acting in a way that knowingly might harm our community. Cyberevenge, cyberbullying, sexbullying and sextortion have wider negative implications on our community as they undermine trust between people, offend our sensibilities and harm the dignity of the person.

³ R. Cohen-Almagor, "Netcitizenship: Addressing Cyberevenge and Sexbullying", *Journal of Applied Ethics and Philosophy*, Vol. 7 (2015): 14-23.

⁴ See "Moral Responsibility," *Stanford Encyclopedia of Philosophy*, at <https://plato.stanford.edu/entries/moral-responsibility/>

⁵ Lawrence Kohlberg, *The Philosophy of Moral Development: Moral Stages and the Idea of Justice*. Vol. 1 of *Essays on Moral Development* (San Francisco: Harper and Row, 1981).

Furthermore, it is assumed that we are rewarded by the social framework in which we live, we care about society, would like to maintain it and to contribute to it. The contribution is proactive. We take active steps to do good and to avoid harm.⁶ Netcitizenship carries burdens and obligations. People should respect their responsibilities, being cognizant of the consequences of their actions. At the same time, people have discretion as to the ways open for them to carry out their responsibilities, in accordance with their capabilities and the circumstances at hand.

CleaNet

Once data are available in digital form, questions arise about who can disseminate the data, who owns the data, who provides access to the data, who may have access to the data (including restrictions to access), and who may use the data. It is time to consider the introduction of a new browser funded by an affluent person with a sense of social responsibility, a nongovernmental organization (NGO), or a group of NGOs that wants to establish a better Internet future for our children (such as The Deliberative Democracy Consortium, or DDC).⁷ The DDC, vowing that it will have no connections to any government, has stepped forward and taken on the task of developing a new browser called CleaNet. Being cognizant of potential governmental tendencies to restrict out-of-favor political speech under the pretence of “dangerous” and “terrorist” speech, no government will be involved in this delicate, deliberative process.

Deliberative democracy directly involves citizens in the decision-making process on matters of public concern. It requires the establishment of public institutions through which knowledge is exchanged and ideas crystallized through deliberation and critical reflection. Democratic procedures establish a network of pragmatic considerations and a constant flow of relevant information. People present their cases in persuasive ways, trying to bring others to accept their proposals. Deliberation takes place through the exchange of information among the parties who introduce and critically test proposals. Deliberations are free of any coercion, and all parties are substantially and formally equal—in terms of standing, ability, and opportunity to table proposals, offer compromises, suggest solutions, and support some motions and criticize others. Each participant has an equal voice in the process and tries to find reasons that are persuasive to all in order to promote the common good. Because the Internet affects the life of each and every one of us, we have a vested interest in attempting to have a social tool that enables the promotion of the social good. Following Jürgen Habermas’ ideas on deliberative democracy and the importance of having access to different publics and organizations in the international civil society, it is argued that the Internet will be stable in the long run only if Netusers generally perceive it as a legitimate instrument and only if the Internet is perceived as right and good based on shared values and norms.⁸

⁶ Burton S. Kaliski (Ed.), *Encyclopedia of Business and Finance* (New York: Macmillan, 2001); Marvin L. Marshall, “Ensuring Social Responsibility,” *Thrust for Educational Leadership*, Vol. 23, No. 4 (1994).

⁷ The Deliberative Democracy Consortium (DDC) is a collaborative network of practitioners and researchers from more than 50 organizations and universities that seeks to strengthen the field of deliberative democracy. The DDC supports research activities and aims to advance practice at all levels of government around the world. For more information about the DDC, see <http://www.deliberative-democracy.net/>

The first step in developing CleaNet will be to create a decision-making framework. It is proposed that the CleaNet framework consist of five components arranged in a hierarchical structure: Select Committee, International Steering Committee, Netcitizens Committee, a Complaints Committee, and a Hotline (see Figure 1).

