

Desperately Seeking Karla: the Case of *alt.fan.karla.homolka*

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Abstract:

This paper discusses the debates and unanticipated consequences of the recent media ban instituted in the Karla Homolka trial in Southern Ontario. The issue of censorship versus free speech; electronic access to information surrounding the case and trial; legal differences between traditional print and broadcast media versus computerized media; and differing notions of free speech in the United States and Canada are examined. The Homolka case challenges information professionals in learning how to respond and formulate policies that deal with the growing complexity, in both social and legal terms, of new multi-media forms of communication.

Introduction

The recent trial of Karla Homolka, convicted of manslaughter in the deaths of two two St. Catharines, Ontario teenagers, and the resultant media ban instituted by Judge Frances Kovacs, sparked controversial debate and a flurry of unanticipated activity on small bulletin board services (BBSs) and on Usenet, a worldwide distributed bulletin board system accessible through university campuses, free-nets, and commercial computer sites. Debates have raged over the issue of censorship versus free speech; electronic access to information surrounding the case and trial, prohibited for publication in Canadian mainstream media by the court-imposed ban, yet ferociously available through foreign media and computer bulletin boards; the legal differences between traditional print and broadcast media versus computerized media; and differing notions of free speech in the United States and Canada.

The Homolka case challenges information professionals in learning how to respond and formulate policies that deal with the growing complexity, in both social and legal terms, of new multi-media forms of communication. The resolution of these issues is at best precarious now, as the law has not kept up with technological currency. What is censorship in networked environments? Should electronic information stored on computer networks be accorded the same status as books and other materials housed in libraries? How can one police the contents of computer networks, if at all, given the peripatetic qualities of networked information?

The Case and Media Ban

It would have been difficult for any Canadian in 1993 to miss the sensationalistic coverage of the events leading up to the trial of Karla Homolka, accused along with her husband, Paul Bernardo Teale, of the horrific deaths of two Southern Ontario teenagers. In a surprise move, Judge Frances Kovacs issued a time limited ban on the publication of the details of Homolka's trial until

after the completion of the trial of her husband, scheduled for 1995, stating that "the considerations for a fair trial outweigh the right to freedom of the press in these exceptional circumstances". Kovacs feared that the widespread publicity surrounding the case would both jeopardize the selection of an impartial jury for Teale's future trial, and act unfairly towards the families of the victims (see *R. v. Bernardo...*). He made this ruling despite the unsuccessful petition of Teale and his lawyers against the media ban. They felt a media ban would contribute to a more prejudicial trial for Teale, and also deny the public's right to know what type of plea bargain or "deal", if at all, was struck between Karla Homolka and the Crown.

Kovacs allowed in his court room Canadian media "on proof of accreditation to the Court Services Manager", the families of the victims and the accused, Counsel for Paul Teale, and the Court's Law Clerk. Foreign press were not allowed in the court, and the media were not allowed to publish details of the deaths of the victims, or reveal this information directly or indirectly to the foreign press (see *R. v. Bernardo...*).

Opposing the Crown's decision were four dominant media outlets: the Toronto Star Newspapers Ltd., Thomson Newspapers Co. Ltd., The Toronto Sun, and the Canadian Broadcasting Corporation. They argued that that the public had a right to know whether Homolka's manslaughter charge and sentence was appropriate, whether there was a plea bargain, whether victim impact statements were accounted for, and whether Homolka would present a danger to the public upon her release. Attorneys for the media outlets also argued that by ignoring Teale's opposition to the ban, the Crown and Kovacs were violating his Charter of Rights and Freedoms (Platiel).

Judge Kovacs admitted in his ruling that it would be difficult to monitor American coverage of the charges, given the easy cross-border availability of American newspapers, television channels, radio stations, and the impossibility of enforcing an "effective blackout of the cable television channels" (see *R. v.*

would subvert his ruling and spark intense debates amongst university administrators, librarians, and the public.

