

## NOTES

- <sup>1</sup> From a speech by Mike Godwin at Carnegie Mellon University, Nov. 1994, quoted with permission. (The speech is excerpted, including part of the quotation used here, in Mike Godwin, "alt.sex.academic.freedom," *Wired*, Feb. 1995, p. 72.)
- <sup>2</sup> Eric M. Freedman, "Pondering Pixelized Pixies," *Communications of the ACM*, Aug. 2001, 44:8, pp. 27–29.
- <sup>3</sup> "High Court Rules Cable Industry Rights Greater Than Broadcast's," *Investors Business Daily*, June 28, 1994.
- <sup>4</sup> Adjudication on Motions for Preliminary Injunction, *American Civil Liberties Union et al. v. Janet Reno* (No. 96-963) and *American Library Association et al. v. United States Dept. of Justice* (No. 96-1458).
- <sup>5</sup> In a 1995 Supreme Court case, Justice David Souter wrote, "One important manifestation of the principle of free speech is that one who chooses to speak may also decide what not to say." (The case concerned the right of organizers of privately sponsored parades to exclude groups from participation. The quote is in *Time*, July 3, 1995, p. 12.) Other court decisions have upheld requirements that owners of property such as shopping centers allow distribution of leaflets on their property even if they disagree with the content.
- <sup>6</sup> Cases concerned advertising of tobacco, legal gambling, vitamin supplements, alcohol content of beer, prices of prescription drugs, and Nike's claim that it did not use sweatshop labor. Robert S. Greenberger, "More Courts Are Granting Advertisements First Amendment Protection," *Wall Street Journal*, July 3, 2001, pp. B1, B3.
- <sup>7</sup> Ithiel de Sola Pool, *Technologies of Freedom*, Harvard University Press, 1983, pp. 224–225 and p. 10.
- <sup>8</sup> The quotation is often incorrectly attributed to Voltaire himself. See Paul F. Boller, Jr. and John George, *They Never Said It: A Book of Fake Quotes, Misquotes, and Misleading Attributions*, Oxford University Press, 1989, for the history.
- <sup>9</sup> Gerard van der Leun, "This Is a Naked Lady," *Wired*, Premiere Issue, 1993, pp. 74, 109.
- <sup>10</sup> Mike Godwin, "Sex, Cyberspace, and the First Amendment," *Cato Policy Report*, Jan/Feb 1995, 17:1, p. 10.
- <sup>11</sup> Robert Peck, quoted in Daniel Pearl, "Government Tackles a Surge of Smut on the Internet," *Wall Street Journal*, Feb. 8, 1995, p. B1.
- <sup>12</sup> For a commentary on the many issues in this case, see Mike Godwin, "Virtual Community Standards," *Reason*, Nov. 1994, pp. 48–50.
- <sup>13</sup> Arguments against the law are in Eric M. Freedman, "Pondering Pixelized Pixies," *Communications of the ACM*, Aug. 2001, 44:8, pp. 27–29. Arguments on the other side appear in Foster Robberson, "'Virtual' child porn on net no less evil than real thing," *Arizona Republic*, Apr. 28, 2000, p. B11.
- <sup>14</sup> Quoted in David Foster, "Children Lured from Home by Internet Acquaintances," Associated Press, Jun. 13, 1995.
- <sup>15</sup> FBI statement, reported in "On-line Child-porn Probe Yields Searches, Arrests" (Associated Press), *San Diego Union-Tribune*, Sept. 14, 1995, p. A10.
- <sup>16</sup> Associated Press and New York Times News Service, "Cybercensors Reverse Ban on 'Breast'," Dec. 2, 1995.
- <sup>17</sup> *Butler v. Michigan*, 352 U.S. 380(1957).
- <sup>18</sup> Adjudication on Motions for Preliminary Injunction, *American Civil Liberties Union et al. v. Janet Reno* (No. 96-963) and *American Library Association et al. v. United States Dept. of Justice* (No. 96-1458).
- <sup>19</sup> "Final Report of the COPA Commission," Oct. 20, 2000, www.copacommission.org/report.
- <sup>20</sup> www.frc.org. On the other side, see for example, the National Coalition Against Censorship, www.ncac.org.
