

Clashes in Cyberspace III
Free speech & censorship, Part II

Censorship and offensive speech:

- Harassment; Threatening Speech; Hate Speech
- Other Dangerous Speech
- Pornography (Obscenity v. Indecency)



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CENSORSHIP and OFFENSIVE SPEECH

Harassment; threats; hate speech

- Basic principles in deciding 1st Amendment cases?
- What about in cyberspace (example...)
 - Should I be arrested?

Harassment: Government can restrict you from **continuing** to send “1-to-1” or “1-to-few” communications that are annoying or offensive.

Threats: (unless political rhetoric) not protected.

Courts often must decide if speech is advocacy, rhetoric, or a threat/harassment.

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CASE STUDY: “Nuremberg Trials: Visualize Abortionists on Trial”

- Preface...
- **1995:** Wanted posters distributed by ACLA; FBI investigates.
- **Jan 1997:** Neal Horsley & others put up web sites
- **Oct 1998:** Outcry after shooting death of Dr. Barnett Slepian... Doctors consider sites as threat.
- **Jan 1999:** Lawsuit filed against ACLA. Trial.
- **Digression:** www.christiangallery.com/atrocidity/

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CLASH:
(and if you saw recent news.....)

- In *your* opinion, did they cross a line here?
 - Information? Incitement or advocacy?
 - Threat? Privacy invasion? (whole other issue!)
- 2 Feb 1999: Result of trial in Portland, Oregon.
- Verdict appealed.
- Separate but related issue: ISP shuts down site.
 - (Later, Horsley sued Mindspring)
- Result of appeal: 28 MARCH 2001 (ER-11)

- Similar cases, different outcomes...

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Hate speech:

- If hate speech (*that doesn't incite, etc.*) is protected **IRL** public forums, should it be protected **on the Net?** Why or why not?
- *Coming in a forthcoming team presentation!*



Other Dangerous speech

- **Headline:** *High school kids download bomb recipe; public outraged.*
 - If I provide a bomb recipe on my Web page, should I be arrested? Go to jail? Why or why not?
 - What if I publish a book that contains a bomb recipe? Should I be arrested? Go to jail? Why or why not?
- Is ownership of *info* generally protected? **Why?**
- **But** what if...?
- **Digression:** Can an ISP keep such things off their servers if they so choose?

More questions to consider.....

- Should the manner of delivery (or ease of access) matter in these cases?
- Is Web browsing, or downloading a file, more like using the **print** media (protected), or like **broadcast TV** (censored)?

Digression: What did the federal judges, then the Supreme Court, compare it to when they decided the CDA case?


Pornography: obscenity & indecency

- Text, images, "hot chat," tiny-sex, animated sequences that are sexually explicit in nature.
 - Remember: Pornography that is found to be **obscene** or **child pornography** is **already** unprotected speech.
- Defining "obscene" (no national standard)
Obscenity test (1973 Miller v. California):
 1. Would average person, applying contemporary *community* standards, find the work (taken as a whole) appeals to prurient interest? (intended audience matters)
 2. Depict or describe sexual conduct in a *patently offensive* way? (**Intent**: hard core, not just nudes)

- 3. Does whole work lack serious literary, artistic, political, scientific, or other social value?
 - burden of proof on the government---sticky
- Obscene **if yes to all three.**
- *Do you see any problems with the test?*
- Possession of obscene material is legal **only in own home.**
 - Stanley v. Georgia (1969)
 - That *excludes* child pornography:
 - artistic value is no defense.
 - Investigative reporting *not* a defense: Larry Matthews (ER-09)
- Is "indecent" speech protected? **Why?**

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- Who contributed to the Great Internet Sex Panic of 1995?
- What were some of Rimm's findings, as reported in *Time*?
 - What impression did Rimm's findings have on the reader?
 - Why did the study seem so **credible**?
- What arguments discredited Rimm's report?



3 July 1995

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- What *legislation* did Rimm's report influence?
- What did it forbid?
 - What information could also be thought of as indecent by, say, your straight-laced great-aunt, but which you would consider decent, useful, and legit?
 - What rationale did its supporters use to pass the CDA?
 - Why do you think it passed?
- What were some important arguments that caused the law to be struck down and declared unconstitutional?

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- 1998: COPA: "CDA-2"
- 2000: CHIPA: CDA-3?
 - Problems with filtering software?
 - Despite emotional appeal, CDA-type legislation has generally been found unconstitutional.
- WAIT!** Then how **do** we protect children from on-line smut??
- Who do you think should be responsible for protecting children? (who should censor?)

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To think about:

- Most Americans cherish their 1st Amendment rights.
- Filtering software will improve. Likely won't ever be perfect.
- Obscenity is considered indecency (protected speech) until it has received due process.
- Yes, pornography often serves to exploit and denigrate women.
 - *Important topic: but outside scope of this course.*
- Anonymity can serve as a cloak for the depraved; but it has important and valuable uses.