A *Toronto Star* article that appeared in late July after the conviction of Karla Homolka reported that a number of BBS's, known as "Bernardo Billboards", started appearing following Teale's February arrest, and others after Karla Homolka's arrest (Duncanson, Pron). On July 14th, a Usenet newsgroup, *alt.fan.karla.homolka*, was created and announced with the comment: "Hey, has anyone noticed how cool Karla Homolka's eyes look? I like women who have a penchant for S&M, and who aren't afraid to take a video camera into the bedroom. This newsgroup is for people who share my tastes. My Canada includes Karla Homolka (and she's a babe)" [see: stem@sizone.jaywon.pci.on.ca].

Alt.fan.karla.homolka, along with another Usenet newsgroup, *ont.general*, presented a melange of rumors and innuendo, along with political commentary, surrounding the case, the trial, and the media ban. The information was collected into an FAQ (Frequently Asked Questions), an itemization of the alleged atrocities committed by Homolka and Teale. Much of the information was collected by Neal Parsons, self-named "Neal the Trial Ban Breaker", and later corroborated by *Frank Magazine*, the contemporary Canadian equivalent to the *libelles* of eighteenth-century Grub Street. A Montreal journalist for a local weekly newspaper, *Hour*, wrote about the episode in September, mentioning some of the more fantastic rumors circulating about the case on the newsgroup (Friedman).

It wasn't until November, however, that universities shut down the newsgroup on their Usenet feeds, upon the advice of a memo distributed to CA*net management by a federal government network manager. McGill University, under order of McGill Vice Principal for Planning and Resources Francois Tavenas, was the first university to suspend the newsgroup (Jacqmotte, Broadhurst). Like other universities, McGill was concerned that by carrying *alt.fan.karla.homolka*, they could be viewed as potentially distributing information about the trial in violation of the Kovacs ban. Within a month, 15 other

universities in Canada (including 11 in Ontario), the National Capital FreeNet in Ottawa, and one American university had also discontinued the newsgroup. However, local Montreal universities including Concordia, Universite de Montreal, and UQAM kept the newsgroup.

Ontario Attorney General Marion Boyd accused the media of engaging in a "feeding frenzy", seeking to profit from the lurid case ("Public's right to know..."). Amid a rapid proliferation of foreign news reports on the Homolka case, including coverage in the *British Sunday Mirror* and *Manchester Guardian*, an article published by *The Washington Post* and reprinted in *The Buffalo News* and *The Detroit Free Press*, American television coverage on "A Current Affair", and Detroit area radio reports, the Canadian public could procure the printed and broadcasted materials to glean details of the Homolka case. A retired Ontario police officer, Gordon Domm, was arrested for distributing copies of the *Sunday Mirror* article. Residents of Southern Ontario streamed across the border to purchase or read copies of *The Buffalo News*. *The Ottawa Sun* reported that:

"U.S. shopkeepers already stocked with double the normal number of papers called for more....Canadians waited outside B&B Cigar Store in Niagara Falls, New York, in the pre-dawn darkness and quickly bought up 120 copies. Owner Stan Stempien sold 50 cent photocopies until another 80 papers came. A few blocks away at the Wilson Farms store, more than 100 copies were cleared out by 10 am. More than half were purchased by Canadians. Fearing police would seize the papers at customs, Canadians read them in parking lots and parked cars" (Burnside; Cairns).

Canadian border officials turned back trucks that carried copies of *The Detroit News* that contained a story about the blackout. Detroit television stations who reported that they would provide details of the trial had their signals blacked out by some cable companies. And, "a Buffalo disc jockey standing on the American side of the Peace Bridge used a loudspeaker to bellow out details from a

Washington Post story ... 'Hear ye, hear ye.' screamed Darren McKee of WGRF, 'Let freedom ring out for all our brothers and sisters to the north'" ("Lid Blown Off...").

Several academic and public libraries, fearing they would be in violation of the publication ban, initially removed copies of newspaper articles that covered the case from their shelves, such as the one that appeared in *The Washington Post*. Later, on legal advice, McGill University, stating that "...it is virtually impossible for the library to monitor the content of each and every periodical and newspaper it receives every day" (Mercille), restored the publications to their shelves. Public libraries, including those in Halifax and Regina, also agreed to restore the U.S. newspapers that carried coverage of the Homolka trial.

