Media convergence, obscenity law and the Internet

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MEDIA CONVERGENCE, OBSCENITY LAW
AND THE INTERNET

by

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A thesis submitted in partial fulfillment
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ABSTRACT

Media Convergence, Obscenity Law, and the Internet

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Digitization and innovation in technology has resulted in a climate of media convergence. Media convergence occurs when elements of previously distinctly separate media forms co-mingle to create new capabilities. Although there is no such thing as complete convergence as of yet, there is probably the closest thing to a purely converged medium. Any user is able to access a variety of text, hypertext, graphic, audio and video files online. However, it is also because of media convergence that makes the Internet difficult to regulate. Laws that were proposed to provide some form of legal control to the access of online content have been met with strong opposition. This thesis will discuss the elements of media convergence and the Internet, difficulties in creating laws for a convergent medium, and examine potential solutions, independent of government action, that could help provide some form of control in the currently anarchical realm of cyberspace.
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CHAPTER 1

INTRODUCTION

Overview

The face of mass media today is continually changing. New products are constantly added to the market that would make the mediascape today different from the one as recent as five years ago. The Internet is one such technology that is gradually becoming part of everyday use. In the last five years, the Internet has penetrated households at an ever-increasing rate. Although the current Internet household penetration rate in the United States is 25-30%, it is expected to increase to 67-75% within the next five years (Cyberatlas, 1999; Intelliquest, 1999; Headcount, 1999). With the number of worldwide online users expected to reach 500-600 million by the year 2005 (Cyberatlas, 1999; Intelliquest, 1999; Headcount, 1999), it can be seen that the Internet is increasingly becoming a part of households just like television four decades earlier.

The Internet is considered the most commonly used and the best-defined form of media convergence today. Media convergence occurs when elements of traditional media forms that consist mainly of the telephone, print and broadcast are combined or work contingent with one another (Cunningham, 1998). The
characteristics of the Internet consist of many of those elements. A data connection has to be made through networks that can include telephone lines, where text, audio and video files can be seen and heard. As Campbell describes it, the Internet is a “vast central network of high-speed telephone lines designed to link and carry computer information worldwide” (1998, p. 483). It consists of all the tools involved in establishing the exchange of information through a telephone line – the most common being the World Wide Web, electronic mail, newsgroups, bulletin board systems, Internet phone and Internet Relay Chat (IRC). Internet users co-exist and interact in a realm called cyberspace. Cyberspace is the region where an inter-linked network of computer communication transports their users. It is a territory that transcends conventional geographic and spatial boundaries, nor does it recognize social hierarchies (Campbell, 1998).

Unlike traditional forms of media, the type of communication the Internet encompasses cannot be as clearly defined (Pavlik, 1998; Dowling, Lechner and Thielmann, 1998; Negroponte, 1995). Using the telephone, or sending a letter is a form of one-to-one communication, but so is sending an e-mail message via the Internet, or using a microphone and soundcard to converse with someone else with the same hardware. A radio or television broadcast is usually considered a one-to-many communication form, but live audio and video samples can also achieve the same goal on a web-browser. The Internet also goes as far as establishing a many-to-many communication form, where a number of people can interact with many others. This is achieved through bulletin board systems.
(BBS) and newsgroup postings. Also unlike traditional media forms, the Internet is interactive. Anyone can produce material and post it in cyberspace, and anyone is allowed to retrieve material from cyberspace. It is this instantaneous interactivity that differentiates the Internet from most other communication forms today.

The advent of the Internet does not come without its share of controversy. Issues regarding privacy, copyright, free speech and obscenity on the Internet have often been associated with and argued (e.g. Electronic Communications Privacy Act, 1993; Communications Decency Act, 1996; Child Online Protection Act, 1998). In order to understand these issues better, a detailed explanation of the nature of the Internet and some of the issues encompassing the Internet as a media form will be examined. The purpose of this thesis is to examine issues in media law arose because of a convergent media technology – the Internet. Using obscenity law as a case study, it will also discuss the applicability of traditional media laws toward that of new media technologies, provide an analysis of their differences, and offer suggestions on how to successfully regulate the Internet given such differences.

**Digital vs. Analog**

Everything digital is good. At least that is the message that electronics manufacturers are trying to tell consumers. Advertisements that sell electronic products advertise digital video, digital audio, digital cellular phones, digital telephone lines, digital printers, digital cameras, digital photocopiers and so forth. The list seems almost endless. The world is becoming digitized. But what exactly
is digital, and how is it different from analog objects like cassette tapes, analog telephone lines, AM radio and even books? And how exactly is digitization affecting the landscape of mass communications as it is today?

