Day 6

1st Amendment
 Telecom ‘96
 Chilling Effects
 Obscenity
 Case Law

Censorship
Spam
Porn
“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.”

Susan Benesch, a faculty associate at Harvard’s Berkman Center for Internet & Society and the director of the Dangerous Speech Project, an effort to study speech that leads to violence.

Regulating Communications

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

FCC: Federal Communications Commission

“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
2002 update: 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.

Congress was against this, but the FCC chairman at the time (Michael Powell) was able to get the provision through.

He is now the top lobbyist for the cable industry (conflict of interest? self-dealing?)
Update 2/2015

FCC reclassified broadband and mobile providers as COMMON CARRIERS.
AT&T filed suit against the FCC on 4/14/2015, saying the reclassification is “arbitrary” and “capricious”.

Update 1/2017

WILD RIDE AHEAD —
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

Telecom Act part 2

Title V, section 230

“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)

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 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
Principles of Free Speech

0 Written to protect unpopular and/or controversial speech and ideas

0 Covers spoken and *written words, pictures, art, and other forms of expression of ideas* and opinions

0 Restriction on the power of government, *not individuals or private businesses*, to react to inflammatory speech
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

0 Laws must not have a **CHILLING EFFECT**: Discouragement/suppression of legal speech.

0 Do not reduce adults to reading only what is fit for children ➔ Solve speech problems by least restrictive means.
What is offensive?

0 Answers depend on who/where you are.

0 Most efforts to censor the Internet focus on pornographic and other sexually explicit material

0 Beheadings?
Violent videos posted online can lead to charges against attackers...

15-Year-Old Girl Charged After Violent Attack Viewed 6 Million Times On Facebook

The attack took place in Cowdenbeath, Fife, and is the latest incident involving teenagers and alleged violent crime to have gone viral on Facebook.

posted on Aug. 18, 2015, at 7:33 a.m.

Patrick Smith
BuzzFeed News Reporter, UK
But can also lead to vigilante justice.

A 16-year-old who pleaded guilty to assaulting two younger girls in Birmingham last month was remanded in custody for her own safety, after personal details including her address were posted online.

Reddit apologizes for online 'witch hunt' for Boston Marathon bombers

The dangers of crowdsourced journalism became evident as false leads led to innocents being accused of taking part in the terrorist attack.

BY MICHAEL WALSH

NEW YORK DAILY NEWS / Wednesday, April 24, 2013, 10:56 AM

called 50 times between 3 and 4:15 AM that day, Kang reports. The family told Kang it received "hundreds of threatening and anti-Islamic messages (though they are not Muslim)." Groups that had been working with the Tripathi family to find their son shied away, thinking he might still be one of the Boston bombers.

"All the sentiment and help we had received to help find Sunil switched over and said he was a terrorist," Judy Tripathi tells Kang.
Controlling Speech

According to Miller v California (1973) (brochure distribution), obscenity...

1. Depicts a sexual act against state law
2. Depicts these acts in a patently offensive manner that appeals to prurient interest as judged by a reasonable person using community standards
3. Lacks literary, artistic, social, political or scientific value
4. Helped clarify 1964 case (Jacobellis v. Ohio) in which Justice Stewart said simply regarding obscenity: “I know it when I see it.”

Controlling Speech

Straining old legal standards

- The definition of “community”
- The definition of “distribution”

Internet Censorship

**COMMUNICATIONS DECENCY 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
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.”
Regulating Video Violence

A California law banned sale or rental of violent video games to minors. In 2011, the Supreme Court of California ruled it violated the First Amendment. (Brown v. Entertainment Merchants Association)
Extended play of violent video games has a proven link to aggression.

But not a proven link to violence.

Columbine shooters, Anders Breivik, James Holmes, Adam Lanza, others did play violent video games.

