PubPol 688/SI 519 - Intellectual Property and Information Law, Fall 2008

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http://hdl.handle.net/2027.42/64966
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First Amendment Basics

• Fundamental principle that government cannot suppress speech, expression, press, etc.

• Analogous to fundamental principles like burden of proof in criminal law
What is Speech?

• Threshold question: what is speech
• Not confined to written or spoken works
  – Symbolic speech is exemplified by conduct designed to convey a point of view
• Software?
• Some speech not protected: obscenity, child pornography
What circumstances allow regulation?

• Content Neutral? (content neutral: time, place, manner and incidental restrictions)
  – Yes – intermediate scrutiny
  – No – strict scrutiny

• (1) compelling (strict)/significant (int.) government interest;

• (2) narrowly tailored to serve purpose; and

• (3) be the least restrictive means of advancing that interest.
Speech Receiving Lesser Protection

- Commercial speech
- Defamation
- Speech harmful to children (COPA case)
- Some media: Radio and TV receives less protection than other media
  - Scarcity rationale
- Speech affected by non-government action
Ashcroft v. ACLU

• Child Online Protection Act – designed to protect minors from exposure to sexually explicit materials

• Earlier Sup. Ct. case in 1997 (the day the Supreme Court was introduced to the Internet)
  – Communications Decency Act struck down statute as unconstitutional
  – COPA passed in response
COPA

• Content-based restriction → strict scrutiny

• Question is on the second prong: whether narrowly-tailored

• Only read Kennedy’s majority opinion
Filtering

- Libraries, schools, other public locations
- CIPA – requires schools and libraries receiving federal assistance for Internet access to install filters
  - 3rd Cir. struck down – not narrowly tailored
  - Sup. Ct. reversed – upheld statute
Sobel Article

• Anonymity
• Attempts to use subpoena power to obtain identities of Internet posters
Other Readings

- *Junger case*: Whether the 1\(^{st}\) A protects software?

- Blogger article: Are bloggers “press”?
  - Think about why “press” is singled out in 1\(^{st}\) A
  - Reasons for protecting not protecting bloggers