Non-copyright Restrictions on Free Knowledge?

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07/18/2015, Wikimania 2015, Mexico City

My larger research project :

Non-property restrictions on the free flow of information

- Property – Copyright, Trade secrets, etc
- Non-property – Privacy, National security, Public safety, Sacredness, etc
- Attempt to control information – threats to openness and freedom?
- Openness vs Control, moral and ethical problem
- Boundary negotiating, for individuals and collectivities
- Goals, overriding concerns in favor of more control than openness
- Methods of control

In this talk – Wikimedia projects as a subset of information (made) freely available

Methodology

- Focus on EN-WP
- Go through Signpost archives 2005-2015 (News and Notes, In the Media), fit incidents into the identified categories
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- Also include non-Wikimedia cases which dealt with issues that might be of relevance to Wikimedia projects

Wikipedia - An encyclopedia that anyone can edit

Relevant editorial principles

- **No original research**
- **Verifiability**
- (Neutral point of view)

Wikipedia is not censored

“Wikipedia may contain content that some readers consider objectionable or offensive...

Content *will* be removed if it is judged to violate Wikipedia policies (especially those on biographies of living persons and neutral point of view) or the laws of the United States. ...

Wikipedia will not remove information or images concerning an organization merely because that organization's rules or traditions forbid display of such information online.”

Privacy (1)

Daniel Brandt complaint, 2005 (Seigenthaler, 2005)

Biography of Living Persons (policy 2006, Board resolution 2009)

"Ensuring that projects in all languages that describe living people have policies in place calling for special attention to the principles of neutrality and verifiability in those articles;

Taking human dignity and respect for personal privacy into account when adding or removing information, especially in articles of ephemeral or marginal interest;

Investigating new technical mechanisms to assess edits, particularly when they affect living people, and to better enable readers to report problems;

Treating any person who has a complaint about how they are described in our projects with patience, kindness, and respect, and encouraging others to do the same."

Privacy (2)

Post-mortem rights? Tron (2005 - 06)
Parents of late German hacker Tron requested Tron's real name to be removed from his Wikipedia entry, arguing such publication violates Tron's post-mortem personal rights.
The courts rejected the complaint.

Strong position against the ECJ decision on the right to be forgotten (2014)

The right of reply? Brazil (2012)
- Individuals are entitled to a response proportional to the offending content, as well as compensation for material damage

Controversial content

Wikipedia:Offensive material [content guideline in WP-EN]

“offensive words and offensive images should not be included unless they are treated in an encyclopedic manner.

Controversial images should follow the principle of 'least astonishment': we should choose images that respect the conventional expectations of readers for a given topic as much as is possible without sacrificing the quality of the article.”

Controversial content and image filtering (1)

2010

Mar, WP-DE Vulva, a 30:29 poll to keep the image (anatomical photo) on the front page. Wales requested the image to be taken down, citing the “principle of least astonishment” (later supported by the Board resolution in May 2011)

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May, Board Statement: Wikimedia projects are educational in nature

Jun, Board Resolution, asking ED to undertake a study on objectionable material → Harris Study

Controversial content and image filtering (2)

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2012
Jul, Board Resolution, rescinding the earlier request to develop a personal image hiding feature

Image filtering referendum results: Q1 [importance]