Correlation? Causation? Fallacy?
### Problem Behaviors and M-Rated Game Preferences: Boys

<table>
<thead>
<tr>
<th>Problem Area</th>
<th>Type of Behavior Previous 12 Months</th>
<th>Overall Percentage of Boys Involved in Behavior</th>
<th>Percentage of M-Gamers</th>
<th>Percentage of Non-M-Gamers</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Aggression and Bullying</strong></td>
<td>Been in a physical fight</td>
<td>44.4%</td>
<td>51%</td>
<td>28%**</td>
</tr>
<tr>
<td></td>
<td>Hit or beat up someone</td>
<td>53.2%</td>
<td>60%</td>
<td>39%**</td>
</tr>
<tr>
<td></td>
<td>Took part in bullying another student†</td>
<td>9.2%</td>
<td>10%</td>
<td>8%</td>
</tr>
<tr>
<td><strong>Delinquent Behaviors</strong></td>
<td>Damaged property just for fun</td>
<td>18.6%</td>
<td>23%</td>
<td>10%**</td>
</tr>
<tr>
<td></td>
<td>Got into trouble with the police</td>
<td>4.9%</td>
<td>6%</td>
<td>2%</td>
</tr>
<tr>
<td></td>
<td>Stole something from a store</td>
<td>10.5%</td>
<td>13%</td>
<td>6%*</td>
</tr>
<tr>
<td><strong>School Problems</strong></td>
<td>Got poor grades on a report card</td>
<td>31.6%</td>
<td>35%</td>
<td>23%**</td>
</tr>
<tr>
<td></td>
<td>Skipped classes or school without an excuse</td>
<td>11.2%</td>
<td>13%</td>
<td>8%</td>
</tr>
<tr>
<td></td>
<td>Got into trouble with teacher or principal</td>
<td>52.9%</td>
<td>60%</td>
<td>39%**</td>
</tr>
<tr>
<td></td>
<td>Got suspended from school</td>
<td>20.1%</td>
<td>22%</td>
<td>15%</td>
</tr>
<tr>
<td><strong>Victimization</strong></td>
<td>Been threatened or injured with a weapon</td>
<td>12.6%</td>
<td>15%</td>
<td>6%**</td>
</tr>
<tr>
<td></td>
<td>Been bullied at school†</td>
<td>10.2%</td>
<td>8%</td>
<td>15%*</td>
</tr>
</tbody>
</table>

* Statistically significant difference within gender between M-gamers and non-M-gamers at the P < .05 level.

** Statistically significant difference within gender between M-gamers and non-M-gamers at the P < .01 level.

† This bullying occurred at school at least two to three times per month over the past few months; Olweus Bully/Victim Questionnaire definitions.
Problem Behaviors and M-Rated Game Preferences: Girls

<table>
<thead>
<tr>
<th>PROBLEM AREA</th>
<th>TYPE OF BEHAVIOR PREVIOUS 12 MONTHS</th>
<th>OVERALL PERCENTAGE OF GIRLS INVOLVED IN BEHAVIOR</th>
<th>PERCENTAGE OF M-GAMERS</th>
<th>PERCENTAGE OF NON-M-GAMERS</th>
</tr>
</thead>
<tbody>
<tr>
<td>AGGRESSION AND BULLYING</td>
<td>Been in a physical fight</td>
<td>20.9%</td>
<td>40%</td>
<td>14%**</td>
</tr>
<tr>
<td></td>
<td>Hit or beat up someone</td>
<td>34.5%</td>
<td>49%</td>
<td>29%**</td>
</tr>
<tr>
<td></td>
<td>Took part in bullying another student†</td>
<td>4.4%</td>
<td>6%</td>
<td>4%</td>
</tr>
<tr>
<td>DELINQUENT BEHAVIORS</td>
<td>Damaged property just for fun</td>
<td>7.9%</td>
<td>15%</td>
<td>5%**</td>
</tr>
<tr>
<td></td>
<td>Got into trouble with the police</td>
<td>1.8%</td>
<td>2%</td>
<td>2%</td>
</tr>
<tr>
<td></td>
<td>Stole something from from a store</td>
<td>9.8%</td>
<td>14%</td>
<td>8%</td>
</tr>
<tr>
<td>SCHOOL PROBLEMS</td>
<td>Got poor grades on a report card</td>
<td>23.7%</td>
<td>37%</td>
<td>20%**</td>
</tr>
<tr>
<td></td>
<td>Skipped classes or school without an excuse</td>
<td>10.8%</td>
<td>20%</td>
<td>7%**</td>
</tr>
<tr>
<td></td>
<td>Got into trouble with teacher or principal</td>
<td>35.5%</td>
<td>49%</td>
<td>31%**</td>
</tr>
<tr>
<td></td>
<td>Got suspended from school</td>
<td>8.4%</td>
<td>16%</td>
<td>5%**</td>
</tr>
<tr>
<td>VICTIMIZATION</td>
<td>Been threatened or injured with a weapon</td>
<td>9.0%</td>
<td>14%</td>
<td>7%*</td>
</tr>
<tr>
<td></td>
<td>Been bullied at school†</td>
<td>6.9%</td>
<td>8%</td>
<td>6%</td>
</tr>
</tbody>
</table>