Bypassing The Ban

Despite the shutting down of *alt.fan.karla.homolka* at many Canadian universities, there were still many ways for people to access the newsgroup and other information available on the trial. For instance, through anonymous posting services, cross-posting of the contents of *alt.fan.karla.homolka* to other non-censored newsgroups, personal requests, and accessing newspaper stories through commercial databases, a diligent citizen could amass a plethora of stories, "facts", and rumors surrounding the case. As university sites discontinued carrying the newsgroup, it became a fabulous Internet hunt to locate the sites where the banned material could be found.

An anonymous posting service, anon.penet.fi (residing in Finland) is specifically designed for anonymous postings to every Usenet newsgroup, and also provides capabilities for supporting anonymous e-mail as well. This service allows any mail messages sent to one's id at anon.penet.fi to get redirected to one's original and real e-mail address. One doesn't know the true identity of any user, unless he or she chooses to reveal their identity explicitly. Anonymous posting services are widely used for posting to the alt. hierarchy within Usenet; as

Johan Helsingius, a.k.a. "Julf", the operator of the services writes:

"And remember this is a service that some people (in groups such as *alt.sexual.abuse.recovery*) need. Please don't do anything stupid that would force me to close down the service. As I am running my own company, there is very little political pressure anyone can put on me, but if somebody starts using the system for criminal activities, the authorities might be able to order me to shut down the service. I don't particularly want to find out, however..." (help@anon.penet.fi).

Using the anon.penet.fi service, a St. Catharine's, Ontario gentleman (who chose to identify himself), set up "Teale Tales", a mailing list to provide information on the trial, including the FAQ, foreign press reports, such as those from *The Washington Post* and *Sunday Mirror*, and the transcript from *A Current Affair*. He was later asked by Julf to stop using the anonymous service for this purpose, and sent out an e-mail message with another e-mail address for procuring the articles.

Personal requests posted to various Usenet newsgroups was another way for people to find out about the case, as well as through individuals offering to e-mail information to interested parties. One individual wrote:

"I was very distraught when the government in Canada decided to place a ban on the recent Homolka trial. What disturbed me even more was that an American television program *A Current Affair* was allowed to air details of the trial in the United States while in Canada we were blacked out. My relatives in the United States just sent me copies of both of the *Current Affair* programs. I am willing to send copies of this program to anybody that is interested. Due to obvious reasons, I am posting this message anonymously. If you would like more information, please send mail to the anonymous address and I will send you more information" (an49840@anon.penet.fi).

Cross-posting requests for information or direct posts from *alt.fan.karla.homolka* to other Usenet newsgroups, such as to *soc.culture.canada*, *alt.censorship*, *alt.journalism*, and *tor.general*; reading Usenet news at other sites which hadn't banned the newsgroup; and using Gopher to find out its location, was a common practice. The University of Toronto's student newspaper, *The Varsity*, published a detailed guide on how to access the newsgroup "...to show how easy it is to get information on Internet even in a case where the information is so tightly censored", according to editor Simona Choise (Micelli).

Commercial bibliographic databases could be used to access the full-text of newspaper articles; the *Washington Post* article was available through Dialog and CompuServe's Information Service and through AP wires. However, users of Infomart, a Southam-owned service, found the following message upon logging in to the system:

"Welcome to Infomart Online. In order to honor the publication ban on coverage of the Karla Homolka trial, Infomart will not be giving customers access to stories on this subject from U.S. sources through its gateway to DataTimes. If you try to search or display these stories you will be dropped from the gateway back to Infomart" (see Roby).

