

# Ch3 Freedom of Speech



# Topics

- Changing Communication Paradigms
- Controlling Speech
- Posting, Selling, and Leaking Sensitive Material
- Anonymity
- The Global Net: Censorship and Political Freedom
- Net Neutrality Regulations or the Market?

# First Amendment, U.S. Constitution

- “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.”

# First Amendment, U.S. Constitution

- A restriction on the power of government
- Criticism of the government and distasteful ideas are generally permitted

# Regulating Communications Media

- New means of publication (e.g., web pages, blogs)
  - No editors or publishers
- Should First Amendment apply to each new means?
- Attempts to restrict Freedom of Speech flourish with new technologies – each viewed by government as threatening at first, therefore a target of censorship

# 3-Part Framework for Protection



Print media



Broadcast  
(tv,radio)



Common carriers  
(phone, postal svc)

# Telecommunication Act of 1996

- Major overhaul of telecommunications law
- Changed regulatory structure, removed artificial legal divisions of service areas and restrictions on telephone companies' services
- “No provider or user of interactive computer service shall be treated as a publisher of any information provided by another information content provider”
- Title V of the Act is Communications Decency Act (CDA) outlines regulations concerning obscene materials
  - First major Internet censorship law.

# Free-Speech Principles

- Supreme Court principles and guidelines
  - Laws must not chill expression of legal speech
    - “Chilling effect” laws are generally unconstitutional
  - Distinguish speech from action. Advocating illegal acts is usually legal
  - Does not protect libel and direct, specific threats
  - Inciting violence, in certain circumstances, is illegal
  - Allow some restrictions on advertising\*
  - Protect anonymous speech\*



# What is Offensive Speech?

- Political or religious speech
- Pornography
- Racial/sexual slurs
- Abortion or anti-abortion information
- Depictions of violence
- Information on how to build bombs
- Reporting of emergencies and how the government handled them
- Recording or distributing video acts of violence

# Obscenity

- Supreme Court guidelines (1973) rule that obscenity
  - Depicts a sexual act against state law,
  - Depicts these acts in a patently offensive manner that appeals to prurient interest as judged by a reasonable person using community standards,  
and
  - Lacks literary, artistic, social, political or scientific value

# Obscenity

- Internet changes practicality of community standard principle – want to restrict the country to the standard of the most conservative community?

# Communication Decency Act (CDA)

- Attempted to outlaw indecent communications by focusing on children
  - made it a crime to make available to anyone under 18 any communication that is obscene or indecent
- Found to be unconstitutional: (1997)
  - Too vague and broad, filtering is less restrictive

# Communication Decency Act (CDA)

- More free speech guidelines
  - Solve speech problems by least restrictive means
  - Do not reduce adults to reading only what fits children
- Court ruled that the Internet “deserves the highest protection from government intrusion

# Child Online Protection Act (COPA)

- Another Internet censorship law
- It would be a federal crime for commercial web sites to make available to minors harmful material as judged by community standards (1998)
- Found to be unconstitutional: (2000)
  - Community standard is too restrict
  - Restricts access to lawful content for adults
  - Chilling effect

# Children's Internet Protection Act (CIPA)

- Enacted in 2000
- Requires schools and libraries that participate in certain federal programs to install filtering software. Can disable the filter for adults.
- Upheld in court: (2003)
  - Does not violate First Amendment since it does not require the use of filters,
  - Does not impose jail or fines on people who provide content on the Internet,
  - It sets a condition for receipt of certain federal funds

# Video Games & Alternatives to Censorship

- Violent video games for children
  - Are they more dangerous than other forms that a minor sees in books or other media?
  - In 2011, Supreme Court ruled that violence is common in classic fairy tales, etc. Disgust is not a valid basis for restricting expression. Research found that the impact was small and differed little from the impact of other media
- Alternatives to censorship
  - Wireless carriers' stricter rules on decency
  - Policies that expel subscribers who post illegal, offensive materials, e.g. child pornography
  - Video rating of sex, profanity, and violence



# Filtering Software

- A main alternative to censorship
- Blocks sites with specific words, phrases or images
- Parental control for sex and violence
- Updated frequently but may still screen out too much or too little
- Not possible to eliminate all errors

# Spam

- Unsolicited bulk email, text, tweets, calls, etc
- Free speech issues
  - Spam imposes a cost on others not protected by free speech
  - Spam filters do not violate free speech (free speech does not require anyone to listen)
- Anti-spam Laws
  - Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-SPAM Act), federal, 2004
  - Targets commercial spam. Require valid headers, id info. etc.
  - Criticized for not banning all spam, legitimized commercial spam