Day 6

1st Amendment
Telecom ’96
FCC
Chilling Effects
Obscenity
Case Law

Censorship
Spam
Porn
Citizens may say *almost* anything they choose to without being punished by the government.

- Restriction on the power of government, *not individuals or private businesses*, to react to inflammatory speech
- “It’s become so common to ... walk through garbage and violent imagery online that people have accepted it in a way. And it’s become so noisy that you have to shout more loudly, and more shockingly, to be heard.”

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Censorship?

Twitter Bars Milo Yiannopoulos in Wake of Leslie Jones’s Reports of Abuse

By MIKE ISAAC
Last Updated: July 20, 2016

In a statement, a Twitter spokesman said: “People should be able to express diverse opinions and beliefs on Twitter. But no one deserves to be subjected to targeted abuse online, and our rules prohibit inciting or engaging in the targeted abuse or harassment of others.”

policies to permanent suspension.”

In a brief interview on Tuesday evening, Mr. Yiannopoulos said, “This is the beginning of the end for Twitter.”

“Some people are going to find this perfectly acceptable,” he said. “Anyone who believes in free speech or is a conservative certainly will not.”

SAN FRANCISCO — For years, one of the main grievances among Twitter users has been the ability of anonymous trolls to send abusive comments to other people on the service.

Regulating Communication

0 First Amendment protection and government regulation
  ① Print media (newspapers, magazines, books)
  ② Broadcast (television, radio)

FCC: FEDERAL COMMUNICATIONS COMMISSION

Federal commission that “regulates interstate and international communications by radio, television, wire, satellite and cable in all 50 states, the District of Columbia and U.S. territories. An independent U.S. government agency overseen by Congress, the commission is the United States' primary authority for communications law, regulation and technological innovation.”

https://www.fcc.gov/what-we-do
ISPs are to be classified as either Information Services or Common Carriers. (Regulatory Structure)

(The first categorization, under Clinton when the law was passed in 1996, was as Common Carrier.)

2002 update, with FCC appointed by Bush: Changed regulatory structure of telephone services: ISPs are info services, not common carriers → they are not subject to regulation by the FCC → ISPs can do/charge what they want.
Update 2/2015

FCC reclassified broadband and mobile providers as COMMON CARRIERS.

F.C.C. Approves Net Neutrality Rules, Classifying Broadband Internet Service as a Utility

WASHINGTON — The Federal Communications Commission voted on Thursday to regulate broadband Internet service as a public utility, a milestone in regulating high-speed Internet.
AT&T filed suit against the FCC on 4/14/2015, saying the reclassification is “arbitrary” and “capricious.”
Update 1/2017

Ajit Pai, staunch opponent of consumer protection rules, is now FCC chair

Ex-Verizon lawyer Pai will take “weed whacker” to net neutrality under Trump.

JON BRODKIN - 1/23/2017, 4:47 PM

Update 12/2017

F.C.C. Repeals Net Neutrality Rules

By CECILIA KANG - DEC. 14, 2017


According to the FCC (appointed by the president),

Internet Service Providers are classified as...

Information Services
Private services
Companies can charge what they want to
Prices regulated by market
Companies can do what they decide to do
Free market/ Capitalist / Neo-Liberal approach

Common Carriers
Public services / Utilities
Companies can charge what the gov’t approves
Prices regulated by government
Companies are limited to approved practices
Public good/ Collectivist/ approach

1996 (Clinton)

2002 (G.W. Bush)

2015 (Obama)

2017 (Trump)
FCC Democrats Set to Move on Net Neutrality, Broadband Subsidies

Bloomberg Businessweek

Biden’s FCC Is Having Trouble Getting Started
There hasn’t been a full slate of commissioners, and the slow-moving confirmation of Gigi Sohn has pushed back potential action.

NSR: Time is 'running out' for Sohn FCC confirmation
By Diana Goovaerts • Sep 19, 2022 11:55am

Bloomberg Law

Biden FCC Nominee Gigi Sohn Confirmation Hearing Set for Feb. 14

Politico

FCC nominee Gigi Sohn withdraws after more than a year of fighting for post

Establishes legal immunity for people and companies who host online content, regardless of what their users post.

“No provider... of interactive computer services shall be treated as a publisher of any information provided by another information-content provider.”

- India eBay case (2004)
The Supreme Court takes up Section 230

Tom Wheeler • Tuesday, January 31, 2023

The Supreme Court Considers the Algorithm

A very weird Section 230 case is headed to the country’s highest court.

By Kaitlyn Tiffany

230 Exceptions?

0 1998 - Copyright infringement: See DMCA

0 4/2018 – FOSTA – SESTA. Immunity for sites facilitating sex trafficking is revoked.

