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INTRODUCTION

On March 19, 1997, the United States Supreme Court officially met the Internet when it held oral arguments in *Reno v. ACLU*.[1] The case offers the Justices not only a chance to pass upon the validity of the Communications Decency Act ("Act")[2]—more precisely, that provision which makes it a crime to post "indecent" material where minors may access it[3]— but it also affords the Court, for the first time, to pass upon basic issues concerning the nature of electronic communication and the degree to which such communication resembles other forms of protected expression.

The key issue is whether current technology makes it possible for providers to reach adults with sexually explicit material they have a right to see, while keeping that material away from young viewers. Two lower federal courts said that was not possible.[4] On that basis they found the indecency provision to be in violation of the free speech clause of the First Amendment. Those judgments began the first phase of the Supreme Court's journey into cyberspace.

The present topic is, however, a different if related one. Our agenda is to explore some special challenges the Internet poses for the college and university campus. In so doing, we will quite naturally pursue some larger issues in regulating what is said in cyberspace. We will also consider how

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1. 117 S. Ct. 554 (1996); *see* Transcript of Oral Argument, Reno v. ACLU, 1997 WL 136253 (U.S. Oral Arg. Mar. 19, 1997).

2. 47 U.S.C § 223(a)-(h) (West ____).

3. 47 U.S.C. § 223(a)(1)(B).

4. *See* ACLU v. Reno, 929 F. Supp. 824 (E.D. Pa.), *cert. granted*, 117 S. Ct. 554 (1996), *aff'd*, 117 S.Ct. 2329 (1997); Shea v. Reno, 930 F. Supp. 916 (S.D.N.Y. 1996).

far the First Amendment may view digital speech differently from the way it views the printed and spoken word. These are questions that campus administrators and attorneys face on an almost daily basis—with surprisingly little guidance from the courts or even from scholars. Each issue in this complex new arena is essentially a matter of first impression.

I. THREE CURRENT ELECTRONIC SPEECH CASES

To set the stage, let me report on three recent and intriguing incidents. They come from California, Virginia and fairly close by in Illinois. Two involve students, and one a professor. They are quite different in content, linked only by the common use of the Internet, and by an absence of familiar principles to resolve the central issue.

A. POLITICS AT CAL STATE-NORTHRIDGE

Let us go first to the West Coast. In June 1996, during a hotly contested state senate race, a student at California State University-Northridge ("CSUN") used his home page to attack the incumbent and tout her rival.[5] That page had been created through the university's computer system, and could be readily accessed through links from the institution's general web site. This was no ordinary political message. Christopher Landers, the student, set forth on the home page a traditional roster of pros and cons, supporting his partisan and attacking the incumbent. But the piece de resistance was visual. It started out with a regular head and shoulders photo of California State Senator Cathie Wright. But as the viewer watched, that image slowly changed into a very menacing skull—a not so subtle slap at her coziness with tobacco interests. As the home page metamorphosis ended, the Senator's platform was highlighted by that gleaming skull.[6]

This novel message soon came to the attention of Wright's campaign manager, who demanded the university delete Landers' web page. The cause of concern was partly the stigma created by the skull, but even more

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5. *See* Stacy Finz, *Student Wins Round For Free Speech*, L.A. DAILY NEWS, Feb. 15, 1997, at N3; Michael Sohigan & John Birke, *Free Cyber Speech Applies to CSUN; Campus Computer Server Qualifies As Marketplace of Ideas Protected By Courts*, Feb. 2, 1997, at B19; John Chandler, *Judge Rules CSUN Erred in Shutting Down Web Page*, @CSUN.EDU, Jan. 27, 1997, at 2 <http://www.csun.edu/~hfoao102/@csun.edu/csun127_97/features/judge.html> (last visited May 20, 1997); Christopher Landers, *Press Release 01/14/9* <http://www.csun.edu/~hbart020/prelease.html> (last visited May 24, 1997).

