Content Regulation of the Internet: A Normative Perspective

- Ching-Yi Liu, National Central University, Taiwan
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- City University, Hong Kong
State Regulations on the Internet

• Self-Regulation of First-Generation Cyberspace: Social Norms in Internet Community

• Why State Regulation: Disorder in Cyberspace or the Desire to Claim Sovereignty or to Protect Citizens from Objectionable Information?

• What Are States Doing with Content Regulation on the Internet
Regulatory Efforts on Internet Content

- The Internet Does Away Geographical Boundaries. Does It Do Away Territorially Based Laws Too?
- Regulatory Models on Internet Content: U.S., Germany and China, etc.
- United States: CDA (the Communications Decency Act of 1996) and COPA (Children Online Protection Act of 1998)
- Germany: Threats on ISP to Enforce Self-Regulation
- China: the “Great Firewall” Intranet by Software Filtering and Internet Company Licensing
Constitutional Problems with State Regulations on Internet Content—I

• Constitutional Values: Free Choice as the Foundation of Individual Freedom
• How Will Content Regulation on the Internet Pass Constitutional Muster in Judicial Review?
• Problems of Vague in Legislative Language and Overbroad in Scope
• Why Nation-wide, Standardized Legislation? What If Different Community Standards in the Real World not Preserved?
Constitutional Problems with State Regulations on Internet Content-II

- Legitimate Purposes: Protection of Minors from Pornography and Objectionable Material? Fear of Out of Control and thus Centralized Control?
- The Least Restrictive Means: Undue Restriction on Adult’s Right to Access Online Information?
- Decentralized, Local Control of Individuals or Centralized Control of States?
International Problems with State Regulations on Internet Content

• The Transnational Nature of Cyberspace: Multiple Jurisdictions over a Single Entity
• Spillover Effects of a Single Government Regulation: All Users Are Subjected to Regulations Around the World
• Country Shopping for Websites to Avoid Legal Enforcement
• Collective Actions Problems Arising from International Legal Enforcement
Technological Solutions for Internet Content Regulation

- Filtering by Software Installed on PC: Cyberpatrol, Cybersitter, X-Stop, etc.
- Filtering by Software on ISPs’ Equipment
- Filtering by Software Installed in Gateways
- Smart Filtering by PICS--Internet-wide Protocols to Establish a Panopticon?
- Filtering by Tracking IP Address; e.g. French Ruling against Yahoo
Problems with Technological Solutions for Internet Content Regulation

• The Accuracy of Ratings Associated with Filtering Technologies

• Filters Block Too Much and Too Little: Human Reviewers Required?

• IP Address Tracking can be Blocked by Using Other Technologies such as Anonymizer.com

• Clever Surfers can Always Tunnel Through Great Firewalls While Most People are Kept from Certain (Valuable) Information
Problems with Technological Solutions for Internet Content Regulation

- Mandatory Filtering Imposed by Government?--Equals to Legislation and the Constitutional Uncertainties Remain
- Non-Mandatory Industry Self-Regulation--How would the Free Choice of Individuals be Preserved?--Negotiation with User Groups? Will Free Market Work for User Choice?
- The Push for Certifications Coordinated by Government and Industry to Avoid Constitutional Constraints More Easily?
- Decentralized, Local Control of Users for Free Choice
Conclusion-I

• The Struggle between Freedom and State Control will Rage for Some Time
• Constitutional Musters Should Remain to be the Big Concerns for the Legislative
• International Coordination in Sight and More Problems of Compromising to Come
• How Will the Filtering Technologies Protect Our Democratic and Constitutional Values?-The Check and Balance on Code Writers?-How Will the Process be Like?
Conclusion-II

• How Would We Have Intellectual Freedom and Narrow Digital Divide?-More, not Less, Access to Online Information Is One of the Key Answers

• More Information to Help Diversify Our Thinking and Opinions that Will Enrich Debates and Policy Makings

• How Could the Internet Become the Most Liberating Technologies?-The Hands-off of Governments and Optimal International Efforts

• New Constitutional Order for Fundamental Rights to Information in a Networked Society?