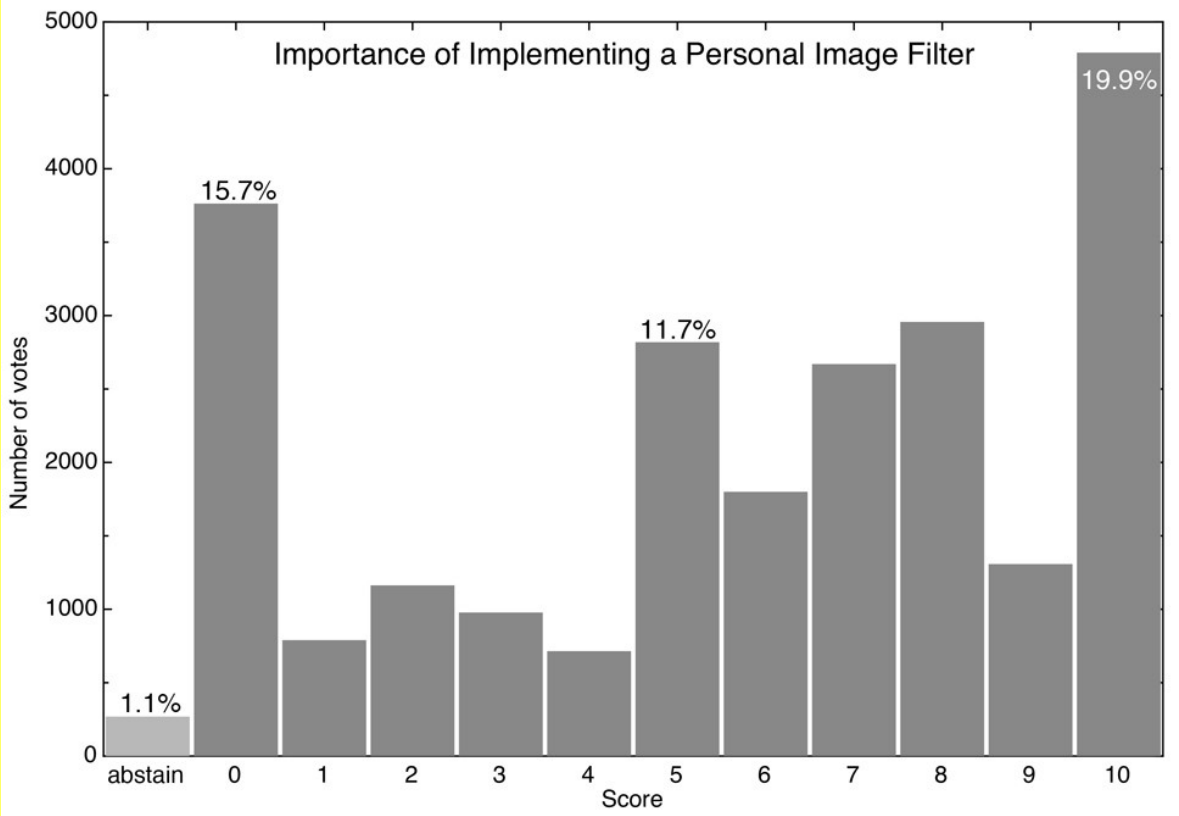

Image filtering referendum results

Q1 It is important for the Wikimedia projects to offer this feature to readers.

0 (not important) -10 (very important) scale

average consolidated 6.41

average by project:

ar 8.17, id 8.04, ko 7.81, ja 7.76, zh 7.69, fa 7.56

sv 3.34, et 3.38, da 3.47, de 4.22, cs 4.69, ro 4.84

en 5.89

commons 5.31

National Security – DCRI allegation and WMF's response

- In March 2013, DCRI, a French intelligence agency, contacted WMF, claiming an article on the FR-WP contains classified military information. Publication of such information is a criminal offense in France. The DCRI demanded removal of the article in its entirety, then pressured an admin to delete it.
- WMF response: 1. WMF takes allegations of national security threats seriously; 2. after investigation, WMF is not convinced that the information is classified or high risk; 3. the information is available in public sources and cited in the article.
- WMF reminds editors that they are legally responsible for the content they contribute and “should be mindful of the laws governing the jurisdiction(s) to which [they] are subject”

Kidnapped Journalists

David Rohde Media blackout (2008 - 09)

Wales contacted a few editors to collaborate

The goal of saving life is largely agreed upon

No consensus if this was “censorship” or simply editing within WP's rules

- Entry edited to make Rohde appear sympathetic to the Middle East (POV, lacking citation)
- Kidnapping removed based on claims that certain news outlets are not reliable

Subsequent incident: Stephen Farrell (2009)

Unclear if a procedure is established for similar incidents [confidentiality required for discussion and executing]

Rorschach Inkblot Test (2009)

Inkblot plates and common responses posted on EN-WP

Canadian Psychological Association (CPA) concerned about the “significant implications for the assessment of psychological problems and disorders” - “the larger issue of the publication and dissemination of psychological test content[,]” which “compromises its usefulness.”

