

Abstract

Joe Zopolsky, an attorney in Dallas, Texas, has been published several times before in prestigious law reviews nationwide. He has studied in Mexico, Spain, and Argentina and served as the assistant managing editor of the International Trade Law Journal. Thus, Mr. Zopolsky has in depth knowledge of global issues concerning our world today. Mr. Zopolsky provides insight into the current status of censorship on the Internet, globally and domestically. Ultimately, Mr. Zopolsky calls for individual and familial responsibility and makes the argument against censoring the Internet on both the international and domestic levels.

CENSORSHIP ON THE INTERNET: WHO SHOULD MAKE THE RULES?

I. Introduction

Millions of people use the Internet everyday. These people come from various socioeconomic, political, and racial backgrounds, as well as different nations. For example, at least forty-three million Mexicans use the Internet daily.¹ Even more Americans, including the United States Supreme Court Justices, also use the Internet.² So prevalent is Internet use that terms such as “web browser” and “chat room” have appeared in recent editions of the United States Reports.³ What is not as widespread, however, is the understanding that this revolutionary technology has created numerous, novel challenges.

Censorship serves as a primary example of a novel concern caused by the unique nature of the Internet.⁴ The challenge of properly addressing this concern is compounded by the fact that this issue is international in scope.⁵ The laws, rules, and regulatory schemes of some countries contradict those of other countries. Therefore, even if there exists an international,

¹ Brendan M. Case, *Beyond the Borders: Internet Cafes Give Mexican Youths Access to Information*, DALLAS MORNING NEWS, Dec. 1, 2002, at 1H.

² Jeff Bleich & Kelly Klaus, *Hurting into Cyberspace As the Court Guides New Technology Through Old Law – Expect a Few Bumps*, 45 FED. L. 38, 39 (1998).

³ *See id.*

⁴ Steven M. Hanley, *International Internet Regulations: A Multinational Approach*, 16 J. MARSHALL J. COMPUTER & INFO. L. 997, 999 (1998).

⁵ *See id.*

collective meeting of the minds, reaching any kind of international agreement could prove to be a daunting task.

Despite challenges and conflicts, a consensus already exists among nations that the world needs some type of international Internet regulation.⁶ Nations further agree that the objective of this regulation should be the abolition of intolerable information contained and distributed on the Internet.⁷ The challenge ultimately facing the international community, therefore, is twofold. First, nations must collectively define “intolerable.” Second, nations must also identify, or perhaps create, the regulatory scheme that effectively aids them in achieving the foregoing end. Although the objective is clear, the solution is not. At this juncture, parental or like figures are charged with the awesome responsibility of monitoring Internet use by those in their charge.

II. Variations of Regulatory Schemes

Any international Internet regulatory scheme must be chosen with the utmost care. Specifically, it is important to consider the great range of available possibilities.⁸ Many alternatives exist, ranging from total user control⁹ to total government control. In the United States,¹⁰ Mexico,¹¹ and many other countries, Internet users enjoy unrestricted access to online information. Alternatively, Chinese,¹² French,¹³ Australian,¹⁴ and Malaysian¹⁵ authorities limit online information available to Internet users in those countries.

⁶ *See id.*

⁷ *See id.*

⁸ *See id.*

⁹ *See id.*

¹⁰ Doug Bedell, *The Net Set: American Teens Are Masters of Widening Digital Domain*, DALLAS MORNING NEWS, Dec. 1, 2002, at 1H.

¹¹ Case, *supra* note 1, at 1H.

¹² Miguel Helft, *Chinese Net Censors Are Doomed to Fail*, THE MERCURY NEWS, Sept. 9, 2002.

¹³ Bradley Smith, *French Government Creates Internet Censorship*, LE TEMPS IRREPARABLE, June 13, 1996.

¹⁴ Raymond Hoser, *Illegal Internet Ban Enforced*, at <http://www.smuggled.com/vac.htm> (last visited Feb. 26, 2003).

III. Challenges That Hinder the Enactment of a Successful International Internet Regulatory Scheme

Some believe that an international regulatory scheme most effectively, efficiently, and fairly govern the use of the Internet. It is possible that at this point, the world may not be ready for any such scheme. The search for an appropriate and acceptable form of Internet regulation indubitably will create certain difficulties.¹⁶ First, an official forum supporting international discourse in pursuit of a solution to this dilemma does not currently exist. How can anyone realistically hope for resolution of any problem without discourse?¹⁷ In short, until this problem is discussed, it will not be resolved.

Legal, regulatory, cultural, and linguistic differences between nations may complicate negotiations, as may political and sociological differences.¹⁸ Since each country embraces a unique set of values, customs, and norms, arriving at a collective agreement might prove difficult.¹⁹ An agreement that is acceptable to one side may be objectionable to another, in light of the aforementioned differences.²⁰ The backbreaking challenge, therefore, remains to discover some “common ground” on which every country may stand, however significant, or slight.