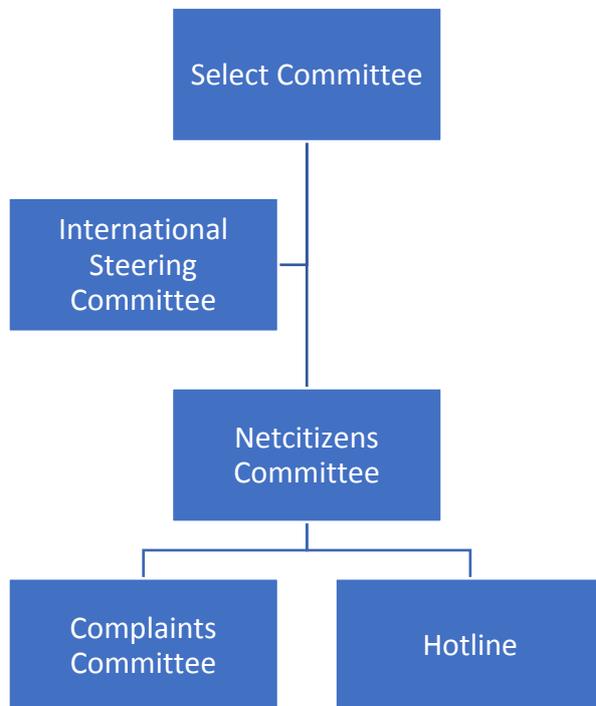


Figure 1. CleaNet framework for decision-making

With the framework in place, the next step will be to appoint a Select Committee whose members will be nominated by the owners of the new browser. NGOs representing new media, human rights organizations, freedom-of-expression societies, and institutions that promote social responsibility will be invited to serve on the Select Committee.

An International Steering Committee of national representatives will be formed to learn from each other's experiences, cooperate in case of need, exchange views, and deliberate sensitive issues. As Habermas explained, such public discourse filters reasons and information, topics and contributions in a way that the discourse outcome enjoys a presumption of rational acceptability. At the same time, according to Habermas, the public discourse establishes relations of mutual understanding that are "violence-free," in the sense that participants seek uncoerced agreement rather than domination or manipulation of others. Habermas described the forms of communication that constitute political discourse as structures of mutual recognition.

⁸ J. Habermas, *Between facts and norms* (Cambridge: Polity Press, 1990); Habermas, *Moral consciousness and communicative action* (Cambridge, MA: MIT Press, 1990). For further discussion, see J.A.G.M. van Dijk, & K.L. Hacker, *Internet and democracy in the network society* (London: Routledge, 2018).

Next, a Netcitizens Committee will be convened. It would decide what should be excluded from the new browser and which problematic topics should be regarded as unprotected speech. A public open call for Netcitizens Committee members will be issued, and the process will be conducted with transparency, full disclosure, and open deliberation and debate. Clear deadlines for each step of the process will be outlined to ensure that the process will not linger for many months. Members of the Netcitizens Committee will be chosen by the Select Committee. The aim will be to include representatives of ISPs, web-hosting companies; Internet experts; media professionals; Internet scholars; government officials; human-rights and minority-rights organizations; freedom-of-speech organizations; computer engineers; judges and lawyers; and other interested parties. This representation is of crucial importance, as minorities frequently face difficulty in having an equal voice and equal standing in decision-making processes.

The Netcitizens Committee will include no fewer than 100 people and no more than 400 people, depending on the number of applicants willing to commit themselves for the responsible work at hand. The committee needs to be a working committee. It cannot be too large.

In some respects, the structure of the CleaNet's organization will resemble that of the Internet Corporation for Assigned Names and Numbers (ICANN) model. ICANN is a private-sector, nonprofit, global corporation with multiple stakeholders. The organization is responsible for IP-address space allocation, protocol-parameter assignment, domain-name system management, and root-server system management functions. ICANN's global stakeholders include companies that offer domain names to the public; companies that operate top-level domain registries; ISPs; intellectual-property interests; business users; noncommercial users (such as academics, NGOs, nonprofit organizations, consumer advocates, individual Internet users, and governments). ICANN has four advisory committees that provide advice and recommendations. These committees represent governments and international treaty organizations, root-server operators, persons concerned with Internet security, and the general community (i.e., average Internet users). ICANN also has a Technical Liaison Group that works with organizations responsible for devising the basic protocols for Internet technologies. As of mid-2013, the ICANN Governmental Advisory Committee represented 125 nations (plus the African Union Commission, the European Union, and the Vatican). ICANN's Country Code Names Supporting Organization represents more than 135 country-code domains, while its At-Large Advisory Committee includes more than 150 representatives from all geographic regions.⁹

The CleaNet Netcitizens Committee members will commit to working for one year, renewable for two more years, at most. After one year, the least active

