Freedom of Speech in Cyberspace

1. The U.S. Constitution - The 1st Amendment:
   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.

Subsequent Interpretations Address:
- Offensive and/or controversial speech and ideas,
- Spoken and written words,
- Pictures, art, and other forms of expression and opinion, and
- Commercial speech (e.g. advertising).

Q: Are there any limitations to free speech? If so, what are they? If not, should there be?

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2. Regulatory Models
   Communication technologies differ with respect to their degree of First Amendment protection and government regulation.
   - Print Media: Strongest First Amendment protection.
   - Broadcast Media: Less First Amendment protection than print media.
   - Common Carrier: Content not controlled and the carrier is not responsible for content.
   - Internet, BBSs, commercial online services, and the WWW:
     - Not exactly print media.
     - Not exactly broadcast media.
     - Not exactly common carrier.

Q: Why is their differential protection based on media type?

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3. Offensive Speech and Obscenity:
   - Political or religious speech.
   - Pornography.
   - Sexual or racial slurs.
   - Nazi materials.
   - Libelous statements.
   - Abortion information.
   - Alcohol ads.

Q: What are other examples of offensive speech?
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4. Age Inappropriate Material & U.S. Censorship Laws

- Technology Changes the Context
  - On the Web, children have access to the same 'adult' text, images, videos, etc. as adults.
  - Online proprietors don’t know the customer is not an adult.
- Protecting Children
  Regardless of the medium:
  » It is illegal to create, possess or distribute child pornography.
  » It is illegal to lure children into sexual activity.

Q: How should children be protected from access in cyberspace to adult material?

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U.S. censorship laws

a. Miller v. California (1973)

Material is considered obscene if all three parts are met:
1. It depicts sexual (or excretory) acts whose depiction is specifically prohibited by state law, and
2. It depicts these acts in a patently offensive manner, appealing to the prurient interest as judged by a reasonable person using community standards,
3. It has no serious literary, artistic, social, political, or scientific value.

Also, United States v. Thomas (1994) and ACLU vs. Reno (1996) (regarding the Communications Decency Act)

Q: How have local "community standards" affected censorship of speech in cyberspace?

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b. Communications Decency Act (CDA, 1996)

- Publicity and public pressure lead Congress to pass this act.
- Anyone who made available to anyone under 18 any communication that is obscene or indecent would be subject to a $100,000 fine and two years in prison.
- In 1997, the CDA was ruled unconstitutional because it was too vague and too broad in protecting children online and because less restrictive means are available.

C. Child Online Protection Act (COPA, 1998)

- Commercial Web sites that make available to minors materials "harmful to minors", as judged by community standards would be subject to a $50,000 fine and six months in jail.
- In 2000 and 2003, COPA was ruled unconstitutional by a federal court, and in March 2004 the Supreme Court ruled it was in violation of the 1st Amendment.
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d. Children’s Internet Protection Act (CIPA, 1999)

- Any school or library receiving federal Internet funds must install filtering software on all Internet terminals.
- Filters must block sites containing child pornography, obscene material, and any material deemed “harmful to minors.”
- A federal appeals court ruled a major part of CIPA unconstitutional in 2002 but the Supreme Court upheld the law in 2003.

Q: How might CIPA affect adults accessing online material at a public library that uses filtering software?

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5. Censorship On the Global 'Net

- Global Impact
  - Avoiding censorship: the global nature of the Net allows restrictions (or barriers) in one country to be circumvented by using networks in other, less restrictive countries (ex: hacktivism).
  - John Gilmore, one of the co-founders of the Electronic Frontier Foundation, a leading online civil liberties group, is credited with having coined the infamous phrase that “the Internet interprets censorship as damage and routes around it.”
  - Creating censorship: the global nature of the Net makes it easier for one nation to impose restrictive standards on others. Review the Great Firewall of China story.

Q: Why are online gambling sites established offshore?

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6. Impulses Against Control:

a. John Perry Barlow and the Electronic Frontier Foundation

- In 1996, Barlow published his Declaration of Cyberspace Independence.
- It was endemic of the freedom inherent in the early culture of cyberspace, and it formalized the mission of the EFF: to protect the first amendment in cyberspace at all costs.

Q: Does the Declaration of Independence of Cyberspace have any real power?
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6. Impulses Against Control:
   b. Howard Rheingold and Smart Mobs
   A “smart mob” is a group of people moved to political or cultural action through the use of technology, particularly e-mail, text messaging, or the Internet.


Q: What kind of power do “smart mobs” have?