6. Mr. Lander's current homepage is devoted to his lawsuit with the university. *See* Christoper Landers, *Chris' ProtestPage* <http://www.csun.edu/~hbart020/> (last visited May 24, 1997).

it was California's deep and abiding aversion to use public resources for partisan pursuits. CSUN officials immediately acceded to Senator Wrights's demand, and blocked access to the home page in October of 1996, well before the election.[7] Undaunted, Mr. Landers went to court, claiming the university had abridged his free speech.

The university had by this time narrowed and refined its computer use policy. The administration argued it had acted reasonably — indeed was compelled to act by a California law that forbids the use of any state resources "for partisan political purposes." On January 14, 1997, however, a state trial court judge upheld the student's claim.[8] She ruled that CSUN had unlawfully censored a protected political message. Finding that the university had created a "limited public forum" through its computer system, the judge found no constitutionally adequate grounds for the removal of political material. Thus she ordered administrators to take no further action against Landers, and by implication to keep its electronic hands off any other student-created digital material of a similar kind. The case is still in court, with an appeal likely after a final ruling at the trial level.

Meanwhile, CSUN finds itself in a classic bind: On one hand, state law insists that public universities prevent the use of their facilities and resources for partisan politics. On the other hand, state courts have thus far denied the university the one remedy which would enable it to deal effectively with political messages posted through its computer network. It would be hard to imagine a more poignant dilemma.

B. DISSONANCE AT VIRGINIA

Let me now cross the country, and share with you a recent incident at my own University. It too involves a web page created by a resourceful student. One evening a wealthy alumnus was browsing the Internet in search of references to his rather uncommon surname. When he encountered such a reference on the web page of one of our undergraduates, his initial reaction was one of pride and delight. He clicked on the reference, and awaited an electronic encounter with a putative cousin. When the graphics began to emerge, however, those feelings quickly turned to shame and disgust. It seemed that the undergraduate, of like name but apparently not related, had used his webpage to do what lots of students do these days — to push the limits of taste and style in his choice of visual material. Though this page has now been removed for non-content reasons, I am assured it was explicit and highly distasteful.

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7. *See* Fintz, *supra* note 5, at N3.
8. *See* Chandler, *supra* note 5, at 2.

It was hardly surprising that our apoplectic alumnus called the President's office to demand the removal of the web page. The President wisely turned the issue over to the General Counsel and the Vice President for Student Affairs and Information Technology. They are reported to have debated at length, hoping the semester would end and the network could be cleansed before the alumnus actually appeared in person.

This case nicely illustrates the effects of changes in media. Suppose a wealthy graduate, during a physical tour of the campus, saw his surname linked to explicit visual material on a kiosk. He would probably be no less indignant than was our net-surfing alumnus. He would quite likely make a similar complaint to the administration. But the options would be few, at least for a public university. If the poster had been properly attached at a site where such displays are permitted, and if the content were not legally obscene or otherwise unlawful, you would politely explain principles of free speech to the indignant alumnus. There is no campus regulation that forbids "debasing the surname of prominent graduate through display of graphic or explicit visual material."

Simply to state the putative charge, in fact, provides the answer. If Larry Flynt has a First Amendment right to caricature and ridicule Reverend Jerry Falwell in his magazine,[9] surely our student has a right to sully the family name in a far less visible medium. So the poster on the kiosk is easy in principle — even though it might entail some awkward moments in practice. What is difficult about the web page is not only the different medium, and the different impact of that medium, but also the uncertain degree to which the university could be said to have made its resources available for such a purpose. That factor, as we shall see, cuts both ways, and makes finding answers even more challenging.

