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

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First Amendment Primer

Introduction to the Week 2 Reading

SI 519/PubPol 688

Bryce Pilz

Fall 2008
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\textsuperscript{st} A protects software?

• *Blogger article:* Are bloggers “press”?  
  – Think about why “press” is singled out in 1\textsuperscript{st} A  
  – Reasons for protecting not protecting bloggers