

Clashes in Cyberspace III

Free speech & censorship, Part I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances ...



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Free speech clause:

- Guarantee that you can do? *What does that imply?*
- 1st Amendment: aimed at whom/what?
- Does it cover only *spoken* word?
- Does it cover only right of the *speaker*?
- Some questions we'll consider...


Truth, or myth?

- Framers meant for it to apply to *all* speech back then.
- Applies only to political speech.
- Applies to private entities/spaces.

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Much is determined by capacity in which government is acting. For example:

- As sovereign
- As employer
- As proprietor
- As K-12 educator
- As University educator (public institutions)



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Basic principles courts have followed when deciding First Amendment cases:

1. Viewpoint is immaterial
2. No false ideas
 - “more speech” remedy
3. Precise & understandable restrictions; no more than necessary
4. Press: no “prior restraints”
5. Punishment for “seditious libel” is not tolerated (*some exceptions*)
6. *Advocacy* cannot be outlawed

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⌚ Not all speech is protected.

Speech **can be restricted** if the *restriction* passes the 3-PART TEST:

1. Compelling government/public interest;
example?
and
2. No *less* obtrusive or onerous means available;
and
3. Speech restriction is not "unconstitutionally vague."

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⌚ **Unprotected:** *passed the 3-part test*

- Clear and present danger doctrine
 - *Immediately* endangers. *Classic example?*
 - Incites *immediate* illegal action
 - Brandenburg test ...*Incitement*, not mere advocacy.
 - Can there be incitement *in cyberspace*? *Varies...*
 - Poses *serious* threat to government (not rhetoric)
 - Threatens President or his/her family
 - Any idea what happens to those who email threats to the President?
 - *Watts v. U.S.*

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⌚ **Unprotected** speech, continued...

- Fighting words
 - Denigrating speech likely to cause 'average' person to fight back or retaliate *right then*.
 - NOTICE: must have opportunity for *immediate physical retaliation*
- Defamation (libel, slander)
- Obscenity, and child pornography
- False or deceptive advertising



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⌚ **Unprotected** speech: MAIN POINTS:

- Speech does not enjoy special rights because it takes place on line. If illegal IRL, illegal in cyberspace.
- **ISSUE:** If *protected* IRL, *should* it be protected in cyberspace as well? Should there be exceptions?
- **MANNER OF DELIVERY** plays a role. Why? Is the Net different?

⌚ **Manner of delivery**

- 18th century--how? Protected?
- When new *medium* is introduced ... **CLASH!!**
 - Legislatures, judges try to balance free speech with "compelling public interest."




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Manner of delivery

- Electronic broadcasts: regulated (censored)?
 - Scarcity doctrine (hint: public interest principle)
 - Fairness doctrine (hint: “ ” and “equal time”)
 - Intrusiveness? (of a 1-to-many *broadcast* medium)
- Does FCC jurisdiction extend to print?
 - Miami Herald case (1974)
 - Butler v. Michigan (1957)

Private agents

- How might a provider censor? ...



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