The electronic environment raises many problems relative to controlling information and bypassing official channels. Is it even feasible to prevent access to offensive or potentially illegal newsgroups, given that networks such as Usenet are international in scope? Restricting access to such newsgroups will only create an underground network whereby different people outside the restricted zone simply copy the same files and propagate them locally. As well, since not all of the offensive or illegal material is centrally located, unless a policy is adopted of screening all newsgroups and postings (an absurd and impossible task!) the offensive or illegal material won't get snared.

How can one exercise jurisdictional control over network environments? Anne Branscomb dubs the peripatetic qualities of the Internet its "extraterritoriality" and suggests that global standardization of what constitutes acceptable conduct and use of data on networks will alleviate some of these quandaries. In the case of material posted on a BBS or Usenet which broaches local jurisdiction for obscenity, for instance, one is confronted with differing national legal definitions of criminality. In which country does one seek redress of grievances? Can one identify and then obtain jurisdiction over the criminal perpetrator? How can such laws be harmonized and administered globally? (Branscomb, 85).

The line between the public and private domain in networking environments is murky. In the academic context offensive or potentially illegal material on Usenet raises the issue of the public-private debate; for instance, there is the problem that the display or discourse of potentially illegal material is conducted on public conferences residing on systems which are university-owned. Should one recognize individual responsibility and control over message content, or implicate and absolve the network provider from liability on messages it allows to be published? In the university context, are students solely responsible for their speech and actions, or are system administrators (and potentially a whole chain of administrators) responsible for irresponsible conduct?

Print vs. Electronic Information: should the common carrier model apply to computer networks?

Was the shutting down of *alt.fan.karla.homolka* at various universities constitutive of "censorship", or was it a reasonable response to a fear of breaking the court-ordered ban?

According to McGill legal adviser Raynald Mercille, reading the newsgroup would not be contravening the ban, but distributing the material to third parties "would constitute an act of publication which is prohibited" (Mercille). Since

McGill is a hub for distribution of newsgroups throughout the province of Quebec, they felt that *alt.fan.karla.homolka*, which "deliberately aims at breaking the ban" would leave the "University open to an argument that in so doing, it was actively engaged in an act of publication as this term is understood under the Criminal Code, which could differ from other statutory definitions of publication such as copyright law and others" (Mercille).

As Rodney Smolla has remarked, the impact of technological change on law and policy is not as rapid as the pace of modern communications technologies: "forms of communication are converging, collapsing the legal distinctions that once brought a semblance of order to free speech policies. For most of this century societies could draw lines of demarcation separating print media, broadcast media, and common law. New technologies, however, are rendering these divisions obsolete" (Smolla, 322).

Should we treat newsgroups as publishers, distributors, or common carriers? Although Kovacs' ban expressly restricted traditional print and broadcast media, are BBSs and Usenet exempt from this ruling? Should the common carrier model apply to computer networks? Common carriers in the communications industries, such as the telephone companies, are regulated by federal statutes, and in the U.S., are covered by the First Amendment provisions of free speech, and therefore not held liable for the content of the messages they transmit. Or, does a new hybrid model need to be defined for computer networks? How can you regulate heresy, innuendo, and wild and fabulous rantings on computer networks?

Definitions of speech have not kept pace with technical currency. The technical characteristics of media--i.e., spectrum scarcity in broadcasting, have been closely linked with the social characteristics of the media; for instance, the prominence of television in our everyday cultural life in formulating laws and policies. However, in the case of computer networking, can we characterize the medium as being a "broadcast" medium?

A recent court ruling in the U.S. treated the operator of an electronic information system (EIS) as a distributor rather than as a publisher, in order to assess liability at the state libel law level. *Cubby, Inc. v. Compuserve, Inc.* also set an important precedent by ruling that the system operator or EIS owner could not reasonably be held liable for the content of the messages it carries, given the sheer volume and rapidity of the messages on computerized boards. Although there is no equivalent Canadian ruling, it is not inconceivable that the *Cubby* decision could be advised in setting a precedent here.

Should information on computer networks be treated the same as information in printed materials?

