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On Leadership



LEGAL SCHOLAR

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Voluntary standards not the same as mandatory law

Q: In defending Craigslist against charges that it facilitates prostitution and casual sex and undermines the news business, founder Craig Newmark relies on an unwavering commitment to free expression, free markets and an open Internet. Is such an unwavering commitment to core principles the essence of leadership, or is leadership more about accommodating core principles to other social needs and values?

The leader of an institution has to make a critical distinction between voluntarily adopted standards and mandated legal requirements in deciding how to react to pressure. Both "standards" which the institution applies to itself (no censorship, free speech) and "laws" which bind the institution (protecting privacy, responding to subpoenas) are, in a loose sense, "principles."

But compliance with self-determined standards can, under certain circumstances, be compromised. Compliance with law cannot.

Let's take law first. For example, it is wrong, in my view, for a corporation to balance the cost of complying with law against the cost of disobeying it, as some economists recommend. Corporations depend on rule of law and cannot selectively choose which ones to obey or disobey.

If they profoundly disagree with the law, they can seek to change it through legislation or litigation in society with meaningful rule of law. Alternatively, they should withdraw from doing business in that society if the law is deeply offensive to core corporate values and if there is little chance of changing that law through normal legal process. Companies withdrawing from South Africa because of apartheid or Google's withdrawal from China because of state censorship (although the facts of its current status are not entirely clear) are examples of exiting nations where laws are an anathema to a company and key stakeholders.

On the other hand, company "standards" are principles adopted to advance the "enlightened self-interest" of the company. They are, in my judgment, voluntarily made binding on the company and its employees for "prudential" reasons (to advance or defend an important company interests) and not for "moral" reasons (derived from some system of moral philosophy). Such standards, which go beyond what the law requires (no censorship in the case of Craigslist or Google), often emerge from a balancing of various company interests (appeal to existing users, enticement to future users, ethos approved by employees).

But they are not immutable or procrustean. When pressures threaten the company, leadership has to decide whether there should be exceptions to deal with the new problem. For example, in 2006, Google compromised its "no censorship" position and accepted Chinese blocking of content on its search engines in an attempt to get a foothold in China. (Only this year did it reverse itself.) Similarly, Craigslist decided that, even though it may have been free under federal law to publish any content on its website, the public pressure from many quarters, including the state attorneys general, warranted "self-censorship" of its erotic ads in order to protect its "reputation." (Whether this was just a Craigslist PR ploy, and whether the same volume of ads will migrate, under different headings to different places on the site, is a different issue and remains to be seen.)

Leaders have significant freedom of action in determining whether voluntary standards apply in all cases or require some modification. They have far less freedom in responding to the dictates of law.

BY BENJAMIN W. HEINEMAN, JR.

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