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COPA/CDA History – Class Exercise

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History of Communications Decency Act (1996) and Child Online Protection Act (1998) Litigation

February 8, 1996 – President Clinton signed The Communications Decency Act (“CDA”). Read the Center for Democracy and Technology article:

The CDA imposed broadcast-style content regulations on the open, decentralized Internet and severely restricted the first amendment rights of all Americans. CDT strongly opposed this legislation because it threatened the very existence of the Internet as a means for free expression, education, and political discourse. Although well intentioned, the CDA was ineffective and failed to recognize the unique nature of this global, decentralized medium.

The CDA prohibited posting "indecent" or "patently offensive" materials in a public forum on the Internet -- including web pages, newsgroups, chat rooms, or online discussion lists. This would have included the texts of classic fiction such as the "Catcher in the Rye" and "Ulysses", the "7 dirty words", and other materials which, although offensive to some, enjoy the full protection of the First Amendment if published in a newspaper, magazine, or a book, or in the public square. It is also important to note that the CDA was not about child pornography, obscenity, or using the Internet to stalk children. These were already illegal under current law.

CC BY-NC: “Communications Decency Act (CDA).” Center for Democracy and Technology.
Available: <http://www.cdt.org/speech/cda/>

February 15, 1996 – E.D. Pa. Judge granted TRO enjoining CDA from becoming law on grounds that the term “indecent” was too vague to provide the basis for criminal prosecution.” Suit was brought by group of 20 plaintiffs.

February 26, 1996 – A second suit brought by 27 plaintiffs, including Citizens Internet Empowerment Coalition (“CIEC”) challenges CDA. CIEC is a

“broad coalition of library and civil liberties groups, online service providers, newspaper, book, magazine and recording industry associations, and over 56,000 individual Internet users, represent[ing] the entire breadth of the Internet community.”

CC BY-NC: “Citizens Internet Empowerment Coalition.” Center for Democracy and Technology. Available: <http://www.cdt.org/speech/cda/ciec.shtml>

CIEC argued that:

- (1) Internet is a unique communications medium which deserves First Amendment protections at least as broad as those afforded to print media;
- (2) Individual users and parents, not the Federal Government, should determine for themselves and their children what material comes into their homes based on their own tastes and values; and
- (3) The CDA would be ineffective at protecting children from “indecent” or “patently” offensive material online.

CC BY-NC: “Citizens Internet Empowerment Coalition.” Center for Democracy and Technology. Available: <http://www.cdt.org/speech/cda/ciec.shtml>

June 12, 1996 – Two cases are consolidated in front of a 3-judge panel and the E.D. Pa., which upholds preliminary injunction against CDA as unconstitutional restriction of speech on the Internet.

June 26, 1997 – Supreme Court upholds injunction against CDA:

- “In the absence of evidence to the contrary, we presume that governmental regulation of the content of speech is more likely to interfere with the free exchange of ideas than to encourage it. The interest in encouraging freedom of expression in a democratic society outweighs any theoretical but unproven benefit of censorship.”

- “We are persuaded that the CDA lacks the precision that the First Amendment requires when a statute regulates the content of speech. In order to deny minors access to potentially harmful speech, the CDA effectively suppresses a large amount of speech that adults have a constitutional right to receive and to address to one another. That burden on adult speech is unacceptable if less restrictive alternatives would be at least as effective in achieving the legitimate purpose that the statute was enacted to serve.”

- “In evaluating the free speech rights of adults, we have made it perfectly clear that “[s]exual expression which is indecent but not obscene is protected by the First Amendment.”

- [There is a history of extensive Government regulation of the broadcast medium due to the scarcity of available frequencies at its inception and its “invasive” nature.] “Neither before nor after the enactment of the CDA have the vast democratic forums of the Internet been subject to the type of government supervision and regulation that has attended the broadcast industry. Moreover, the Internet is not as ‘invasive’ as radio or television. The District Court specifically found that ‘[c]ommunications over the Internet do not “invade” an individual’s home or appear on one’s computer screen unbidden. Users seldom encounter content “by accident.”’

Source: Reno v. ACLU, 521 U.S. 844 (1997)

October 21, 1998 – Child Online Protection Act (“COPA”) becomes law. Makes it a crime to transmit, via the World Wide Web, for commercial purposes, information which may be “harmful to minors.”

- “material that is harmful to minors” includes any communication that is obscene or that “the average person, applying *contemporary community standards*, would find, taking the material as a whole and with respect to minors, is designed to appeal to, or is designed to pander to, the prurient interest...”

Source: Child Online Protection Act (1998), 47 U.S.C. 231

October 22, 1998 – Group of plaintiffs including speakers, content providers, and users of the Web, sued in the E.D. Pa. seeking an injunction barring COPA’s enforcement.

February 1, 1999 – E.D. Pa. granted preliminary injunction against COPA’s enforcement because “filtering and blocking technology was an example of a more efficacious and less restrictive means to shield minors from harmful materials.” (ACLU v. Reno (D.C. No. 98-cv-05591)).

June 22, 2000 – 3rd Cir. upheld the injunction, concluding that the “community standards” language in COPA by itself rendered COPA overbroad.

May 13, 2002 – Supreme Court reversed 3rd Cir. decision because “community standards” language by itself does not render COPA overbroad. Court declined to make additional rulings because record was insufficient to determine whether COPA is nevertheless overbroad for reasons besides the “community standards” language.

March 6, 2003 – 3rd Circuit ruled that COPA was not narrowly tailored to serve the Government’s compelling interest in preventing minors from being exposed to harmful material on the Web, was not the least restrictive means available to effect that interest, and was substantially overbroad. Court affirmed the District Court’s preliminary injunction.

June 29, 2004 – Supreme Court upholds preliminary injunction because record before District Court in 1999 showed that filtering was a less restrictive and more effective means for achieving Government’s interests. Supreme Court remanded case for trial given that record was old and new information about effectiveness of filtering should be available.

March 22, 2007 – E.D. Pa., after a bench trial, concluded that COPA violates the First and Fifth Amendments because:

- (1) COPA is not narrowly tailored to the compelling interest of Congress;
- (2) Gov. failed to meet its burden to show that COPA is the least restrictive and most effective alternative in achieving the compelling interest; and
- (3) COPA is impermissibly vague and overbroad.

Source: ACLU v. Gonzales D.C. (No. 07-2539)

July 22, 2008 – 3rd Cir. affirms District Court ruling granting injunction. In particular, upholds District Court finding that filters are more effective and less restrictive than COPA.

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