Choice-of-law and jurisdictional issues also tend to complicate matters.²¹ A foreign country, for example, may wish to prosecute a U.S. citizen for an Internet-related crime. This crime, however, may not violate any law of the United States. Should this prosecution be

¹⁵ Chris Sprigman, *Hacking for Free Speech: A New Breed of “Hacktivists” Takes on Internet Censorship*, June 24, 2003, available at http://writ.news.findlaw.com/commentary/20030624_sprigman.html (last visited Mar. 11, 2004).

¹⁶ See Hanley, *supra* note 4, at 1010.

¹⁷ See *id.*

¹⁸ See *id.* at 1011-17.

¹⁹ See *id.* at 1010.

²⁰ Caroline Uyttendaele & Joseph Dumortier, *Free Speech on the Information Superhighway: European Perspectives*, 16 J. MARSHALL J. COMPUTER & INFO. L. 905, 926 (1998).

²¹ See Hanley, *supra* note 4, at 1010.

permitted, nonetheless?²² If so, does the law of the United States, or the law of the foreign country, supercede? Similarly, jurisdictional difficulties exist.²³ This holds true for international and domestic disputes, alike. Essentially, the challenge remains to determine where an Internet transaction takes place. This is significant, as the laws of the state or country in which a transaction takes place would likely govern any dispute based on, or involving, such transaction.²⁴ Interpretations vary, with respect to this determination. While some propose that the physical location of the Internet user determines the location of an Internet transaction, others opine that the location of the service provider, or some other criteria, determines the same.²⁵

IV. Pandora's Box

Implementing any type of censorship at this point could open a Pandora's Box of litigation due to the vast number of novel legal issues that the regulatory scheme would create. Courts already face an onslaught of first impression cases involving computers and technology. Although the handling of legal disputes involving Internet regulation may be treated to similar, recently litigated technologies, such as email,²⁶ the effective treatment of this potential litigation still remains as a formidable challenge.

V. Concerns Regarding Overbearing Governmental Intrusion

The manner in which courts will adjudicate matters regarding search warrants for computer information may cause additional problems. Specifically, these warrants could subject innocent individuals to significant, personal exposure. This potential practice gives rise to

²² See *id.*

²³ See Jason Krause, *Casting a Wide Net: Search Engines Yahoo and Google Tussle with Foreign Courts over Content*, ABA J., November 2002, at 20.

²⁴ See *id.*

²⁵ See *id.*

²⁶ Solveig Singleton, *Reviving a First Amendment Absolutism for the Internet*, 3 TEX. REV. L. & POL. 279, 299 (1999).

concerns regarding excessive governmental interference in individual lives, and bolsters the argument against government-imposed regulation. Extreme regulation may contribute to an environment in which people may feel inhibited from exercising their free speech.²⁷ The Communications Decency Act, for example, resembles this type of overbearing regulation.²⁸ This especially holds true since it is a criminal statute.²⁹ Appropriately, the Supreme Court declared the Act unconstitutional in *Reno v. American Civil Liberties Union*.³⁰ This decision by the Court proves that overbearing regulation, such as Internet regulation, is not appropriate for the country, or arguably any other, at this time.

VI. Alternatives to an International Internet Regulatory Scheme

Some on-line service providers, such as AOL, offer a parental controls device, which limits information available to an Internet user through a censorship-type feature.³¹ Although these mechanisms and similar software are not completely effective, and since children can access the Internet at libraries, schools, and businesses such as “[I]nternet cafes,”³² these options serve merely as partial solutions to the instant challenge.

Another device available to parents is the Internet “filter.” There are over 15 varieties available for commercial use.³³ Some filter proponents have gone so far as to suggest that Internet service providers make the devices available to all Internet users at no charge.³⁴ Since the industry has responded to presidential challenges in the past, it is likely that the Internet

²⁷ Bradley J. Stein, *Why Wait? A Discussion of Analogy and Judicial Standards for the Internet In Light of The Supreme Court's Reno v. ACLU Opinion*, 42 ST. LOUIS U. L.J. 1471, 1485-86 (1998).

²⁸ *See id.*

²⁹ *See id.*

³⁰ *Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 847 (1997).

³¹ Jay Munro, PC MAGAZINE, *At Home: AOL Parental Controls*, September 25, 2001.

³² Case, *supra* note 1, at 1H.

³³ *See id.*

³⁴ Eugene Volokh, *Freedom of Speech, Shielding Children, and Transcending Balancing*, 1997 SUP. CT. REV. 141, 162-63 (1997).

service providers would quickly implement such a suggestion into their ordinary business practices.³⁵

Opponents of filters, however, point to the fact that the filters are not 100% effective.³⁶ This argument fails due to the myriad of sites available on the web. One study, for example, points to the fact that over 90 percent of the 40,000 sites relating to Thomas Edison were blocked out by one brand of filtering software.³⁷ What the study fails to point out, however, is that there are 4,000 articles that a child *could* read about Thomas Edison. After all, can a child possibly read 140,000 articles about one topic?³⁸ This argument results from a “glass half full” approach to the issue, and results in a pessimistic outlook rather than constructive criticism. This mentality results in a call for regulation when no such need exists. Further, technology must also be considered in contemplating the issue at hand, as filters are certain to improve with time.