⁹ For further discussion, see J. Goldsmith, & T. Wu, *Who controls the Internet? Illusions of a borderless world* (New York, NY: Oxford University Press, 2006); J. Pohle, & L. Morganti, The Internet Corporation for Assigned Names and Numbers (ICANN): Origins, stakes and tensions. *Revue française d'études américaines*, 4(134) (2012): 29-46; and J. Zittrain, No, Barack Obama isn't handing control of the Internet over to China. *The New Republic* (2014, March 24). Retrieved from <https://newrepublic.com/article/117093/us-withdraws-icann-why-its-no-big-deal>

members will be asked to leave, and they will be replaced by others. It is expected that a third of the committee will change each year. Such a reshuffle is advisable and productive. It keeps the committee energetic, engaged, viable, and fresh with ideas.

Because the work is hard and demanding, with considerable societal implications, members of the Netcitizens Committee will be paid for their work. The payment should not be too meagre nor should it be very substantial. It should be enough to provide an incentive, given the responsible work at stake, but it should not be the main job of the committee's members. It is recommended that the payment be between 1,000 and 2,000 euros per month.

The first issue on the agenda will be to determine what speech should be ousted from the Internet. The next issue will be to specify the parameters for identifying problematic, antisocial speech. The committee will consider the wide needs and interests of the public in an open, transparent, and critical way. All committee members will have the opportunity to participate and voice an opinion, present arguments, submit criticisms and reservations, and respond to counterarguments. No one will ever be excluded from the deliberative process. The committee will try to reach a consensus in delineating the scope of legitimate and acceptable Internet speech. In the absence of a consensus, decisions may be made by voting; however, the committee needs to make every effort to reach a consensual decision that reflects widespread public needs and interests. The broadest possible consensus would ensure the legitimacy of the committee's decisions. Because the committee represents Western-liberal tradition, the scope of legitimate and acceptable speech should be as wide as possible. Whenever it comes to restrictions on speech, the onus for limiting free expression always is on the person who wants to limit expression. Concrete evidence always should be provided to justify any restrictions on expression. For speech to be restricted, it must be dangerous and/or harmful. The danger and/or harm cannot be implicit or implied. If speech were to be prohibited only because its danger might be implied from an unclear purpose that is opened to interpretation, then the scope for curtailing fundamental democratic rights is too broad, and the slippery-slope syndrome becomes tangible. The implicit way is not the path that liberals should tread when pondering restrictions on freedom of expression.

Throughout the CleaNet development process, each participant will be able to exercise "communicative freedoms," a term that Habermas applied to activities that seek to achieve mutual understanding through reasoned discourse. Such open, deliberative discourse allows everyone to participate in the processes of opinion- and will-formation in which individuals exercise their autonomy. When the list of requirements for excluded speech has been completed, the list will be given to software engineers to design the algorithm for detecting material that should be banned from the new browser.

In a sense, CleaNet will be an enhanced, citizen-based form of server filtering. A detailed Terms of Fair Conduct will be drafted. Only material that is deemed problematic and affirmed by at least 80% of the members on the Netcitizens Committee will be listed for exclusion. A separate under-review list will comprise debatable speech that needs to be considered and debated periodically until a resolution to either allow or filter the material has been achieved. The under-

review list also will include problematic material that is allowed on CleaNet but is accessible to only those Netusers who sign up to access the content. It will be the responsibility of the ISPs and web-hosting companies to retain a list of Netusers who access the restricted content and to cooperate with law-enforcement whenever needed. After the list of requirements for exclusion of content has been completed, the list will be given to software engineers who then will design an algorithm to detect material that should be removed from CleaNet.

CleaNet will be launched during a special news conference to let the public know that the new browser is available for use, explain the rationale for developing a new browser, and explain the significance of the browser's ability to detect and exclude dangerous content. The news conference will stress that CleaNet can be downloaded for free and may be used by anyone. After downloading CleaNet, Netusers will have two options: (1) keep the browser(s) they have been using but add CleaNet as an alternative (primary or secondary) browser, or (2) replace their current browser(s) with CleaNet.

CleaNet will be attentive to societal cultural norms. For example, while Holocaust denial is not problematic in the United States, it is particularly problematic in Germany and Israel. The CleaNet will pay special attention to such sensitive matters.