The first approach to take in explaining the differences between analog and digital is to define terms. Analog transmission is accomplished by adding signals of varying frequencies to the carrier waves of alternating electromagnetic currents (Campbell, 1998). However, analog media only allow the reproduction of images, texts and sounds to be analogous to the original. Telephone static, radio hiss and television snow are all interferences to analog transmission (Negroponte, 1995). On the other hand, digital media consist of “bits” — either a zero or a one. Digital images, texts and sounds are converted into varied combinations of binary messages consisting of zeros and ones that make an exact copy in the transmission of images, texts and sounds (Campbell, 1998).

The merits of digitization include data compression, the condensing of data to take up less storage space, and error correction, which reduces the amount of interference that would be caused by analog media (Negroponte, 1995). Hence, audio-visual and hypertextual data will be transmitted with more clarity, and the impediments in analog transmission as mentioned above will be greatly reduced. The increasingly digital environment is rapidly making analog media obsolete and transforming the mediascape as it is today. The word “medium” cannot be as easily defined in the digital world as it could have been in the analog one. According to Beniger:
The progressive digitalization of mass media and telecommunications content begins to blur earlier distinctions between the communication of information and its processing: as well as between people and machines. Digitalization makes communication from persons to machines, between machines and even from machines to persons easy as it is between persons. Also blurred are the distinctions among information types: numbers, words, pictures, and sounds, and eventually tastes, odors, and possibly even sensations, all might one day be stored, processed, and communicated in the same digital form. (Beniger in Pavlik, 1998, p. 135)

Hence, it can be said that digitization is causing existing media forms to break down the definite boundaries first established by analog media and caused each medium to overstep into another's domain. The telephone, books, newspapers, radio and television were distinctly different media forms fifty years ago where digital media were non-existent. However, it is harder to attribute certain qualities to just one media form today. For example, a telephone line is no longer just a telephone line, but a transmitter of digital data via a fax machine, or a conduit to hypertextual information on a computer via a modem.

**Hypertext and Hypermedia**

Hypertext is the language which content on the Internet is organized. It does not necessary consist of text alone, but graphic, audio and video images as well (Belew, 1999). It also includes links within regular text that would almost
immediately direct you to other text or hypermedia formats (World Wide Web Consortium, 1999). According to Leggott (1995), there are significant differences between regular (printed on paper) text and hypertext. Regular text is sequential and hypertext is non-sequential. Regular text uses paper on books, magazines and newspapers as an interface and hypertext uses a software/hardware environment. Readers of regular text take a distinctly different role from that of the author. Readers of hypertext could also be authors of the hypertext as well.

Hypermedia is a term that is derived from hypertext that "extends the notion of the hypertext link to include links among any set of multimedia objects that include graphics, animation or moving graphics, sound and video" (WhatIs.com, 1996-1997). Hypermedia may also imply a higher level of interactivity between a user and the network of hypertext already existent in hypertext. The World Wide Web, where hypertext can be viewed, is the most common example of a hypermedia system.

**Media Convergence – An Overview**

Digitization has created a new landscape in mass communications where boundaries between media are broken down and different elements of each medium are co-mingled. Some examples of this include video-conferencing, interactive television, and the Internet. This has often been termed "media convergence."

Media scholars have offered several different definitions of media convergence. Pavlik (1998) defines media convergence as "the coming together of all forms of mediated communications in an electronic, digital form, driven by
the computers and enabled by network technology” (p. 134). Negroponte (1995) sees convergence as the commingling of audio, video and data – and terms it multimedia. Dowling, et. al. (1998) define convergence as “a process of change in industry structures that combines markets through technological and economic dimensions to meet merging consumer needs. It occurs either through competitive substitution or through the complementary merging of products and services” (p. 34). Baldwin’s (1998) interpretation of convergence is the “merging of voice, video and data services which were once separate.” Horvath (1998) defines it as the deregulation of the telecommunications, media and information technology sectors.” Cunningham (1999) notes that convergence, contrary to what the name suggests, should be considered an additive or accretive model of change that leads to multiplication, rather than a narrowing path to a single entity.

