

# 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.*

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

- 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).

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## 2. Regulatory Models

Communication technologies differ with respect to their degree of First Amendment protection and government regulation.

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

- **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.

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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**, and
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 1<sup>st</sup> Amendment.

Q: Should content on the Internet have as much First Amendment protection as printed material?

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## d. Children's Internet Protection Act (CIPA, 1999)

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

- 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.

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## 5. Censorship On the Global 'Net

Q: Why are online gambling sites established offshore?

- **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. [1](#) | [2](#)

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## 6. Impulses Against Control: a. John Perry Barlow and the Electronic Frontier Foundation

Q: Does the Declaration of Independence of Cyberspace have any real power?

- 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.

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## Freedom of Speech in Cyberspace

### 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?

Examples: 2001 Filipinos,  
1999 Battle of Seattle,  
1992 Critical Mass,  
1990s-present Al Qaeda

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