- <sup>21</sup> For a good overview of issues and legal cases about filters, see Richard S. Rosenberg, "Controlling Access to the Internet: The Role of Filters," *Proceedings for Computer Ethics: Philosophical Enquiry*, eds. Deborah G. Johnson, James H. Moor, and Herman T. Tavani, July 14–16, 2000, at Dartmouth College, pp. 232–261.
- <sup>22</sup> Electronic Privacy Information Center, "Faulty Filters," www2.epic.org/reports/filter\_report.html, 1997. See also Rosenberg, *ibid.* Pamela LiCalzi O'Connell, "Law Newsletter Has to Sneak Past Filters," *New York Times*, Apr. 2, 2001, p. C4.
- <sup>23</sup> "Current State of Internet Content Filtering," *EPIC Alert*, Mar. 2, 2000.
- <sup>24</sup> Judge Leonie M. Brinkema, *Mainstream Loudoun, et al. v. Board of Trustees of the Loudoun County Library, et al.*
- <sup>25</sup> *ALA v. United States*.
- <sup>26</sup> Brock Meeks, "Internet As Terrorist," *Cyberwire Dispatch* (an electronic newsletter), May 11, 1995. Brock Meeks, "Target: Internet," *Communications of the ACM*, Aug. 1995, 38:8, pp. 23–25.
- <sup>27</sup> The quotations in this paragraph are from Meeks, "Internet As Terrorist."
- <sup>28</sup> David Armstrong, "Bomb Recipes Flourish Online Despite New Law," *Wall Street Journal*, Jan. 18, 2001, pp. B1, B8.
- <sup>29</sup> Tamzin Booth, "The Web Work," *Wall Street Journal*, Nov. 20, 2000, p. B6. The site is www.pig-brother.uk.com.
- <sup>30</sup> John Simons, "CFTC Regulations On Publishing Are Struck Down," *Wall Street Journal*, June 22, 1999, p. A8. Scott Bullock, "CFTC Surrenders on Licensing Speech," *Liberty and Law*, Institute for Justice, Apr. 2000, 9:2, p. 2.
- <sup>31</sup> *Swedenburg v. Kelly*.
- <sup>32</sup> *Against the Gods: The Remarkable Story of Risk*, John Wiley & Sons, 1996, p. 89.

- <sup>33</sup> Arthur C. Clarke, "Beyond the Global Village," *1984 Spring: A Choice of Futures*, Ballantine/Dell, 1984, p. 7.
- <sup>34</sup> Stewart Baker, "The Net Escape Censorship? Ha!" *Wired*, Sept. 1995, pp. 125-126.
- <sup>35</sup> For a review of this case and its implications, see Lisa Guernsey, "Welcome to the Web. Passport, Please?" *New York Times*, Mar. 15, 2001, pp. D1, D8.
- <sup>36</sup> Mylene Mangalindan and Kevin Delaney, "Yahoo! Ordered To Bar the French From Nazi Items," *Wall Street Journal*, Nov. 21, 2000, pp. B1, B4.
- <sup>37</sup> Guernsey, "Welcome to the Web," *op. cit.*
- <sup>38</sup> Barry Bearak, "Taliban Will Allow Access to Jailed Christian Aid Workers," *New York Times*, Aug. 26, 2001, p. 8.
- <sup>39</sup> David P. Hamilton, "Asians Taste Free Speech on Internet," *Wall Street Journal*, Dec. 8, 1994, pp. B1, B10.
- <sup>40</sup> *Wired*, Sept. 1996, p. 42. James Miles, "Burmese Ban on Political Websites," Jan. 20, 2000, news.bbc.co.uk/1/english/world/asia-pacific/news-id.611000/611836.stm, viewed Aug. 27, 2001. "State Department Releases World Human Rights Report," *EPIC Alert*, 5.02, Feb. 10, 1998. Robert Fox, "Newstracks," *Communications of the ACM*, Dec. 1996, pp. 9-10.
- <sup>41</sup> Zixiang Tan, Milton Mueller, and Will Foster, "China's New Internet Regulations: Two Steps Forward, One Step Back," *Communications of the ACM*, Dec. 1997, 40:12, pp. 11-16. Marcus W. Brauchli, "China Requires Computer Networks to Get Registered," *Wall Street Journal*, Feb. 5, 1996, p. C15.