C. ANTI-SEMITISM AT NORTHWESTERN

It is now time to meet our third digital malefactor, who is a relatively near neighbor. Professor Arthur R. Butz has for over twenty years been a tenured professor of engineering at Northwestern University in Chicago, Illinois. Apparently his teaching of technical subjects has been without fault. Professor Butz differs from his colleagues, however, in one significant respect. For most of his years at Northwestern, he has publicly and persistently claimed that the Holocaust never happened — that several million Jews in Europe somehow became terminally ill or committed suicide between 1933 and 1945. These views are set forth in a book titled *The*

9. *See* Hustler Magazine v. Falwell, 485 U.S. 46 (1988).

Hoax of the Twentieth Century, the jacket of which correctly identifies the author as a Northwestern professor.

Over the years, Northwestern has felt recurrent pressure to stifle Professor Butz, or at least his views on the Holocaust. Commendably, university officials and trustees have resisted those pressures. They insist that such aberrational views fall within Butz' academic freedom, even though close to testing its limits. Thus they have patiently explained to alumni, community groups and many others why Butz remains a member of the faculty in good standing even though he spews hateful and demonstrably false notions about the most tragic events of our century.

Recently, however, Professor Butz has taken his views on-line. In late 1996, he added explicit Holocaust denial to his Internet home page.[10] The medium has thus changed, and some argue the equities have also altered. Critics who uneasily tolerated Butz in print now argue that Butz on-line has gone one step too far, and must be muzzled. Northwestern officials have, however, refused to change their basic position. While condemning his hateful views about the Holocaust, as they have done for years in the print world, they insist that academic freedom does not diminish when the words appear in digital form. Thus, the Holocaust denial remains on-line, just as Professor Butz posted it several months ago.

II. GENERAL PRINCIPLES: FREE SPEECH IN DIFFERENT MEDIA

This may be an appropriate point to focus on our central issue: Recognizing there are important differences between expression on the Internet and speech in other forms, how far do those differences permit — or even require — a different First Amendment standard? It may be useful to identify a few of those differences. Speech in cyberspace, for one thing, can reach millions in an instant, far beyond the potential immediate impact of the printed or even the broadcast word. It is also the case that the Internet seems to bring out the worst in some users; a good many people who are polite in print somehow turn into demons when they go on-line, engaging in vicious flaming, spamming and other extreme forms of discourse.

Anonymity poses another important difference: While we are familiar with unsigned letters and phone calls that involve little more than heavy

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10. Arthur R. Butz, *Home Web Page of Arthur R. Butz* <http: //pubweb.acns.nwu.edu/~abutz> (last visited May 20, 1997); *see* Edward Walsh, *Professor's Holocaust Views Put Freedom Issues On Line*, WASH. POST, Jan. 12, 1997, at A3; Laurel S. Walters, *Tenure Comes Under Stricter Review Multiyear Contracts Win Favor As Colleges Seek More Flexibility and Rein In Costs*, CHRISTIAN SCIENCE MONITOR, Apr. 24, 1997, at 12.

breathing, anonymous e-mail may create a new level of anxieties. The recipient has no idea whether the unsigned message comes from halfway around the world, or just around the corner, and with current technology, we may have no reliable way to find out.

Access to potentially troubling material — sexually explicit images, for example — is becoming so much easier, so rapidly, that a technically savvy minor can almost certainly obtain forbidden graphics much more easily by computer than through the laborious process of getting a friend or older sibling to reach behind the top shelf for a cellophane wrapped copy of *Penthouse* or *Hustler*. In these and other ways, cyberspace is undeniably different, though it is far less clear how far these differences warrant a diluted standard of free expression.

Let me propose one very simple principle, which I fervently hope the Supreme Court will espouse in its Communications Decency Act judgment: Speech in cyberspace should be as free from government restraint as is the printed or spoken word, save to the extent that special qualities of the medium itself may warrant a lower standard.

Let me illustrate this maxim with a case that will bring us back to campus realities. If a student posts photos of naked women on a kiosk in the central campus plaza, someone will quite likely tear them down. Even if it attracts a large and restive crowd, such a poster could not be punished at a public university under any rule with which I am familiar.

