**Decision Point Two: Is Yahoo Responsible for Defamatory content published through its portal?**

*You work for Yahoo and are part of a team responsible for the maintenance of an online discussion format that is civil yet lively and challenging. Maintaining a frank discussion environment depends on balancing individual responsibility with anonymity. (Why do these two values occasionally work against one another?)*

*You have been petitioned by the court to provide the real identities behind 23 pseudonyms under which 16,000 anti-Biomatrix emails were posted on Yahoo’s Financial Bulletin Board between April 1999 and August 2000. These messages accused Biomatrix managers of sexual harassment and Nazi war crimes and Biomatrix the corporate entity of greed and financial risk cover-ups.*

*The legal mechanism behind the court’s subpoena has been termed a “John Doe” law suit. The plaintiffs have to establish a strong argument for defamation to fend off the possibility of summary judgment dismissals of their complaints. So you can assume that there is a strong initial (=prima facie) case for defamation. But you are still concerned about spill-over effects from this subpoena. How will subscribers react when it is revealed that Yahoo has revealed the real identity behind user pseudonyms? How will this affect the credibility of the Yahoo Financial Bulletin Board? Will users view this as an attack on their free speech rights?*

*Review Yahoo policies regarding the participation of its subscribers in online discussion forums. Are these compatible with freedom of speech? Review its privacy practices. Test Yahoo prescribed speech practices the following:*

1. What values do Yahoo free speech practices realize? What values remain vulnerable? (Pay special attention to respect, responsibility, and trust.) Do these practices reconcile free speech with responsible speech?

2. Are Yahoo free speech policies reversible among key stakeholders? Consider the companies whose financial health and practices are under discussion in Yahoo Bulletin Boards. Consider Yahoo readers who are looking to find useful information to guide investment. Consider those who post information, especially those who post good faith but, perhaps, without the expertise to evaluate properly the information they share.

3. What harms/benefits do Yahoo free speech practices produce/avoid? Are these practices “utility maximizing?”

4. Finally, what model of OSP responsibility should Biomatrix adopt? Should it work to be responsible as a publisher, distributor, or common carrier? What kind of software tools should Yahoo seek to develop to support its responsibility stance?

It is not necessary in this decision point to generate options. Your job, rather, is to use the ethics tests to examine Yahoo free speech practices. You are also asked to recommend what stance Yahoo should take on its responsibility for the content of the speech broadcast through its various forums.

**Decision Point Three: How far does free speech go?**

*You work with a public service organization devoted to the defense of free speech, both off and online. For this reason you immediately noticed a newspaper story that three individuals, Richard Costanzo, Raymond Costanzo, and Ephraim Morris, were found guilty in a summary judgment of defamation. It seems they published, under 23 psuedonyms, some 16,000 messages that made negative claims against Biomatrix and its managers that they were unable to substantiate.*

*The claims made by these individuals in their emails were pretty strong:*

* *They claim that Biomatrix's most popular product, Synvisc, has produced significant harmful side effects and the company has taken wrongful measures to suppress this information.*
* *They accuse Biomatrix of covering up that fact that the company has been targeted by potentially damaging lawsuits.*
* *The BXM Police accuse the Biomatrix of covering up negative, harmful information about their upcoming merger with Genzyme. They claim that inside information reveals that the merger will never take place.*
* *The BXM police accuse Biomatrix top management of having committed war crimes and acts of sexual harassment.*

*During pre-trial depositions, Costanzo, Costanzo, and Morris were unable to substantiate any of these claims. While the motives for posting these messages have never been made clear three stand out: revenge, short selling, and the perception that rules of defamation did not apply in cyber space.*

*Your organization recognizes that the BXM Police are clearly guilty of defamation. But they are concerned about the effects of a zealous legal and corporate response on free speech in general. You and your organization think it imperative that you file a friend of the court brief in this or in another similar anti-defamation cases. Develop a legal and moral argument that is value realizing, reversible with the major stakeholders in this case, and utility maximizing. It is not necessary that you defend the actions of the BXM Police. But how does one go about punishing defamation without eroding the right of free speech?*

Things you can consider…

* EPIC (Electric Privacy Information Center) and the ACLU (American Civil Liberties Union) present an amici curiae (friend of the court brief) outlining their concerns about the use of John Doe lawsuits to pierce online anonymity. This brief is summarized in the Biomatrix case materials.
* Perhaps the strongest case for Free Speech is made by John Stuart Mill in On Liberty. Consult this book and find his argument in the first chapter. (The summary of this argument in the Biomatrix module will also help.) Do defamation lawsuits suppress free speech? Why does Mill think that it is wrong to suppress even completely false speech?
* Did Biomatrix and its management team suffer damages as a result of the Yahoo messages? What were these damages? What evidence proves that the damage was caused by the negative speech and not something else? Who bore the burden of proof in the summary judgment against the BXM Police?
* What is the strongest argument that Biomatrix made against the speech of the BXM three? How can you and organization counter this argument?
* The strongest argument the BXM Police offer for their actions is that they are not bound by rules of veracity and defamation while operating pseudonymously online. Should we be held responsible for what we say online? In the same way that we are held responsible off line? Doesn't Yahoo's disclaimer to readers that they should not assume that what they read is true suffice to exculpate those who post false speech?
* It has been suggested that the BXM Police were motivated by greed. Their speech was designed to lower the price of Biomatrix stock so they could profit from short selling it. Does this change you defense? There is also inconclusive evidence that they were not acting alone? Does this change your defense?