The process of convergence does not dispel specific definitions in the media industry, but will only serve to create more confusion and uncertainty about existing definitions (Pavlik, 1998; Dowling, et. al., 1998; Negroponte, 1995). For example, by examining the Internet as a convergent media technology, the question of “What kind of medium is it?” is posed. It does have words that can be printed, so it could possibly be considered a print medium. On the other hand, it also has the capability to transmit audio and video files, as well as live broadcasts. Hence, it could also be considered a broadcast medium. The concept of media convergence due to digitization is fairly new, given that the notion of technological digitization occurred, according to Negroponte (1995), no more than 25 years ago. Convergence of media technologies has made it hard to
assign specific characteristics to each media form so as to define them for the institutions of law and policy.

**Advent of the Internet and Regulatory Issues**

There is no doubt that the Internet is gradually becoming a part of everyday life. People buy groceries, clothes and other products over the Internet without having to physically step into a store. Bank transfers can be performed, and stocks can be traded online without having to step into a bank or a brokerage firm. News and other information in both print (or hypertext) and audio-visual forms can be viewed via a web browser instead of flipping through a thick newspaper or turning on the television set. The capacity to extend the uses of the Internet may be endless.

However, it is unwise to say that the Internet, which has the potential to positively influence so many lives, does not have a negative side. Having almost complete autonomy from codes of regulation has subjected it to abuse by people who transmit information that could directly or indirectly influence, cheat or even harm another person. As noted by Cunningham (1998), “the more things converge, the more they produce... ...effects which could not be predicted from within the technological horizon of understanding” (p. 3). Phelan (1996) observes the deregulated state caused by media convergence by stating that the very idea of convergence is “so commonplace that... ...the picture of the whole diverges from the tiny iterations of detail, but yet depends on them” (p. 46). Giese (1996) also deliberates the prediction that the convergence of technologies will “make corporate and governmental agencies more prone to invade the private lives of
their employees and citizens, thus violating tenets of freedom of speech and the rights of privacy” (p. 124).

Already, in the short history of widespread Internet use, there have been a plethora of controversial issues. Personal privacy, questions of copyright and moral rights, obscenity regulation and censorship, jurisdictional questions, the distribution of hate propaganda, and the posting of instructions to produce illegal substances and weapons of destruction are just some of the more common issues that are often broached when weighing the benefits of the Internet against its harms.

Privacy Issues

The fear of the invasion of personal privacy has existed before the advent of the Internet. However, the Internet has opened up digital lines of communication where there is a vast exchange of personal information from credit card numbers, to addresses and phone numbers, to sexual preferences (Lemmey, 1999). Any personal data provided over the Internet have the potential to be subject to scrutiny by anyone skilled enough to hack into a personal computer or network databases. In the United States today, an individual has very little control over his/her personal information, and knows little of how his/her personal information is exchanged and used. Given the speed and extent of how information is traded over the Internet, that individual would have his or her personal information exposed to even more people at a faster rate (Lemmey, 1999).
Another privacy concern regarding the Internet is that of privacy in the workplace. There have been reports of several cases where employers and supervisors access their employee's e-mail without the employee's prior knowledge. Employers are considered to have strong justifications when it comes to accessing their employee's personal e-mail messages, just as they have the right to listen into private telephone conversations (Hartman, 1999; Cavanaugh, 1996; Casser, 1996). Companies have an invested interest in what their employees are doing to affect their work performance. By checking on their employee's e-mail, the employers and supervisors can detect fraud, corruption, bribery and other illegal and unethical activities their employees are conducting. However, employees under scrutiny state that violation of e-mail privacy is an infraction of their Fourth Amendment rights. No case regarding electronic workplace privacy has made it to the United States Supreme Court, although it has been challenged several times at a state level (Hartman, 1999).

Copyright

Another question that permeates the Internet controversy is that of copyright (Spender, 1995; Negroponte, 1994; H.R. 3029). Since anyone with basic hypertext mark-up language (HTML) skills can post text, sounds and images on the Internet, it is difficult to trace who owns the copyright, or possesses the moral right to any material on the Internet. Even if a copyright infringement can be detected, it may also be hard to trace and prosecute the violator. He/she could be posting material on an anonymous server, or be out of the jurisdiction of the controlling courts. Copyright embraces the separate
contexts of text, images and audio - but are all similar when it comes to attributing rights of the original author.