- <sup>42</sup> Darren McDermott, "Singapore Unveils Sweeping Measures to Control Words, Images on Internet," *Wall Street Journal*, Mar. 6, 1996, p. B6. Michele Levanter, "Singapore to Relax Censorship Laws As It Seeks to Expand Internet Access," *Wall Street Journal*, Sept. 1, 1999, p. A18.
- <sup>43</sup> Steve Lohr, "Privacy on Internet Poses Legal Puzzle," *New York Times*, Apr. 19, 1999, p. C4.
- <sup>44</sup> Jeffrey M. O'Brien, "Free Agent," *Wired*, May 2001, p. 74.
- <sup>45</sup> *Wall Street Journal*, Nov. 14, 2000, p. A11.
- <sup>46</sup> Neil King, "Small Start-Up Helps CIA Mask Its Moves on Web," *Wall Street Journal*, Feb. 12, 2001, pp. B1, B6.
- <sup>47</sup> Numerous articles in the *Washington Post*, *New York Times*, *Honolulu Star-Bulletin*, and others, Dec. 1997-May 1998, some collected at www.gaymilitary.org/mcveigh2.htm.
- <sup>48</sup> *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 115 S.Ct. 1511 (1995).
- <sup>49</sup> "Defending Right To Post Message: 'CEO Is a Dodo,'" Sept. 28, 2000, pp. B1, B12.
- <sup>50</sup> *HealthSouth v. Krum*.
- <sup>51</sup> Judge David O. Carter, *Global Telemedia International, Inc. v. Doe 1*, 00-1155 (C.D. Cal. Feb. 23).
- <sup>52</sup> For an in-depth discussion of cases and legal background and recommendations, see Lyrrisa Barnett Lidsky, "Silencing John Doe: Defamation and Disclosure in Cyberspace," *Duke Law Journal*, 49:4, Feb. 2000, pp. 855-946. (Available at www.law.duke.edu.)
- <sup>53</sup> In a speech at the Computers, Freedom, and Privacy Conference, San Francisco, March 1995.
- <sup>54</sup> Quoted in Jared Sandberg, "Suit Challenges State's Restraint of the Internet," *Wall Street Journal*, Sept. 25, 1996, pp. B1, B4.
- <sup>55</sup> Sanford Wallace, founder of CyberPromotions and other e-mail advertising companies, as reported in Thomas E. Weber, "The Spam King Is Back, and His New Recipe Clicks On Changing Net," *Wall Street Journal*, Dec. 13, 1999, p. B1.
- <sup>56</sup> In 1998, Cyber Promotions announced that it was quitting the spam business. Sanford Wallace later formed a new business that sent e-mail advertising for its client companies only to people who requested it.
- <sup>57</sup> Some of the case documents for *Intel Corporation v. Hamidi* are available at www.intelhamidi.com. Or see appellatecases.courtinfo.ca.gov, case no. C033076.
- <sup>58</sup> See Laurie Faith Cranor and Brian A. LaMacchia, "Spam!" *Communications of the ACM*, Aug. 1998, 41:8, pp. 74-83, for a longer discussion of spam cases and potential solutions.
- <sup>59</sup> Jayson Matthews, "Harris Interactive Continues Spam Battle with MAPS," siliconvalley.internet.com/news/article/0,2198,3531,434061,00.html, Aug. 9, 2000. Viewed Apr. 9, 2001.
- <sup>60</sup> Lawrence K. Grossman, "Maintaining Diversity in the Electronic Republic," *Technology Review*, Nov./Dec. 1995, pp. 23-26. "Groups Urge a 'Digital Gift' to the Nation," news release, Apr. 5, 2001, www.digitalpromise.org/pressrelease1.asp.
- <sup>61</sup> CPSR, "Serving the Community: A Public Interest Vision of the National Information Infrastructure," p. 23.
- <sup>62</sup> Todd Lappin, "Déjà Vu All Over Again," *Wired*, May 1995, pp. 175-177, 218-222. Thomas W. Hazlett, "The Rationality of U.S. Regulation of the Broadcast Spectrum," *Journal of Law & Economics*, Apr. 1990, pp. 133-175.
- <sup>63</sup> Jesse Walker, "Don't Touch That Dial," *Reason*, Oct. 1995, pp. 30-35. Charles Oliver, "Brickbats," *Reason*, Nov. 1995, p. 17.