Now let us move the same images into cyberspace. Suppose news of the posting of such material on the student's home page spreads rapidly across the campus network, and so many other users seek to access it that a "traffic jam" results. Such congestion might well threaten to shut down the whole system, or at least severely hamper its operations. The computing center director might well conclude that only rapid intervention would protect the rest of the system and the communications of other users. Thus the offending material might be removed, or access to it might be blocked for a time. Such action would reflect no judgment about the message or viewpoint, but a wholly valid concern for its potential effect on the communications of others. Even here, though, we should proceed with caution. The "traffic jam" principle bears an ominous resemblance to the claim that a speaker can be silenced if the message unsettles or provokes a crowd. That sort of "heckler's veto," as Supreme Court Justice Hugo Black warned a half century ago,[11] would allow the stifling of protected speech for what may well be a contrived pretext, often based on the unreviewable

11. *See* Feiner v. New York, 340 U.S. 315, 326 (1951) (Black, J., dissenting).

judgment of the police. For much the same reasons, we should insist on an independent review before the computing center blocks access or removes the display that creates the digital "traffic jam." Only in that way could we be certain that a genuine need exists, which could not be met in a less drastic way, and that the popularity of the web site is not simply a pretext for suppressing material the administration finds undesirable or embarrassing.

The case of the "traffic jam" does, however, offer one example (the only good one that comes to mind) of restrictions that may be permissible in cyberspace for reasons that have no ready analogue or counterpart in print. The basic precept remains firm, however: Where such novel conditions do not exist, speech on the Internet should be as free from government restraint as the spoken or printed word.

III. APPLYING GENERAL PRINCIPLES TO CYBERSPACE

Before we are comfortable with that conclusion, however, we need to note a few other factors that might warrant different approaches to the Internet. Let us return for a moment to Professor Arthur Butz. Northwestern officials have, as I noted earlier, insisted that Butz on-line is no different form Butz in print.[12] Others take a less generous view. One such skeptic is the Simon Weisenthal Center in Los Angeles, which monitors anti-Jewish propaganda and attacks.[13] Last year the Center conducted a survey of hate material, especially anti-Semitic hate material, that appeared on college and university web pages. They found an alarming amount of neo-Nazi, Aryan Nation and other such postings in places accessible through links from campus home pages.

Rabbi Abraham Cooper, the Center's director, wrote to university presidents around the country, acknowledging the importance of free speech and academic freedom, but urging steps to curb or reduce the incidence of such hateful material.[14] Many institutions responded sympathetically, though it is too early to chart the impact.

What Rabbi Cooper and others note about Professor Butz on-line are two features distinctive to cyberspace. On one hand, the potential reach of such hateful material is magnified many fold. Since its publication, Butz'

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12. *See* Walsh, *supra* note 10, at A3.

13. *See* Katharine Webster, *Rights Group Seeks Censorship of On-Line White Supremacists*, ROCKY MOUNTAIN NEWS, Jan. 21, 1996, at 38A; Greg Williams, *Hate Groups Using the Internet to Spread Their Racist Message*, PHILADELPHIA TRIBUNE, Jan. 23, 1996, at 1A.

14. *See* Webster, *supra* note 13, at 38A.

book has probably reached a few thousand people, mostly in this country. But the moment the same views went on the Internet, they became instantly and easily available to millions of users around the world. Such expansion of clientele may be only a matter of degree, but dramatically so. The other difference is both subtler and more substantial. The relationship between the university and the professor is different in cyberspace. In an almost technical sense, Butz' use of the university's computing network was an essential means or medium for this new and broader communication. While the cost to the institution of adding one more faculty member's web page may be negligible, the value to the user is substantial. Yet the real concern is not one of cost or value — but rather of apparent attribution.