Another option is a public hotline, whereby concerned Internet users work collectively to keep unacceptable material off of the Internet.³⁹ This system functions without any third party, external, or commercial influence at all.⁴⁰ The Dutch have successfully utilized this type of system for many years, and have proven that this alternative serves as a viable option to the implementation of a regulatory scheme.

³⁵ See *id.* See generally Ann Beeson & Chris Hansen, *Fahrenheit 451.2: Is Cyberspace Burning?*, CYBER-LIBERTIES, available at <http://www.aclu.org/issues/cyber/burning.html> (last visited Jan. 26, 2000).

³⁶ See Beeson, *supra* note 35.

³⁷ See *id.*

³⁸ See *id.*

³⁹ See *id.*

⁴⁰ See *id.*

VII. Self-Regulation by the Computer Industry

In response to a challenge from the President, the computer industry self-regulates speech on the Internet, in part.⁴¹ This act, per se, further reinforces the argument against Internet regulation. Especially among industry personnel, fears that government leaders will make poor decisions pertaining to Internet regulation exist. Consequently, the industry's continued self-regulation in response to public and governmental demands should be anticipated and expected in full.⁴²

VIII. By Choosing Not to Speak, The Court Has Spoken

The Supreme Court had the opportunity to analogize the Internet to any one of several mediums, but failed to do so.⁴³ Possibilities include print, broadcast, telephone, cable broadcast, public forum, and zoning.⁴⁴ Further, "the public forum is the closest analogy to the [I]nternet, though it was never considered by the Court."⁴⁵ In failing to analogize the Internet to any other medium, the Court expresses through its inaction, that no current regulatory solution can adequately resolve this issue.

IX. The Supreme Importance of Parental Responsibility

Censorship may be necessary, for the most part, due to the harmful effects that online information may have on children. When parents assume responsibility for properly raising their children, however, this issue will become less important.⁴⁶ A parent should be charged with the

⁴¹ *See id.*

⁴² *See id.*

⁴³ *See Stein, supra* note 27, at 1473-81 (explaining possible analogies pertaining to the Internet).

⁴⁴ *See id.*

⁴⁵ *Id.* at 1495.

⁴⁶ *Faulty Filters: How Content Filters Block Access to Kid-Friendly Information on the Internet*, Dec. 1997, ELECTRONIC PRIVACY INFORMATION CENTER, at http://www2.epic.org/reports/filter_report.html (last visited Jan. 26, 2000).

responsibility, and afforded the right, to supervise his or her child's use of the Internet.⁴⁷ Internet users should not be subjected to any form of extra-familiar, especially governmental, censorship.⁴⁸

Some parents are wary of libraries and chat rooms. At the same time, some parents, perhaps the same parents, distrust strangers, generally fear things unknown, and raise their children in a sheltered environment. This type of individual will always cry for more protection, and request that more decisions be made on their behalf. Others champion the freedom to make their own choices.

In addition to parental guidance, teachers and librarians can assist in guiding a child as the child learns how to use the Internet in an appropriate manner.⁴⁹ The role of these figures is especially important, as libraries traditionally are First Amendment zones, free from all restrictions.⁵⁰ Accordingly, libraries traditionally allow unrestricted access to the Internet.⁵¹ Despite the role of these figures in a child's life, a parent is ultimately accountable for his or her child. Accordingly, a parent should use his or her discretion in considering the conditions under which the child is permitted to access the Internet.

If Internet chat rooms, in particular, serve as an area of concern, in order to minimize potentially problematic situations, a child should be required to seek parental permission before he or she enters the chat room.⁵² Parents have the ability to monitor the use of chat rooms in the

⁴⁷ See generally Beeson, *supra* note 35.

⁴⁸ See *id.*

⁴⁹ See *id.*

⁵⁰ See *id.*

⁵¹ See *id.*

⁵² See *id.*

same manner as telephones, primarily due to the similarities between the two entities.⁵³ They may even have the ability to be more restrictive in their supervision of chat rooms through the use of computer programs or software.⁵⁴

X. Conclusion

With respect to the implementation of an international Internet regulatory scheme, the timing of an implementation is as significant as the substance of the regulations. At this juncture, the implementation of such a scheme would complicate our legal system, hinder technological advancement, and disregard parents' rights to supervise, teach and rear children without the unnecessary intrusion of government. Conversely, a widespread acceptance of parental responsibilities, which is lacking within our country at this time, will resolve this problem. In short, parental supervision, accountability, and responsibility serve as the ultimate potential solution to concerns regarding Internet regulation.

⁵³ *See id.*

⁵⁴ *See id.*