McGill's legal advice stated that foreign publications which printed information on the Homolka case and available at libraries would be exempt from this ban, as "the mere receipt and placing on shelves of a newspaper, which contains a large amount of other unrelated material, does not constitute an act of publication" (Mercille). The legal arguments that McGill, as well as the public libraries relied on were: 1) the libraries are outside of the province of Ontario, where the ban is, and Kovacs's ruling is unclear in terms of extraprovincial authority of provincial court orders; 2) Kovacs's order was directed at the representatives of news organizations who were present in the courtroom for the trial and sentencing of Homolka; and 3) Kovacs's ban was not on the publication of all evidence or legal argument; it was on the circumstances of deaths of persons referred to during the trial (Valpy).

The Nova Scotia Library Association issued a press release "urging the removal of the ban on reporting details of the Karla Homolka trial; the reinstatement of censored American newspapers in Canadian libraries; and the restoration of access to censored bulletin boards", basing their standing on the Canadian Library Association (CLA) Statement on Intellectual Freedom and the Canadian Charter of Rights and Freedoms (see Nova Scotia...).

The CLA Statement reads, in part:

"It is the responsibility of libraries to guarantee and facilitate access to all expressions of knowledge and intellectual activity, including those which some elements of society may consider to be unconventional, unpopular or unacceptable. To this end, libraries shall acquire and make available the widest variety of materials. Libraries should resist all efforts to limit the exercise of these responsibilities while recognizing the right of criticism by individuals and groups" (CLA).

As well, the Canadian Association of Research Libraries (CARL) Statement on Freedom of Expression supports similar guidance:

"research libraries shall acquire and make available, through purchase or resource sharing, the widest variety of materials that support the scholarly pursuits of their communities" (CARL).

And, censorship, as defined by the American Library Association's (ALA) Intellectual Freedom Committee is "The change in the access status of material, made by a governing authority or its representatives. Such changes include: exclusion, restriction, removal, or age/grade level changes" (ALA).

However, a conundrum exists here: according to McGill legal counsel, the *Washington Post* article should be physically present in McGill libraries; while the electronic version of the article on Usenet could be construed as illegal and in violation of Kovacs ban, if accessible on the McGill Usenet feed, as it is equivalent to "publication". The legal status between the print versus the electronic version is cloudy. Like most users, the process of accessing the article is a voluntary process for both the library patron and the Usenet reader. Could private ownership of the article on one's computer without intent to distribute be considered illegal? What if one sent the article to someone else, at their private

request? Could that be considered illegal? What if someone xeroxed the same article from the newspaper available in the library and distributed that--could that be illegal?

Free Speech in the Global Context

The Homolka case and media ban generated a lively debate on the Well, a computer conferencing system operating out of the San Francisco Bay area. In the Canada and Electronic Frontier Foundation conferences, users principally debated the free speech issues of the case. (It was also another place to locate banned information in hidden, or "scribbled" messages). The general consensus of American participants was that if a similar ban happened in the U.S., it would contravene the First Amendment provisions for freedom of speech. However, as one member, also an attorney wrote, a Kovacs ban could happen in the U.S.: "If there were such a case, particularly in a non-urban area, such a ruling would be theoretically possible, because the legal standard requires a case by case determination based on the balancing of the competing interests" (Brenner).

But, it was the American sensibility of free speech--the feeling that free speech, as embodied in the First Amendment, is a paramount right, and should therefore transcend national borders--as contrasted to the Canadian laws on freedom of expression--that irritated and angered many Americans (a sentiment also expressed in a *Washington Post* editorial).

The Canadian Charter of Rights and Freedoms has its own version of the First Amendment in Section 2(b), which reads:

"Everyone has the following fundamental freedoms...(b) freedom of thought, belief, opinion, and expression, including freedom of the press and other media of communication",

but it is qualified by Section 1:

"The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". (see Canadian Charter...).

In the case of *R .v Keegstra*, the Court found that the section of the Criminal Code that Keegstra was convicted under (319(2), which states that willful promotion of hatred against any identifiable group is subject to an indictable offense) did violate the right to freedom of expression as guaranteed by the Charter, but was nonetheless a permissible restriction because it adhered to the Section I principles for "reasonable limits".