It was not simply that the material could be posted and accessed through university links but, as one of Butz' colleagues argued, that the posting "makes it appear that it's carried out with Northwestern's imprimatur." This colleague, who happened to be Jewish but expressed views shared by some non-Jews, put his objection this way: "I didn't object to [Butz'] material being on the Web. But don't publish it so it appears that I and other faculty members are a party to what I consider a libel."[15]

The issue of attribution deserves elaboration. While Butz has long been identified on the jacket of his book as a Northwestern engineering professor, no reader would seriously believe on that basis that the university sponsors, or even condones, the book's contents or its outrageous assertions. That would still be true even if the book had been published by the Northwestern University Press. But when one encounters such aggressive anti-Semitism on a professor's web page, a subtly different inference might arise. Of course no one would seriously believe that the university had endorsed the contents of myriad web sites accessible through its home page. Yet prospective students who wish to learn more about Northwestern, and quite naturally accessing its web page for that purpose, could encounter faculty Holocaust-denial mixed in with admission procedures, lists of Evanston restaurants and cultural events, and an attractive campus map.

The most nearly comparable experience for a future student physically visiting the campus would be finding a copy of Butz' book on display at the university bookstore or in the library. That would entail a quite different level of emotional assault. Yet, as I have already noted, I applaud the view that Northwestern's board and administration have taken over the years toward Professor Butz and his aberrant views. Academic freedom protects even the right of a scholar, as citizen, to be egregiously and offensively wrong on so sensitive and deeply divisive an issue.

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15. *See* Walsh, *supra* note 10, at A3.

Before returning to our other two cases, let me add one caution. Butz' mischievous views must be tolerated in part because they are remote from his academic discipline. His field is electrical engineering, which has nothing to do with the Holocaust. But suppose instead his specialty were modern European history. Even if his teaching and scholarship were impeccable with regard to the British Isles, the Scandinavian countries and Southern Europe, so erroneous a view about German history would be far harder to tolerate.

The classic case is that of flat-earth advocacy, which is tolerable for teachers of literature, philosophy and classics. But if a geographer or geologist insists, in or out of class, that the surface of the earth does not bend or curve, that goes beyond the bounds because it demonstrates a basic lack of competence in the discipline. Assuming due process and an institutional burden of proof, dismissal could be contemplated. So too a historian of modern Germany or contemporary Europe, who widely and persistently denied the Holocaust, might risk dismissal for betraying a basic lack of core competence. But to repeat, that situation is quite different from Professor Butz who, as far as we know, has never shown any comparable lack of competence in his discipline.[16]

Such a review of the Butz situation brings us back to the other two cases I posed at the start. The one that arose at my own university — the sullying of the once proud surname by a student's tasteless web page — was wisely resolved through informal means. It would be difficult to fashion a policy that would either prevent the posting of such material, or would permit a public university to bring about its removal for anything short of a criminal law violation. If the material is legally obscene, or contains child pornography, then of course it can be removed and the student posting it would have no recourse — indeed, the student should be grateful the university web-master beat the police to the site. In the future, those using the campus network to design and post personal web pages might get more elaborate lessons in etiquette. But that is about as far as I could envision a public college or university intruding standards of taste on student-posted material that is lawful and presumably protected.

It is the skull displacing the California senator's photograph that needs further discussion. The very imagery is unique to cyberspace; while faces on elaborately programmed billboards can change from benign to malignant, no student is likely to put such a display on a campus building. If a student posts political barbs on kiosks around campus, no candidate would believe the administration is in any way complicit. The most that could be charged

16. *See* ROBERT M. O'NEIL, FREE SPEECH IN THE COLLEGE COMMUNITY, 49 (1997).

is that the institution has created physical space on which students can display offending or insulting material. Even in California, where political activity on state university campuses is unusually constrained, no one believes that administrators can purge all such material. They must be careful not to facilitate campaigning, much less mandate or sponsor it, but that is effectively the limit of responsibility.

