Poe in Cyberspace: The $5 Billion Question [EAPR-Sp20-Ehrlich]

Heyward Ehrlich

Professor Emeritus, Rutgers University

On July 23, 1846, after months of hostility on both sides, Poe sued Thomas Dunn English for libeling him, falsely claiming that he had obtained money under false pretenses and had committed forgery. Curiously, Poe’s legal suit named both Hiram Fuller and Augustus W. Clason, the publishers of English’s remarks the New York *Evening* *Mirror* but did not name English himself.

The suit arose out of the incessant warfare in the newly empowered literary media of magazines and newspapers in the 1840s. Thanks to three major inventions, the steam press, the telegraph, and the daguerreotype (all treated wittily by Poe in “The Thousand-and-Second Tale of Scheherazade,” of which more later), the press entered the modern age, running faster and cheaper, reaching over greater distances, and including more visual elements than ever before.

One of Poe’s model was Charles Dickens, who spanned the entire media spectrum with unprecedented popularity, becoming an avatar of this media revolution. As chapters of his novels were serialized in magazines, they were pirated as soon as installments reached the United States and then were hawked overnight by newsboys on the street.

In 1844, ignoring *Pym*, Poe described to George Anthon his mastery of the changing media scene: “Thus I have written no books and have been so far essentially a Magazinist.” Afterwards Poe made it a general principle, proclaiming in *Graham’s* in December 1846, “the whole tendency of the age is Magazine-ward.”

Poe’s libel suit as an outgrowth of hostile sketches of English and Charles Frederick Briggs he had published in “The Literati” series in *Godey’s.* Inreplies they serialized in novels in the *Evening Mirror*, English sketched Poe as Marmaduke Hammerhead in *I844, or the S. F.* and Briggs satirized him as Austin Wicks in *The Trippings of Tom Pepper.* (Afterwards gathered in book form, these newspaper novels became the first two premiums to be offered to subscribers of the *Evening* *Mirror.*)Poe expressed his feelings of revenge in his tale, "The Cask of Amontillado," published in *Godey’s* in November 1846, published midway between English’s sketch of Poe in the *Mirror* on September 5, 1846 and Briggs’s satire of him on February 27, 1847.

The libel laws in 1846 had permitted Poe’s lawyers to sue the assets of the publishers (and did not bother to sue English himself, perhaps because of his lesser assets). By contrast, contemporary libel laws often grant publishers legal immunity – if they publish online – while holding authors responsible.

The unexpected legal distinction between publication in print and publication online was created by Section 230 of the Communications Decency Act of 1996 (CDA), which, in an earlier era of the web, granted a “safe harbor” or special protection to infant internet sites. In legal language, Section 230 states that no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

Although the CDA was intended to support free speech, allowing liberty of expression in personal videos uploaded to YouTube, unfettered user reviews on Yelp, and uninhibited personal postings on Twitter, the explosive growth of media technology in the years since 1996 has produced some serious intended consequences: the CDA has not restrain he growth of hate speech, terrorist incitement, and fake political commercials on the internet. Some urgent modifications were made in 1998, when the Federal Trade Commission protected privacy for children through the Children Online Privacy Protection Act (COPPA), which limits the mining information from children and requires warning labels for potentially harmful information, it was followed in 2000 by the Children's Internet Protection Act (CIPA).

To protect the privacy of children under the age of thirteen, the Federal Trade Commission (FTC) has imposed major fines for flagrant violations of its guidelines and agreements. In 2019, the FTC fined Facebook a record-breaking $5 billion for breaking a 2011 FTC privacy agreement. Curiously, Facebook had reportedly already set aside $3 billion for this purpose, apparently regarding it as a routine cost of doing business. In response to public pressure do something about the undesirable promotion of hate, fakery, and terrorism, the social networks Facebook and Twitter have promised to end access for the worst offenders, but after years without restraint, developing and applying guidelines, precedents, and administrative procedures for monitoring and rejecting such postings will not be easy.In addition, Mark Zuckerberg regularly defends Facebook by arguing that it is not a media companym but a technology company.