- <sup>64</sup> Armstrong, "Bomb Recipes Flourish Online Despite New Law."
- <sup>65</sup> Massimo Calabresi, "Quick, Hide the Tanks!" *Time*, May 15, 2000, p. 60.
- <sup>66</sup> Quoted in David Dary, *TV News Handbook*, Tab Books, 1971, p. 7. I thank my student Lee Ellen Merchant for finding this quote.

## BOOKS AND ARTICLES

- Laurie Faith Cranor and Brian A. LaMachia, "Spam!" *Communications of the ACM*, Aug. 1998, 41:8, pp. 74–83.
- Alan Dershowitz, "The Right to Transmit Hate Anonymously," United Feature Syndicate, 1995.
- Electronic Privacy Information Center, *Filters and Freedom 2.0: Free Speech Perspectives on Internet Content Controls*, www.epic.org, 2000.
- Jonathan Emord, *Freedom, Technology, and the First Amendment*, Pacific Research Institute, 1991.
- Mike Godwin, *Cyber Rights: Defending Free Speech in the Digital Age*, Times Books, Random House, 1998.
- Lawrence K. Grossman, "Maintaining Diversity in the Electronic Republic," *Technology Review*, Nov./Dec. 1995, pp. 23–26.
- Thomas W. Hazlett, "The Rationality of U.S. Regulation of the Broadcast Spectrum," *Journal of Law & Economics*, Apr. 1990, pp. 133–175.
- Heins, Marjorie, *Not In Front of the Children: "Indecency," Censorship, and the Innocence of Youth*, Hill & Wang, 2001.
- Nat Hentoff, *Free Speech for Me—But Not for Thee: How the American Left and Right Relentlessly Censor Each Other*, Harper Collins, 1992.
- Peter Huber, *Law and Disorder in Cyberspace* Oxford Univ. Press, 1997. Criticizes FCC regulation of telecommunications, showing examples where regulations have delayed introduction of new technologies.
- Mitchell Kapor, "Civil Liberties in Cyberspace," *Scientific American*, Sept., 1991, pp. 159–164.
- Lyrrisa Barnett Lidsky, "Silencing John Doe: Defamation and Disclosure in Cyberspace," *Duke Law Journal*, 49:4, Feb. 2000, pp. 855–946. (Available at www.law.duke.edu.)
- A. Lin Neumann, "The Resistance Network," *Wired*, Jan. 1996, 4:1, pp. 108–114. Use of computer networks by human rights organizations, many in countries with oppressive governments.
- "Science, Technology, and the First Amendment, Special Report," Office of Technology Assessment, U.S. Dept. of Commerce, Washington, DC, Jan. 1988 (Report NO. OTA-CIT-369).
- George Orwell, *1984*, 1948. Orwell's dystopian novel in which the totalitarian government controlled the people via ubiquitous telescreens. (Orwell introduced the term "Big Brother" for the government.)
- Charles Platt, "Americans Are Not As Free As We Think We Are," *Wired*, Apr. 1996, pp. 82–91.
- Richard S. Rosenberg, "Controlling Access to the Internet: The Role of Filters," *Proceedings for Computer Ethics: Philosophical Enquiry*, eds. Deborah G. Johnson, James H. Moor, and Herman T. Tavani, July 14–16, 2000, at Dartmouth College, pp. 232–261.
- Scott Shane, *Dismantling Utopia: How Information Ended the Soviet Union*, I. R. Dec, 1994.
- Ithiel de Sola Pool, *Technologies of Freedom*, Harvard University Press, 1983. This book describes the history, rights, restrictions, and responsibilities of the various communications technologies in depth.
- Eugene Volokh, "Freedom of Speech in Cyberspace from the Listener's Perspective:

- Private Speech Restrictions, Libel, State Action, Harassment, and Sex," *Univ. of Chicago Legal Forum*, 1996, pp. 377-436.
- Jesse Walker, *Rebels On the Air: An Alternative History of Radio in American*, New York University Press, 2001.
  - Jonathan D. Wallace, "Nameless in Cyberspace: Anonymity on the Internet," *Cato Institute Briefing Papers*, No. 54, Dec. 8, 1999.