Conditions may be different in cyberspace, in two ways. On one hand, an inference of attribution may arise with respect to material of this sort posted on a student home page that was created, and made accessible, through the university's general home page. Most of what appears on that home page is, after all, official university material. Even if disclaimers are posted around the student pages, everyone knows that campus resources were used and that campus links offer one avenue of access. Thus, the political attack on the student home page is different from the same material on the kiosk.

It was for that reason the CSUN administration argued, with what seemed to me considerable validity, that it was legally required to remove political material in order to comply with the California law that barred using state resources for partisan purposes. That plea, as we know, fell on deaf judicial ears.

Cyberspace also complicates the other side of the equation. The action that Cal State-Northridge administrators took — removing or blocking the student home page after the senator complained — seemed to the court far closer to official censorship (like muzzling a student newspaper, for example) than would the removal of a single flier or poster from a kiosk. The superior court judge who chided university officials for having taken that step found that the campus had created a limited public forum, rather like a podium set up on the central plaza for rallies and demonstrations.

Moreover, she was concerned that the subject matter was political speech, the most clearly protected of messages. Thus, as she observed in her ruling from the bench: "This is what I think universities are supposed to be about. . . . This is kind of an easy case. At least this kid was involved in politics . . . ."[17] The import of that ruling seems clear, though it leaves campus computer operators in a quandary.

One other recent ruling in *Loving v. Boren*[18] may ease the computer center's dilemma slightly. In early 1996, a journalism professor named Bill Loving sued the president of his institution, the University of Oklahoma, for blocking access through the campus computer system to a host of alt.sex

17. *See* Chandler, *supra* note 5, at 2.

18. 956 F. Supp. 953 (W.D. Okla. 1997).

newsgroups. He claimed that such action denied him access to digital material, much of which was perfectly lawful, in violation of his First Amendment rights. The two parties invoked quite different analogies. For Professor Loving, the restrictive action was comparable to telling faculty members they could no longer check certain materials out of the library because the administration found the content offensive. The administration saw the issue quite differently — much closer to a librarian's refusal (or financial inability) to buy and circulate every new book that any professor might wish to read.

In late January, 1997, the federal judge in Oklahoma City dismissed the suit, though without choosing between these analogies. He ruled simply that Professor Loving (who represented himself in court) had failed to prove the degree of harm or injury that is vital for a civil rights or civil liberties claim filed in a federal forum.[19] While it might cost Loving a bit more, the judge felt he could obtain the material he sought through one of the commercial Internet service providers like America Online, CompuServe or Prodigy and therefore rendered his claim moot.[20] The university computing network was not, in short, the only possible source. The basis of this ruling of course avoids the merits, and postpones for another day (and a stronger case) the testing of faculty and student claims to access lawful but offensive material trough campus computing channels.

IV. GUIDANCE FOR CAMPUS COMPUTING SYSTEMS

Finally, what suggestions for guidance of campus administrators may emerge from these early skirmishes? One is struck by the absence of rules or policies specifically tailored for cyberspace. Sometimes the existing regulations, designed for print-era speech, may turn out to be surprisingly useful. At other times, with some creativity, old-fashioned rules may be adapted to fit new challenges. In still other situations, the print-era rules may simply not fit at all, and the need may be clear for rules shaped to fit the Internet. There have been some early and commendable efforts to frame

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19. *Id.* at 954-55. Loving sought an injunction against the university's actions as well as a declaratory judgment. The court held that Loving failed to present any evidence demonstrating that he was irreparably harmed by the restricted Internet use, an essential element to relief by injunction. *Id.* at 955. Additionally, Loving failed to show how the university's actions affected him personally to establish an actual case or controversy for declaratory relief. *Id.* While Loving may have touched upon these elements in his argument, the court noted that such material is not considered evidence and therefore he failed to establish the necessary elements of his claim. *Id.*

20. *Id.* at 956 ("[T]he Court agrees that the fact of alternative routes to reach the blocked news groups does make Plaintiff's claim moot.")

such rules — though the creativity of high-tech students is such that reality seems a couple of steps ahead of the rule-makers.