The $5 billion Facebook fine is not, amazingly, the largest on record. In 2018 the European Union, following European regulations that are generally stricter than those in the United States, fined Google $5.1 billion for competitive abuses with its Android phone operating system. For a violation that occurred before May 2018. the European General Data Protection Regulation (GDPR) fined Facebook the maximum permitted, $643,000, for its role in the Cambridge Analytica. For violations after that date the GDPR can levy a fine of to 4% of a company’s turnover. For the statistically curious, Facebook’s quarterly $17 billion in revenue and $6 billion in profit from its 6 million advertisers would support an annual fine at 4% of about $2.7 billion. However, the common editorial opinion is that the impact of large fines on social networks has been less than expected.

In the United States internet fines are generally limited to charges of improperly collecting and selling data of children’s internet activity. For violating children’s privacy on YouTube (a subsidiary of the Google complex) was fined $170 million. For TikTok, a new short video attraction, the Chinese parent company Bytedance was fined $5.7 million for COPPA violations of collecting information on children. TikTok, which began by acquiring the musical.ly site for $1 billion, surpassed Facebook in late 2019 in downloading statistics. According to Sensor Tower, in two months TikTok was downloaded 750 million times, edging out Facebook with its 715 million downloads. (Other apps in the running included Instagram with 450 million downloads, YouTube with 300 million, and Snapchat with 275 million.) However, TikTok may not do very well in retaining users. In summer 2019, Facebook reportedly retained 45% of its viewers, Instagram 44%, Snapchat 32%, and TikTok lagging in the range of 26% to 39%. Incidentally, as a Chinese company the entire TikTok/Bytedance/musical.ly entity has been under national security review in matters of cybersecurity and intellectual property. (Do not confuse TikTok with ToTok, a messaging app from the United Arab Emirates that has been accused of surveillance activity.)

Surely Poe himself would have found it difficult to comprehend the extent to which ordinary internet activity has become monitored and monetized. Each time we turn on a phone, send email, access an internet site, or activate a home device of the “internet of things,” we create data about ourselves that may be collected, analyzed, and sold to those who wish to influence how we shop or vote. Although we may think we are the user when we go on the internet, increasingly we are merely data to be harvested and sold.

China has taken the lead in applying artificial intelligence, using it in mass surveillance to track suspected terrorists, political dissidents, drug lords, and perhaps ordinary people. Data is being combined data from phone scanners, facial recognition cameras, license plates, local records, fingerprint/face databases, and personal data (such as dates of birth, phone numbers, home addresses, and personal interests and preferences). Most American computer users innocently upload supposedly harmless bits of information about themselves when they join web sites or social networks, share their personal location to activate mapping services, give their email address for better communication, state their name and age group for better connections, and reveal personal interests or preferences. All this data can contribute to more effective tracking, especially when combined with a record of pages visited and the relative amount of time spent on each. Moreover, personal DNA scans have become popular even though participants may not realize that the data they produce may be resold.

To avoid the constant collection of data by ordinary activity on common computer browsers and search engines such as Chrome and Google, experts suggest we try Firefox or Brave for the PC and Safari for the Mac instead. When Google and Yahoo search for you, they also search and collect data about you. For a recommended search engine that is not interested in collecting data, try DuckDuckGo (an improbable name). By the way, your email is also not inherently safe. According to the ACLU, both Verizon and AT&T have given email data to the government. The various services handle your data differently. According to press reports, [T-Mobile](https://en.wikipedia.org/wiki/T-Mobile_USA) doesn't store any information on your [web browsing](https://en.wikipedia.org/wiki/Web_browsing); Verizon keeps text messages for three to five days and a record of the websites you visit for up to a year; and [AT&T](https://en.wikipedia.org/wiki/AT%26T_Mobility) keeps a record of the recipient, date, and time of text messages for five to seven years but not the content of these messages.

