

Saving the Oodlehood and Shebangity of the Internet

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<http://dash.harvard.edu/handle/1/4552009>

The internet makes open access possible. Open access wasn't physically or economically possible in the age of print. These commonplace assertions are true but slightly out of focus. Let's be more specific. The internet has many properties (it's digital, it's packet-switched, it has end-to-end architecture, it has a certain number of nodes, a certain throughput capacity, a certain level of traffic at a given time, a certain degree of saturation, and so on), but one property above all others makes open access possible. It's the capacity to disseminate perfect copies of a digital file to a worldwide audience at virtually no cost. [...]

Notice that this is the very same property that makes spam and large-scale digital piracy or mass infringement possible. I wish this property had a name. That would do a lot to advance the discussion of open access, spam, and mass infringement. In the absence of an accepted name for it, and for lack of a better term (like oodlehood? shebangity?) let me call it the "prodigality" of the internet.

Open access proponents like to focus on the revolutionary potential of the prodigality of the internet for the public good. But our strategic thinking must address the fact that the same prodigality also has revolutionary potential for mass infringement, economic harm, loss of privacy, and spam hell. The forces at work to curb these harms are powerful and well-funded—and not especially cautious about the goods they destroy in order to crush the evils they fear. It's time to realize that the obstacles to open access don't lie merely in the inertia and ignorance of scholars, and the dysfunction of the journal market. [...] We could be collateral damage in the war against piracy and spam.

I've written often in the past about how the reaction to mass infringement has given up on surgical responses to online crime and turned to crude remedies that threaten the prodigality of the internet. For example, we see this in the denial of the first-sale doctrine to digital content, in retroactive extensions of copyright, in the hardware mutilations contemplated by Hollings' SSSCA [Security Systems Standards and Certification Act], and in the DMCA [Digital Millennium Copyright Act] ban on circumvention even for fair use or other non-infringing purposes. New question: will the reaction to spam be equally harmful?

It may be. [...]

If my keyboard had a key that sent a non-fatal electric shock to the sender of a piece of spam, then I confess: mine would be worn out. I'm ominously attracted to a direct, Skinnerian remedy that combines text and voltage. ("Thanks for the spam. Here are 100 volts just for you.") People who hate copyright infringement hate it even more than I hate spam. On June 19, Senator Orrin Hatch said in public what many no doubt think in private, that the music industry needs a method to destroy the computers of copyright infringers. If executives at the RIAA [Recording Industry Association of America] and MPAA [Motion Picture Association of America] had remote detonation keys on their keyboards, they would be worn out.

You may not hate mass infringement, but you probably hate spam, and that's enough to put you on both sides of this problem. The prodigality of the net carries the potential for momentous good and the potential for momentous harm. [...]

Watch the campaign against spam and mass infringement. You don't have to love either one to love the prodigality of the internet that makes them possible. Fight to defend it and to prevent remedial overreaching. Don't hastily blame only the defenders of indefensible intellectual property theories. All of us who hate spam are now implicated. So while watching others, who might encroach on the prodigality that makes open access possible, we should also watch ourselves. Can we hate spam surgically?

Finally, let's watch for escalations of mischief and harm that create excuses to sacrifice the good potential of the net in order to block the bad. Will the dream of open access live only as long as the internet's prodigality is enduring, and die when terrorist viruses (let's call them Hatchlings) can be delivered to every desktop?

On the threat from challenge-response spam systems

<http://news.com.com/2010-1071-1009745.html>

<http://web.archive.org/web/20030811223019/>

<http://www.wired.com/news/culture/0,1284,59156,00.html>

<http://www.canada.com/technology/story.html?id=E5F01452-1B4B-4B33-B94A-F4E719E3C874>

Sen. Charles Schumer's Stop Pornography and Abusive Marketing (SPAM) Act

<http://thomas.loc.gov/cgi-bin/query/D?c108:1:./temp/~c108a62RGp::>

Orrin Hatch's remote detonation fantasy

<http://www.washingtonpost.com/wp-dyn/articles/A12441-2003Jun19.html>

<http://money.cnn.com/2003/06/19/commentary/wastler/wastler/>

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