0 Backpage, Craigslist “personals” section shut down

0 Criticized because voluntary sex workers who had been able to market themselves online had to return to former dependent/dangerous situations (street prostitution, pimps).
Old problem/new context

Harvey Carignan

aka Harvey Louis Carignan

Born: 18-May-1927
Birthplace: Fargo, ND

Gender: Male
Race or Ethnicity: White
Sexual orientation: Straight
Occupation: Criminal

Nationality: United States
Executive summary: The Want-Ad Killer
Supreme Court principles and guidelines

**Advocating illegal acts is (usually) legal.**

**Anonymous speech is protected.**

**Some restrictions are allowed on advertising.**

- the general rule: speaker and audience, not the government, assess the value of the information presented
- FTC regulates ads that are considered “deceptive”

**Libel and direct, specific threats are not protected.**

**Inciting violence is illegal.**
Gov’t protocol

Laws must not have a **CHILLING EFFECT**: Discouragement and/or suppression of legal behavior (including speech).

Do not reduce adults to reading only what is fit for children → Solve speech problems by **least restrictive means**.
Internet Censorship

COMMUNICATIONS DECENTY ACT OF 1996 (CDA)

- First major Internet censorship law
- Made it a crime to make available to anyone under 18 any obscene or indecent communication

Censorship - found to be unconstitutional

- It was too vague and broad
- It did not use the least restrictive means of accomplishing the goal of protecting children

- This act was one part (Title V) of the larger Telecommunications Act of 1996, section 230 upheld
Internet Censorship

- Child Online Protection Act of 1998 (COPA)
  - More limited than CDA
  - Federal crime for commercial Web sites to make available to minors material “harmful to minors” as judged by community standards

- Found to be unconstitutional
  - It was too broad
  - It would restrict the entire country to the standards of the most conservative community
  - It would have a chilling effect
Internet Censorship

**CHILDREN'S INTERNET PROTECTION ACT OF 2000 (CIPA)**

- Requires schools and libraries that participate in certain federal programs to install filtering software

**Upheld in court**

- Does not violate First Amendment since it does not require the use of filters, impose jail or fines
- It sets a condition for receipt of certain federal funds
Who should censor?

- Search engines: obligation to provide complete results vs obligation to omit very offensive sites
  - See Right to Be Forgotten Case (day 5 slides)
  - See Project Dragonfly (day 8 slides)
Revenge Porn

- Right now (2022), 48/50 states outlaw “nonconsensual pornography.” Misdemeanor → Felony
- “21 laws ... mean ... 21 different definitions” of revenge porn. - Mary Anne Franks, University of Miami law professor, 2014
- Currently, there is no federal level law. It is expected this year (2015).
- Update: 8/2016:
- Update: 9/2019:
- Update: 2/2022:

In less than a decade, nearly every state has outlawed ‘revenge porn.’ So why hasn’t Massachusetts?

Federal Civil Action for Disclosure of Intimate Images: Free Speech Considerations

April 1, 2022
On March 15, 2022, Congress authorized a federal civil claim relating to the disclosure of intimate images as part of the Consolidated Appropriations Act, 2022. The new cause of action, which takes effect on October 1, 2022, marks the first federal law targeting the unauthorized dissemination of private, intimate images of both adults and children—images commonly referred to as “nonconsensual pornography” or “revenge porn.”

Finally passed! Took effect 10/2022

http://www.cybercivilrights.org/revenge-porn-laws/
https://www.google.com/maps/d/u/0/viewer?mid=1Nq1Y1Im_djJtcXCUt651in-NLTE&hl=en_US
Even the existent laws aren’t perfect

- Free speech issues: justice vs. censorship
- California law originally protected victims if another person took their photo and posted it.
- Did not protect against photos taken by the victim then sent to people who later posted them.
- Was changed after Bollaert case in Feb 2015
- He was charged with extortion and identity theft but fell into the loophole for the revenge porn charge.

California man faces 20 years in historic revenge-porn conviction

By Kevin Collier

Feb 3, 2015, 11:43am CT | Last updated Feb 3, 2015, 12:3;

A California man has been found guilty of the largest revenge porn case to date.

San Diegan Kevin Bollaert was convicted Monday on 27 felony counts of identity theft and extortion related to his site, YouGotPosted, which published naked images of women without their consent, and the accompanying changemyreputation.com, which charged the victims to remove the photos. Bollaert wasn’t actually charged with violating California’s state law against revenge porn, which passed in 2013.

Bollaert faces up to 20 years in prison, the Associated Press reported.
Spam

- Unsolicited bulk communication (first emails, now texts and social media messages)
  - Mostly advertisements
- Free speech issues
  - Spam imposes a cost on recipients
  - Spam filters do not violate free speech *(free speech does not require anyone to listen)*

AdBlock Plus defeats German publishers in court

By Leo Kelion
Technology desk editor

22 April 2015  Technology
Controlling the Assault of Non-Solicited Pornography and Marketing (CAN-SPAM ACT) - 2003

- Sets rules for spam senders
- Criticized for not banning all spam, legitimizing commercial spam