Second, there needs to be clear recognition of the potential of rules that are not aimed at expression in either print or electronic form. My earlier "traffic jam" illustration suggests the utility of regulations that focus more on effect than on content, and thus avoid stigmatizing message or viewpoint.[21] Computer center directors and system operators must have authority to protect the network from destructive overload, without regard to the material that creates the problem.

One other example, of a quite different sort, might be helpful. In late 1995, a homophobic student at Virginia Tech invaded a gay and lesbian student chat room set up through the campus computing system.[22] His deeply offensive comments and slurs effectively drove the regular users away and shut down the chat room. University officials found no print-era rule that covered the case. One could possibly draw an analogy to the physical invasion of a gay and lesbian group meeting in a student union meeting room, the willful disruption of which would be punishable under traditional rules. Such action would imply no focus on the content of the invader's message, but would target the acts of invasion and disruption.

Third, I have already suggested that more creative use of digital disclaimers may be helpful. Northwestern might clarify its degree of non-involvement in Professor Butz' home page. California State-Northridge could distance itself, before the next election, from material that state law says it may not disseminate but a state judge says it may not remove. And the University of Virginia could hope that alumni seeking long-lost relatives among current students would recognize the institution's remoteness from what undergraduates post on their home pages.

Fourth, the Loving case at Oklahoma University suggests the need for clearer policies on access through campus computers to lawful but explicit and potentially troublesome material. This issue has been problematic at several other institutions. Some years ago, Stanford removed access to alt.sex newsgroups, but quickly rescinded this action.[23] Later Carnegie-

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21. *See supra* pp. 196-197.

22. Michael D. Shear, *Free Speech Gets Tangled In the 'Net; Colleges Try to Balance Rights, Cybersensitivity*, WASH. POST, Oct. 23, 1995, at A1.

23. John Schwartz, *School Gives Computer Sex the Boot; Carnegie Mellon University Taking Discussion Groups Off Its Network*, WASH. POST, Nov. 6, 1994, at A26. In 1989, Stanford University removed access to sex newsgroups and newsgroups devoted to sharing jokes. *Id.*

Mellon University took a similar step.[24] Intense protest caused it to reinstate access to text, but continue to study access to the visual materials.[25] After a year of study, the policy retained the potential for blocking access to newsgroups that carried arguably unlawful material, even if accompanied by lawful graphics.[26]

Meanwhile, several states (including my own) have passed laws that require government agencies, including universities, to prevent the use of state computers to access sexually explicit material.[27] There are bound to be many more such issues in the next few years, even if the Supreme Court agrees with the lower courts that Congress cannot ban on the Internet any category of material as broad as "indecent" material.

Finally, it is already clear that this is an area where creativity and ingenuity are in great demand. Those who use the Internet extensively are not likely to be long deterred from sending and receiving messages they really wish to convey. Yet institutions will be under growing pressure to regulate certain facets of just such communication. One can only say at this very early stage: "Stay tuned."

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24. *Id.* In an attempt to comply with Pennsylvania law prohibiting distribution of obscene materials, Carnegie-Mellon proposed to eliminate from its computer network the set of Internet discussion groups devoted to sexuality. *Id.*

25. John Schwartz, *University Reverses On-Line Ban; Sex-Oriented Network Won't Be Blocked*, WASH. POST, Nov. 9, 1994, at A13.

26. Letters from Vice Provost Erwin R. Steinberg to the author (Oct. 25, 1995 and Nov. 8 1995) (on file with author).

27. The Virginia law that restricts use of state owned or leased computers to access sexually explicit material is VA. CODE ANN. § 2.1-804-06 (1996). This law has been challenged on First Amendment grounds by a group of state college and university professors in *Urofsky v. Allen*, Civ. No. 97-701 (E.D. Va.).