2009 consensus review: Keep

> “The image is in the public domain, and germane to the article's subject.”
>
> “Consensus is built upon the voices of the many, not the voices of the few... especially when half of those few freely admit conflicts of interest. We must not compromise our ethics as encyclopedists for the ethics of an exterior body.”

Sacredness

Mohammed cartoons and images → controversial content debates

Indigenous knowledge with traditional rules about access control

Foster and others v. Mountford and Rigby (1976)

Sup Ct. of the Northern Territory (1)

- All members of the Pitjantjara Council v. Charles P. Mountford, author, and Rigby, publisher, of *Nomads of the Australian Desert*
- Notice printed immediately prior to acknowledgements: "Where Australian aborigines are concerned, and in areas where traditional Aboriginal religion is still significant, **this book should be used only after consultation with local male religious leaders**. The restriction is important, it is imposed because the concept of what is secret or may not be revealed to the uninitiated in Aboriginal religious belief and action, varies considerably throughout the Australian Continent and because the varying views of aborigines in this respect must, on all occasions be observed."

Foster and others v. Mountford and Rigby (1976) (2)

- Book contains information which “could have been supplied and exposed in confidence.”
- The court is aware that the case incolves “one's right to disseminate the results of scientific or anthropological research under such condition,” but declines to consider it.
- “The plaintiffs have a **genuine fear** that the book may further **disrupt their social system**. ... the plaintiffs have made out a prima facie case that these secrets may, by continuing publication of the book in the Northern Territory, be revealed to those to whom it was always understood it would not be revealed.
- “Continuance of such publication in the Northern Territory and of course perhaps elsewhere, **may cause damage of a serious nature**, damage of a type to which monetary damages are irrelevant ...”
- Order restraining the sale, distribution and display of the book in Northern Territory.

Pitjantjatjara Council Inc and Peter Nganinjgu v. Love and Bender Supreme Court of Victoria (1982)

- Auction of a collection of more than 1,000 lantern slides by Charles Mountford
- More than 100 slides claimed to be dealing with secret ceremony
- Pitjantjatjara Council strongly opposed the sale, the autioneer intended to proceed
- The slides were taken as confidential information and only for personal use
- Court ordered the slides to be delivered to the Council for inspection
- Court ordered that the ownership of the slides dealing with secret/sacred material is vested in the Council on behalf of its people

palawa kani: A constructed language based on fragments of several Tasmanian languages (1)

- WMF Transparency Report: 2012 Tasmanian Aboriginal Center (TAC) claims to have copyright of the language, removal request was rejected.
- Article in The Verge: “the TAC promotes [the use of palawa kani] within the aboriginal community and sets rules for who can use the language, and what they can do with it”
  - TAC's claim “isn’t simply arguing about US or even Australian copyright law. It’s appealing to the UN Declaration on the Rights of Indigenous Peoples, which it says allows it control over how the language is used.”
  - According to TAC, palawa kani should not become available to the general public "until aborigines themselves are familiar and competent with it."
  - “A use policy for the language ... asks any non-aboriginal person or company to submit an official request if they want to use the language for any reason.”
  - “Words for geographical features, plants, and animals are acceptable, but they draw the line at using them for 'farms, office buildings, educational facilities, homes, streets, etc. which have no connection to collective aboriginal values.'"

palawa kani (2)

- TAC didn't feel it could afford to further pursue the request, but “accuses [WMF] of hiding behind legal technicalities.”
- “... the real question isn’t whether the site can print words in a copyrighted language... It’s how to respect the wishes of a group that wants to keep a piece of knowledge private or hidden, without undermining copyright as we know it.”

- Respecting cultures, Tasmania Government (2004): “The Tasmanian Arts Advisory Board has endorsed the recommendation of the Arts Tasmania Aboriginal Arts Advisory Committee in relation to using Aboriginal language as follows: palawa kani words must only be used after gaining permission from the Tasmanian Aboriginal Centre.”

palawa kani (3)

- Learning palawa kani : teacher's guide (2004)
  http://catalogue.nla.gov.au/Record/3642034

  “Before any researcher makes use in any form and for any purpose of the information from the CD-ROM or Teacher's Guide permission must be obtained from the Tasmanian Aboriginal Centre. Not for inter-library loan.”

