

Pacific University

CommonKnowledge

Volume 5 (2005)

Interface: The Journal of Education, Community
and Values

4-1-2005

Seeking The Fulcrum, Not The Tipping Point

Glee Cady

Recommended Citation

Cady, G. (2005). Seeking The Fulcrum, Not The Tipping Point. *Interface: The Journal of Education, Community and Values* 5(3). Available <http://bcis.pacificu.edu/journal/2005/03/cady.php>

This Article is brought to you for free and open access by the Interface: The Journal of Education, Community and Values at CommonKnowledge. It has been accepted for inclusion in Volume 5 (2005) by an authorized administrator of CommonKnowledge. For more information, please contact CommonKnowledge@pacificu.edu.

Seeking The Fulcrum, Not The Tipping Point

Rights

Terms of use for work posted in CommonKnowledge.

Seeking The Fulcrum, Not The Tipping Point

Posted on **April 1, 2005** by **Editor**



By **Glee Cady** <gleecady@gmail.com>

News articles that bring me up short and make me say “hmm, I need to think more about that” seems to come in spurts. There have certainly been a number of them lately.

Sometimes the articles prompt me to add to my “things I want to know more about list” – like an article about the “Oxyrhynchus Papyri” which led me to the “POxy: Oxyrhynchus Online” site at <http://www.papyrology.ox.ac.uk/>. I wish I could painlessly acquire the knowledge that would make me an expert in classical literature, philosophy, archaeology. Please note the painless part of that wish. I can’t really see myself starting a new career along those lines <grin>.

Sometimes the articles make me want to travel and see things – like an article about the filming of the DaVinci code (a book I have yet to read and a movie I probably won’t see) which will now, indeed, take place at Rosslyn Chapel in Scotland. Rosslyn Chapel figures prominently in a Dorothy Dunnett novel, something I do love. See <http://www.dorothydunnett.co.uk/duvisitsedin.htm> in the webpages built by Bill Marshall, a fellow Dunnett fan.

Sometimes the articles prompt me to add to my “things I should do” list – like the “make a living will” item prompted by the Terry Schiavo dilemma. I want my children or friends to be given permission to act on my behalf should I not be able to make my own medical decisions.

And sometimes an article will cause me to immediately react with an “oh, no, that’s wrong” and then I try to figure out why I had such a quick, instinctual reaction.

This week an article of that type appeared in the International Association of Privacy Professional’s (IAPP / www.privacyassociation.org) daily newsletter of privacy-related news clippings prepared by legal firm Collier Shannon Scott. I quote it here:

E-Mail Privacy

– Yahoo Gives E-Mail to Slain Soldier's Family

Online portal and e-mail service provider Yahoo Inc. has turned over a computer disc containing e-mail messages belonging to slain Marine corporal Justin M. Ellsworth to Ellsworth's parents, ending a legal dispute. Yahoo had at first refused to provide Ellsworth's parents with the information, citing the company's privacy policy, but opted not to continue the fight after a court ordered the information turned over.

Note: it is important to remember that I am not an attorney, so nothing I write should be construed as anything other than personal opinion.

A longer version of the article can be found here:

<http://news.zdnet.co.uk/0,39020330,39195962,00.htm>

I found this little paragraph to be both heartbreaking and disturbing. The heartbreaking part is obvious. I can only be sympathetic (and even empathetic) to the Ellsworth family loss. As a parent of adult sons, including one who is serving in the military, I find my heart clutching at each and every death of the young people serving our country. And I am very grateful that so far our family has been very lucky.

The disturbing part comes to me as a privacy advocate who has championed the network and email as a wonderful way to break the barriers of time and space. We are fortunate today to be able to reach out to our loved ones serving far away. These wars have kept us in touch with our loved ones, much more so than in previous wars. I can only imagine how long a family would wait to hear of their loved ones serving in say, the Boer War in the early 20th Century or the Napoleonic Wars. And just imagine how long you would have to wait to hear about someone serving in the Crusades? Some families probably never knew why their loved ones didn't come home.

In the earlier days of internetworking, we network evangelists spoke about email as a postcard. We distinguished it from postal mail within an envelope because postal mail, by law, could not be disturbed. Postcards, on the other hand, can be read by anyone along the delivery chain. We also said, "Don't put anything into email that you wouldn't post on the bulletin board in the cafeteria." Thus, we cautioned people to try to help them understand that email is not truly private.