The hypertextual format of text on the Internet, and the ease of Windows cut-and-paste facility allows the fast and easy duplication of text and images on the Internet. Instead of transcribing text word-for-word to a piece of paper, a person could just select which portion of the hypertext he/she wants and paste it to a word processor to format it as his or her own work (D'Amico, 1994). Images on the Internet have also been and still are subject to copyright infringement. An example of the most common copyright infringement of images is that of doctored nude pictures of celebrities on the Internet. The faces of celebrities are superimposed over the body of a nude model and passed as a realistic fake. Someone who performs such a procedure not only infringes the moral rights (rights of the producers of content, but not necessarily the owners of the copyright) of the original photographer and the copyright law of the image owner, but he/she also defames the character of the original model (Spender, 1995).

One of the most current copyright debates is that of spliced audio files. Digitization has made it easy to convert an audio file on a compact disc to a computer file. Bootleg copies are easily available and distributed in mp3 format over the Internet, and these digital audio files can be easily copied onto a compact disc or listened to from the computer itself. Production companies, writers and performers of the songs are often against these songs as they lose out on royalties made should a bootlegger have purchased an original copy.
However, unknown artists welcome the easy distribution of the files, as it lets them reach a broader audience for little production costs (Haring, 1999).

Hate Propaganda and Illegal Instructions

There is no doubt that the Internet has enabled us to access a mass of information at our fingertips. However, there are also many that have taken advantage of this privilege of modern science and exploit the Internet for less benign purposes. Hate messages are those that discriminate against a minority. They are often posted by segregationist groups who are against those from a different race, culture, religion, age or sexual preference. Many of these groups use the Internet as a conduit to spread their propaganda (e.g. www.kkk.com; www.jewwatch.com; www.churchofsatan.com). Producers of the content on these sites containing “hate propaganda” have yet to be prosecuted, as they are protected by the First Amendment as a form of free speech (Silverthorne, 1997).

Instructions on how to make homemade weapons and bombs are also readily available on the Internet. Similarly, instructions on how to make illegal substances like crystal meth and crack cocaine are also easily obtained just by searching for them on a search engine (Spender, 1995). These sites, like sites propagating hate messages, are also protected as a form of free speech, and no action has been or can be taken against the authors. However the harm caused by these sites are obvious, and individuals and organizations have to compromise the benefits of free speech against that of the damage involved. Adventurous yet susceptible children could use such instructions, and have a

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bomb blow up in their face, or overdose on cocaine (e.g. Blais, 1997; Silverthorne, 1997; Wellen, 1998).

**Obscenity and Censorship**

The biggest issue being debated regarding the Internet since its advent is that of the regulation of online sexually explicit material. The extent of the amount of such material, and its ease of access by children was first brought to public attention by Elmer-Dewitt's article in *Time* (1995, July 3). Anyone unaware of the decentralized nature of the Internet may wonder why it created such a controversy and why there is so much attention given to pornography on the Internet. After all, sexually explicit material is readily available at the local adult store. However, one has to note that the Internet does not have a centralized producer or distributor of material. Unlike television and radio stations that broadcast via bandwidth to a limited region, or newspapers and magazines, that originate from a main printing press or publisher, the Internet does not have a centralized producer or distributor of material. Anyone with access to a computer and a modem can obtain or provide any form of content as he or she wishes.

Probably the most widely publicized bills passed to attempt to control the Internet, the now Communications Decency Act (CDA) of 1996 and the Child Online Protection Act (COPA) of 1998 have both suggested attempts to control such images on the Internet. However, the CDA was overturned by the United States Supreme Court and a temporary restraining order was issued to the COPA at a Philadelphia municipal court for the same reason – both acts were considered unconstitutional, as they infringed on First Amendment rights. (CDA,
First Amendment advocates state that banning pornography would be analogous to surrendering First Amendment rights of U.S. citizens (American Civil Liberties Union, 1998; Electronic Frontier Foundation, 1999; Peacefire, 1999). On the other side of the argument, people who are against the display of sexually-explicit images on the Internet claim that such images causes harm because they will negatively influence children and those not mature enough to make educated decisions (Netparents.org, 1999; Safe4Kids, 1999; Johnson, 1999).