- This book is not referenced on the palawa kani entry
- The palawa kani entry is not well-sourced. In particular, no references for the vocabulary lists and examples
- Wikipedia does not censor, but could we better understand TAC's claim/aim, and preserve the entry in way that still meets Wikipedia's goals?

Summary

- Privacy – BLP; no further discussion on post-mortem rights after Tron; Against the EU right to be forgotten; position on the right to reply?
- Controversial material – image filter proposal failed, Wikipedia is not censored
- National security – willing to comply if actually classified and unavailable to the public?
- Kidnapping cases – willing to cooperate, but the adequate method and process remain unclear
- Rorschach inkblot – judging psychologists' concerns invalid
- Indigenous knowledge with access control – copyright claim denied, but a missed opportunity for both communities to communicate?

Lessons (1)

- “WP:NOTCENSORED”
  - should not be used to kill a conversation. (Gardner, 2011)
  - Definition of censorship? “WP:NOTCENSORED” although WP does comply with state censorship?
  - Do we confuse editorial judgement with censorship? (Gardner, 2011)
- Find out the real concerns behind a claim and avoid being dismissive.

Lessons (2)

- Taking out information is not always “censoring”, sometimes it is necessary for achieving a quality encyclopedia and can in fact be mandated by existing editorial policies.

- A broadened understanding of “freedom”?
  - Wikimedia communities: free from corporate/copyright control
  - Indigenous peoples: free from unwanted influences of the main stream society

Thank you!

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Not about accuracy or viewpoints,

Does not include vandals, hoaxes (false information), unsourced information, and things WP does not include according to its content policy, e.g. the Wikipedia Art dispute (https://en.wikipedia.org/wiki/Wikipedia:Wikipedia_Signpost/2009-04-27/In_the_news)

Does not touch on opinions or information with views, e.g. edit wars, COI, but counts on the NPOV principle to work

mostly look at what the community debate, but sometimes the issues can be brought by legal threats/lawsuits

Does not look as SLAPP cases, e.g. Video Professor

porn per se is irrelevant to this project, but controversial content (of course we can ask what counts as encyclopedic, what does not)

incidents involve information that wikipedia normally covers, but decide not to cover for reasons,

including the biographical articles, and related policies

Wikipedia - An encyclopedia that anyone can edit

Relevant editorial principles

- **No original research**
- **Verifiability**
- (Neutral point of view)

Wikipedia is free and open, but restricts both freedom and openness where they interfere with creating an encyclopedia. Accordingly, Wikipedia is not a forum for unregulated free speech.

Wikipedia is not censored

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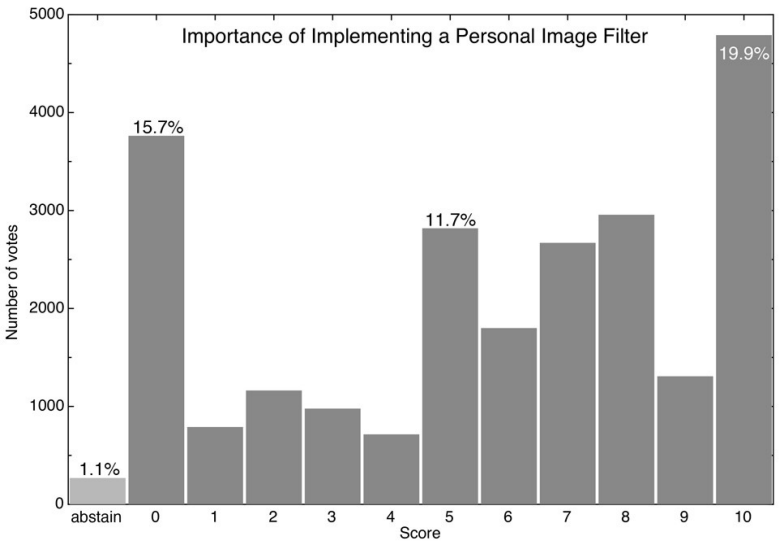

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  - Wikimedia communities: free from corporate/copyright control
  - Indigenous peoples: free from unwanted influences of the main stream society

Thank you!

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Inquiries for links regarding individaul cases are welcome.