As Stanley Fish has recently remarked, the Canadian law is careful to protect a semblance of balance as explicated in Section 1 of the Charter, and "In the United States the question is presumed closed and can only be pried open by special tools. In our legal culture as it is now constituted, if one yells 'free speech' in a crowded courtroom and makes it stick, the case is over" (Fish, 105).

When the April 1994 issue of *WIRED* magazine was banned in Canada for its story, "Paul and Karla Hit the Net", outraged editor Louis Rossetto said in a press release that "banning of publications is behavior we normally associate with Third World dictatorships...this [is] an ominous indication that the violation of human rights is becoming Canadian policy" (see "Cyberspace Cannot be Censored"). A detailed listing of electronic sites maintained by *WIRED*--an Infobot e-mail server, a gopher, and a World Wide Web server--with various banned details, was also given in the same press release. What Rossetto did not mention, however, is that the magazine was banned not because the article revealed how Canadians were circumventing the ban, but rather because the article discussed details that were in direct violation of the Kovacs ruling.

How can different and often conflicting national laws regarding freedom of speech be harmonized in the global context, when technology knows no boundaries? Once again, we're left with a legal--and perhaps insurmountable enigma--that carries no easy resolution. It's also not inconceivable that any global resolutions could smack of subtle forms of "cultural imperialism".

Conclusion

Despite the politics of the media ban, the Homolka case was alluring to many Canadians--and Americans--because of its shocking and salacious qualities. As Wendy Lesser argues, there can be no "discrete" inquiry into violent death: "...the enjoyment of murder...always consists of wallowing in gory details. The details are all we can grasp" (Lesser). The court-ordered publication ban was very unique in the way that technology was used to break the ban; and certainly Judge Kovacs could not apprehend how computer networks would so rapidly spread news and rumors of the Homolka-Teale escapades. The "Bernardo Billboards" and *alt.fan.karla.homolka* were, in their own quirky fashion, tantamount to the proliferation of pamphlets, libels, and *chroniques scandaleuses* during the Enlightenment (see Darnton).

Such unanticipated consequences, though, aren't a surprise to members of the Internet community, and particularly Usenet denizens. Usenet, "the user's network", is a raucous realm which respects no boundaries or borders, physical or mental. A diverse community of international users protects fiercely the notions of free and unfettered communication, and can hide anonymously behind a thick veneer of bandwidth. Stephenson's description of the "Internet" is felicitous to Usenet:

"Nearly all academic computers are on the Internet, so access is open to anyone having an account on such a machine, which is to say, any student who bothers. The Internet is, therefore, still very much a college town and shares much the same ambience as Cambridge, Iowa

City, or Berkeley: a dysfunctional blend of liquored-up freshmen and polymorphously perverse deconstructionists. The politically correct atmosphere may help to explain the generally frosty stance toward humor exhibited on Usenet, where people either use it badly--at the level of toilet-stall grafitti, or categorically reject it" (Stephenson).

The approaching "virtual library", where multi-media forms will mingle and inevitably proliferate, presents a challenge for information professionals with regard to the irresolute aspects of copyright and intellectual property. For our immediate concern, though, is the dilemma posed by the legal definition of computer newsgroups. Is Usenet a publisher or distributor? Should the common carrier model apply to computer networks? Should information on Usenet be accorded the same degree of academic freedom as is applied to books and materials in university libraries? Yes, the Homolka case, given the court-ordered ban, is extraordinary; but I anticipate that more cases will develop over censorship of material on Usenet newsgroups, and information professionals need to understand the technology and formulate their positions so that they can make a valuable contribution to these debates.

And lastly, what does the Homolka case tell us about access to information? Given the recent hyperbole about the much vaunted "information superhighway" of the near future, are there any cautionary lessons we can learn here? Who was able to plunge through the Internet to locate the elusive *alt.fan.karla.homolka*? But, most importantly, what citizens were not able to access this material--and how can we remedy this discrepancy?

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