Part of our concern was that email occasionally gets mangled and postmasters (the administrators of the email servers that keep our network communications running smoothly) need to look at the content of a message to determine where it was supposed to go. Pat McGregor wrote about postmaster ethics in a widely cited article in 1990. Here it is if you wish to read it now: <http://www.ja.net/CERT/McGregor/Postmaster.ethics.txt>.

Another (and perhaps more likely) part of our concern was the ease of the <FORWARD> mechanism in most email systems. Just say something really snotty about someone else and you can be sure that eventually it will be sent on to the person you would least like to have read it.

But we never thought of gathering all of someone's sent and received email and treating it as an entity that one's heirs could claim. Wow, we were naïve. So, now I am trying to think this through.

First, there is the grieving family. They are most likely seeking anything they can to remember their loved one. We can understand that desire. What, as heirs to Corporal Ellsworth, are their rights? His messages, as I understand United States law, would be copyrighted to him and would probably be the property of his legatees.

Next, there is Yahoo's privacy policy (<http://privacy.yahoo.com/>), their terms of services (<http://docs.yahoo.com/info/terms/>), and their copyright policy (<http://docs.yahoo.com/info/copyright/copyright.html>). None of these, to my reading, explicitly address the problem presented to Yahoo. The privacy policy (and most organization's privacy policies) addresses the use and sharing of personal information. As is frequently the case, Yahoo defines personal information as "information about you that is personally identifiable like your name, address, email address, or phone number, and that is not otherwise publicly available." Privacy policies are mostly about marketing and how not to receive message you don't want to receive.

The copyright policy has more to do with protecting Yahoo in dealing with copyright infringement. Again, this is not uncommon in an era when music and motion picture groups frequently target providers whose services can be misused to share copyrighted material. It doesn't really address the idea that any content you might create and post belongs to you. This is true even in the "Yahogroups" area where the service provided is mailing lists – communications within membership groups. It's even true in a (non-Yahoo) site like Live Journal, where the content would belong to the original poster. See their terms at <http://www.livejournal.com/legal/>.

Yahoo's terms of service address the obligations of the user/registrant and the service provider. As a registrant, you agree to behave within the code of conduct developed by the company for the service. The service provider may terminate your service if you don't.

Yahoo, in its initial refusal to give the email to Corporal Ellsworth's father, cited a company policy of not giving email passwords to anyone other than the account holder. That policy doesn't appear to be part of the company's "public" policies but it is a not surprising policy. Service providers frequently caution their users in the prudent practices of not sharing passwords, not sharing accounts, changing passwords frequently.

My expectation of an email service would include not giving my email to someone else, even if

they were my heir. It is what I want. If I wanted anyone to read my email, I would have sent it to them. If I wanted people to read my thoughts, I would post them in something like this column (grin) or I would become a blogger. In addition, my children have the right to their own lives and their own private conversations. I do not read their writing unless it is sent to me. I have not opened my late husband's handwritten journals although I have preserved them. His private thoughts remain his.

I have saved my parent's letters sent during World War II., but I didn't read them either. I keep thinking I will send them to an university archive somewhere. Those letters, though, were written with the expectation that they would have been read by military censors. So, anything really private wouldn't have been written in them. I would expect that today's military personnel remain very careful about including information that may provide aid and comfort to the enemy but email messages written in Internet Cafes around the world are not seen by censors. There is an expectation of privacy.

The judge of the probate court disagreed with my opinion. He ruled that the email should be given to the family. I think (remember, I am not an attorney nor have I seen a written opinion in this case) he was seeing that email as copyrighted material that should become part of the estate. Presumably Corporal Ellsworth had a will that left his possessions as he wished. Yahoo then, complying with their terms of service, complied with the instruction of the court and gave the email to the family.

Will this case change privacy policies, terms of service, and/or the statements about copyright for organizations? It will be interesting to see.

In the meantime, I think I might review my will to see if I can add something that requests my email be destroyed upon my death. I really don't see the need for anyone to manage the jokes and spam I get. What will you do?

This entry was posted in Uncategorized by **Editor**. Bookmark the **permalink** [<http://bcis.pacificu.edu/interface/?p=3121>].