The Question of Jurisdiction

The Internet does not solely comprise users in the United States and North America. It consists of a multitude of users from a myriad of nationalities, races, cultures, religions, and ages. Users of the Internet and distributors of online content may not fall within the jurisdictional boundaries of the United States. Even if a person flouts a law that is considered to be illegal in the United States, he or she may not be residing within the 50 states or territories. Something that may be considered illegal in the United States may not have the same repercussions in another country. As there are no worldwide standards or agreements regarding online content, the United States cannot prosecute anyone that does not fall within its physical geographical boundaries, even if he/she does violate United States laws.
Questions for Research and Subsequent Chapters

All the issues discussed above address legal institutions, content control and policy. They involve making legal decisions and structuring policies – some of which only arose because of the advent of media convergence. Many policies and bills that were proposed to regulate Internet content are often composed based on traditional media laws. However, as discussed earlier, media convergence has made it harder to define a single media entity. Hence, there is also a need for “legal convergence” to accommodate the convergent nature of media today (Nadel, 1991; Krattenmaker and Powe, 1995; Wright, 1998). This thesis will examine the impact of media convergence on the institution of law. There are three research questions that it will attempt to answer: (1) how well can traditional media laws govern online obscenity as compared to currently proposed laws and industry self-control methods? (2) has the Internet raised the need for new or modified laws to govern obscenity in cyberspace? (3) what are the implications and consequences of a regulated medium?

Chapter 2 will first discuss and detail what media convergence is, by providing explanations and examples. Secondly, it will provide a brief history of the Internet – from its origins, its transitions to its current state. Finally, this chapter will conclude with a literature review on media convergence and the Internet, which will include discussions on barriers to convergence and, in particular, regulatory issues.

Chapter 3 will examine traditional obscenity laws that pertain to print and electronic/broadcast media. It will attempt to explain the applicability (or rather
lack of applicability) of such laws to new media technologies. As traditional media laws regulate content that is deemed obscene within single distinct medium that can be defined by geographical and distributional boundaries. However, these laws are made less applicable in the intangible community of cyberspace, where there are no fixed physical and/or geographical boundaries.

Chapter 4 will examine recent attempts to create legislation to regulate obscene content on the Internet, particularly the CDA and COPA. By providing other cases as precedence, it will examine the motives, policy and history behind the bases, the key elements in each case, the current status of the case, and the strengths and weaknesses of each case.

Chapter 5 will first examine the need for regulation of obscene content in convergent media such as the Internet through a framework of questions. By weighing the negative and positive effects brought about by government regulation, this chapter will also evaluate the consequences of regulation and whether it should be implemented. Finally, by analyzing current recommendations and suggestions made by communication scholars, it will examine the viability of these suggestions and offer additional suggestions towards better management and regulation of obscene content in the future.
CHAPTER 2

MEDIA CONVERGENCE

Media Convergence

Evidence of converging media can be seen in everyday life. Instead of reading the news printed on dailies, news can now be obtained online in hypertextual, audio or video formats. Sending an e-mail message is a faster and more convenient alternative compared to writing and mailing a letter. Movies can be ordered with the push of a button rather than taking a trip to the local video store. A person can listen to a live radio broadcast on his/her computer from another country instead of obtaining a delayed transcript. These are just a few of the many examples of how traditional media are converging.

Dowling, et. al. state that "convergence is an often used, but rarely defined concept" (1998, p. 31). This statement, although not entirely untrue, could, however, be rephrased to say that convergence is a concept many have attempted to define, but no one has agreed upon a single definition. As noted in the overview in the previous chapter, many media scholars have offered an explanation as to what media convergence is. However, there are similar characteristics that can be derived from the definitions and explanations of media convergence offered. Firstly, although the term “convergence” would imply
coming together toward one point, it should not be narrowed down to and treated
as a single, constant entity (Cunningham & Finn, 1998; Noll & Price, 1997;
Dowling et. al., 1998). It should instead be studied as a constantly changing
abstraction that could possibly create or re-invent technologies. Agre (1998)
describes the mediascape of the future:

Portrayals of a digital future are too often monolithic: everything will
be digital, everyone will be wired, all media will converge into one...
the most distinctive feature of the unfolding digital present is a
proliferation of new media and new forms of communicative
interaction. (p. 69-70)

Secondly, there is as of yet no truly “converged” media form. As noted by
Baldwin, “convergence to an entirely integrated, broadband interactive voice,
video and data system is only hypothetical. None exists, other than in some trial
circumstances… …nonetheless, convergence has already begun” (1997, p. 2).
Although much of the study of media convergence has been centered on that of
the Internet, one has to note that media convergence is not restricted to that of
the Internet alone. Other new media technologies like digital wireless telephony
and interactive television also vaguely fall under the same classification.
However, the Internet is the most oft-studied media form because, as noted
Cunningham and Finn (1996), the Internet is probably the most developed form
of convergent media whereas “other so-called new media are still in varying
stages of convergence” (p. 84). However, Noll and Price (1997) predict that the
stages of convergence would be more clearly defined as technologies become more adaptive in the next decade.