It is assumed that while international consensus has been reached about excluding certain antisocial material (i.e., child pornography, cyberbullying, and the promotion of violent crime and terrorism) from CleaNet, such a consensus cannot be expected for content related to hate and bigotry. The notable exception to this lack of consensus will likely be the United States. Such tolerant norms, however, are not universal. It is not reasonable to expect other countries to believe that the Internet should be free of bigotry and hatred. CleaNet users therefore can opt to filter such material.

After CleaNet has been implemented and is widely available in the marketplace, government officials in each country will need to promote and encourage the use of CleaNet in the public sector. Only governmental agencies that have a specific interest in studying antisocial material should be granted permission to use other browsers. The assumption is that the public sector has no need for access to, for example, child pornography, criminal speech, terrorism, and bigotry.

On CleaNet, search engines will not keep their ranking-algorithms secret. Quite the opposite. They will proudly announce that the ordering of search results is influenced by standards of moral and social responsibility, commitment to preserving and promoting security online and offline, and adherence to liberal principles we hold dear: liberty, tolerance, human dignity, respect for others, and not harming others.

The assumption is that once people become aware of the advantages of CleaNet, they will prefer it over the browsers they had been using. Ongoing open discussions about the merits of and the flow of information on the new browser are expected. Attempts will be made to remedy any problems with the flow of information.

The entire process of debating, implementing, and browsing with CleaNet will be transparent and open for criticism and feedback. Netcitizens will be welcomed to provide criticism on the CleaNet hotline and will receive an answer within 24 hours. Netcitizens will have the option of making their feedback public or keeping it private, with or without attribution in either case.

Paid CleaNet officers will screen the hotline comments and pass thought-provoking complaints to a Complaints Committee. The Complaints Committee will be a subcommittee of the Netcitizens Committee and will include 20 to 40 members. Subcommittee members will receive an additional compensation of 500 to 1,000 euros for their work. It is assumed that members will consider it a great honor and privilege to sit on the Complaints Committee and therefore would see no reason for a higher salary despite the hard work involved. The Complaints Committee will study the complaints it receives and will issue a reasoned response within a month.

By the end of each year, the Netcitizens Committee and the Complaints Committee will issue an annual report about their work, which will be freely available to all interested parties and posted on the CleaNet website. The reports will be as detailed as possible and include the terms of practice and how those terms were implemented; reflections on the year's work; lessons learned; the reasoning behind specific decisions; and recommendations for the future.

The hotline will be operated by a team of paid professionals who will provide an effective and speedy response to all questions and criticisms. The hotline will provide easy accessibility to Internet users and an assured response. Queries and answers will be transparent. They will be posted on the hotline website. Transparency also means that the rules and procedures for addressing users' concerns will be explained at the point of entry. The CleaNet rationale will be explained in detail, and additional help will be made available if needed. Netusers will be able to track their concern throughout the submission and review processes and will be informed of the final outcome. The Netcitizens Committee will make available to the public annual reports of the basic statistics.

One may ask: How is CleaNet different from any of the multiple commercial products that offer filtering of Internet and web-based content? To start with, CleaNet will be the result of democratic and open deliberations involving citizens. The decision-making process will involve concerned citizens who will decide together what the future Internet should look like. They will be involved in an ongoing process, offering reasoning and counter-reasoning where everything will be put on the table for discussion. Furthermore, CleaNet will be more comprehensive than any existing filter. Whereas some filters are designed to help parents ensure that their children will not encounter pornography on the Internet (e.g., NetNanny.com) and others are designed to filter hate (e.g., HateFilter.com), CleaNet will be a transparent browser that will provide Netusers with the ability to surf the Internet in a social, friendly environment, free of the antisocial, evil material that is now so prevalent and accessible on existing browsers.¹⁰ In addition, CleaNet will be a pragmatic, deliberative, democratic,

¹⁰ For more information, see R. Cohen-Almagor, Addressing Internet dangerous expressions: Deliberative democracy and CleaNet. *Journal of Internet Law*, 21(11) (2018): 3-15. I first proposed the idea of CleaNet in my book, *Confronting the Internet's Dark Side: Moral and*

fluid tool that is sensitive to cultural norms and open to contestation. It will be designed by the people and for the people to address people's needs and concerns. CleaNet has been suggested precisely because no existing filter can achieve the desired outcome of a clean Internet with full transparency about relevant considerations for permitting and not permitting certain content and citizens' ability to deliberate, exchange ideas, and influence cyber surfing.

November 2020