* STATISTICALLY SIGNIFICANT DIFFERENCE WITHIN GENDER BETWEEN M-GAMERS AND NON-M-GAMERS AT THE P < .05 LEVEL.

** STATISTICALLY SIGNIFICANT DIFFERENCE WITHIN GENDER BETWEEN M-GAMERS AND NON-M-GAMERS AT THE P < .01 LEVEL.

† THIS BULLYING OCCURRED AT SCHOOL AT LEAST TWO TO THREE TIMES PER MONTH IN THE PAST FEW MONTHS; OLWEUS BULLY/VICTIM QUESTIONNAIRE DEFINITIONS.
Majority opinion

"No doubt a state possesses legitimate power to protect children from harm, but that does not include a free-floating power to restrict the ideas to which children may be exposed." – Justice Scalia
Video game sources

0 http://content.usatoday.com/communities/gamehunters/post/2011/06/supreme-court-strikes-down-violent-video-games-ban/1

Censorship Alternatives

Filters

- 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

What should be blocked?

- Sites can ask users to report things that should be deleted...
Social networking sites develop policies to protect members.

"The purpose of fake news sites is, after all, to fool people, and fooled people are obviously not reporting the links as fake." – T. Geignern

https://www.techdirt.com/articles/20160413/05434934167/facebook-has-lost-war-it-declared-fake-news.shtml
Censorship
Alternatives Cont’d

Video game industry developed rating system that provides an indication for parents about the amount of sex, profanity, and violence in a game.
Who should censor?

Search engines: obligation to provide complete results vs obligation to omit very offensive sites
Child Porn

0 Includes pictures or videos of actual minors (children under 18) engaged in sexually explicit conduct.

0 Production is illegal primarily because of abuse of the actual children, not because of the impact of the content on a viewer.
Child Porn in MA

Each of these can result in 5 years of jail and up to a $10k fine in MA. They also require registration on a sex offender list for 20 years.

Possession of Child Pornography

It is illegal for anyone to knowingly possess photographs (in any format) which depict a person under the age of 18 posed with a lewd exhibition of genitals, buttocks, breasts or engaged in an actual or simulated sexual acts.

Dissemination of Harmful Matter to a Minor

It is illegal for anyone to knowingly send to any person under the age of 18 matter considered to be "harmful. "Harmful matter" includes things that are obscene or pornographic in nature.

https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter272/Section29B
Congress **extended** the law against child pornography **to include** “**virtual**” child pornography.

The Supreme Court ruled the law violated the **First Amendment**.

The Court accepted a later law providing harsh penalties for certain categories of computer-generated and cartoon-type images.
Sexting

0 Sending sexually suggestive or explicit text or photos, usually by cellphone or social media
0 Can meet the definition of child pornography if subject is under 18
Revenge Porn

Right now (2017), 38/50 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:

Whoa, we might finally get a federal law making revenge porn illegal

Update: 8/2017:

http://www.cybercivilrights.org/revenge-porn-laws/
https://www.google.com/maps/d/u/0/viewer?mid=1Nq1Y1Im_djJtcXCUt651in-NLTE&hl=en_US
Why Doesn’t Massachusetts Have a Revenge Porn Law?

By Allison Pohle March 23, 2015

Gov. Charlie Baker seeks to close ‘revenge porn’ loophole in Massachusetts law

Updated on April 25, 2017 at 11:31 AM, Posted on April 25, 2017 at 11:30 AM
Even the existent laws aren’t perfect

0 Free speech issues: justice vs. censorship
0 California law originally protected victims if another person took their photo and posted it.
0 Did not protect against photos taken by the victim then sent to people who later posted them.
0 Was changed after Bollaert case in Feb 2015
0 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, 12:34pm

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

San Diegoan 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, legitimized commercial spam