C[ookie](https://en.wikipedia.org/wiki/HTTP_cookie)s, which are convenient computer objects for returning to a website, also make us vulnerable to user-tracking. [Firefox](https://en.wikipedia.org/wiki/Mozilla_Firefox) and [Opera](https://en.wikipedia.org/wiki/Opera_(web_browser)) are safer browsers in that they are said to offer to clear cookies when the user closes the browser. When pictures with Exif (Exchangeable Image File Format) data are uploaded, they may expose photographers by revealing where and when they were taken. By the way. don’t be surprised if your privacy was compromised when the Google street camera drove by and snapped you without stopping for permission. The familiar *http* (hypertext transfer protocol) form is gradually being replaced by *https*; the added *s* standing for secure. The internet has become so convenient to use that most users simply sign the required legal agreements without reading them, and those who do read them often cannot penetrate their legal language.

The 2010-decade has been one of a turn in direction for the Internet. Larry Page and Sergey Brin, the Stanford graduate students who were the cofounders of Google and its new spirit, have stepped down, marking the end of an era: Google is now but one component of the Alphabet conglomerate. Facebook, realizing its dominance cannot last forever, is reportedly exploring new areas of activity, such as podcasts, newsletters, and travel services. Of course, rapid media changes and even revolutions are not new. Perhaps the greatest media revolution took place a few thousand years ago when, to Plato’s dismay, writing challenged the supremacy of memory; another took place several hundred years ago, when the printing press overthrew the authority of handwriting. Around us today digitized forms are constantly being rendered obsolete by the quest for technological advances.

At this very moment, telecom companies are beginning to deploy 5G, the next-generation protocol for wireless networks, said to be about one hundred times faster than its predecessor, 4G -- although it will take some time for the new hardware to be distributed. According to *Forbes,* the international leader in 5G technology is the Chinese company Hauwei, which is restrained by American sanctions and suspicions of backdoor spying.

In 1845 some cutting-edge achievements in contemporary science and technology seemed so advanced that Poe could tease the readers who were scientifically less adept and thus still regarded them as fables. In one of his favorite pieces, “The Thousand-and-Second Tale of Scheherazade,” Poe used hyperbole in describing recent developments, making them seem improbable. Then Poe added footnotes to reveal the actual accomplishments -- an unexpected satire on skepticism and a moral victory for credulity. For example, Babbage’s Calculating Machine, an early computer, became a device that in one second could equal the calculations of “the united labor of fifty thousand fleshy men for a year.” Next, the steam press became a machine with “brains of lead, intermixed with a black matter like pitch . . [that had] no trouble in writing out twenty thousand copies of the Koran in an hour.” The electro telegraph printing apparatus marvelously allowed a writer to “sit down in Damascus and indite a letter at Bagdad.” Finally, using the daguerreotype an artist miraculously “directed the sun to paint his portrait, and the sun did.”

For us today the equivalent dazzling implausibility is quantum computing, by which subatomic particles can exist in more than one state at any time, using dramatically less energy for operations. As a result, quantum bits, or *qubits*, promise to replace digital computing entirely in the future. In a Google demonstration, a task that would require 10,000 years for a conventional digital processor took a quantum computer only three minutes and twenty seconds. More incredibly, in another experiment at IBM, a quantum computer is said briefly to have made history run backwards.

In the English affair, however, Poe did not let himself be carried away by the legal dangers of uncontrolled exaggeration. Feeling cautious, Poe on June 29, 1846 sent a reply to English intended for *Godey’s* to Evert Duyckinck and Cornelius Mathews, both lawyers, feeling “anxious that some friend should read it before it goes.” Even more cautious, Godey declined to print Poe’s reply, paying $10 to have it printed in *The Spirit of the Times*.

In his libel suit Poe had asked for damages of $5,000 from Fuller and Clason, the publishers of the *Mirror*, and the result of trial is that the jury awarded him $225 and six cents in court costs. Since English had not been named by Poe’s lawyers, he paid nothing. The opposite might result today under the protection provided by Section 230. If I were to libel you in a newspaper and on a social network, you could sue me and the newspaper, but you could not sue the social network. For example, for the same libel you could sue both me and *The New York Times* but not Facebook.

Poe in Cyberspace columns are available online at eapoe.info.