Nor is convergence a concept that arose solely from the advent of the Internet. Historically, motion pictures were first seen as a combination of moving printed pictures and electronic sound, and later, television was initially seen as a combination motion pictures and broadcast radio. However, the characteristic that segregates the Internet from earlier forms of media convergence is that it has the capacity to transcend physical and geographical boundaries. Deregulation of the media industry and the breakdown of monopolies offered more competition in the media market. And because of competition, there was a need to attract customers. This was achieved by lowered prices and the development of new technologies so that consumers were offered a choice of better products and services over competitors.

The increased capabilities of media brought about media convergence do not come without adverse effects. As the boundaries between the media forms become more blurred, so do the policies that previously governing the older and more distinguishable forms of mass communication. In order to gain a better understanding of the difficulty of regulating convergent media, the concept of media convergence, particularly that of the Internet, will first be examined. This chapter will first provide a brief history of the Internet and subsequently provide a review of current available literature on media convergence and the Internet.
A Brief History of the Internet

The Internet began as a military project with the United States Department of Defense with the aim of creating a network of nodes that could survive even if one node was taken down in the event of a nuclear meltdown (Giese, 1996). The earliest form of the Internet was developed by the Advanced Research Projects Agency (ARPA) in the late 1960s and conveniently termed ARPANET. The development of the versatile UNIX operating system made ARPANET popular through to the early 1980s, although at this point, was still purely a non-commercial military entity.

In the mid 1980s the National Science Foundation (NSF) pushed for "a more efficient way of managing the network and avoiding some of the constraints of the Department of Defense bureaucracy", which led the NSF to contract out management duties of NSFNET to corporations like MCI and IBM. This resulted in the commercialization and eventual privatization of NSFNET, a direct predecessor of the current-day Internet (Cunningham, 1998).

Another parallel predecessor of the Internet was USENET, which was detrimental to the military control of the ARPANET. USENET was started as a network that was both independent and adjacent to ARPANET, created by a conflict in the interests between the Department of Defense and the computer scientists responsible for the creation of the ARPANET infrastructure (Giese, 1996). USENET's philosophy was largely educational, anti-authoritarian, and anti-commercial, although commercial interests were bred with companies like Digital
Equipment Corporation (DEC) who contributed financially to the research and development of the network (Cunningham, 1998).

There was a vested interest of the commercial sector in the development of networks, despite the reticence of the government and the anti-authoritarianism, anti-commercialization ethos of computer scientists. The dependence of both establishments on the hardware, software and expertise provided by commercial companies such as DEC and Bell Labs urged the convergence of commercial interests with that of the government and individual inventors. With these companies establishing themselves in the field through such contributions, there were rightly positioned to “take advantage of subsequent advances in networking” (Cunningham, 1998, p. 6).

Media Convergence and the Internet (Literature Review)

Pavlik (1996) recognizes the power of media convergence in the new media environment, and foresees that a unique medium of public communication will eventually emerge that can transform almost every social institution “from education to government, medicine to law, politics to religion, at home and abroad” (p. 347). However, he argues that there will also be consequences of convergence and poses three questions: (1) will these changes be for better or worse? (2) what will be the cost and for whom? (3) what will be the timetable for change? By examining the writings presented in this section, these questions can be explained, although not completely answered to the fullest extent.
In *Verging on Convergence*, Cunningham (1998) identifies the ambiguity in defining convergence. He notes that media scholars are constantly searching for understanding through singularity. They try to narrow the notion of technological convergence to a single point and giving it a fixed definition. However, the task of defining convergence, or studying it as a single entity is not. He explains by quoting Brand: “all communication technologies are suffering a joint metamorphosis, which can only be understood properly if treated as a single subject, and only advanced properly if treated as a single craft” (Cunningham, 1998, p. 1).

Cunningham also asserts that there are contemporary problems caused by the convergence of media. Convergence is a broad category rather than a singular concept, and should be seen as “an elemental force in its own right, rather than a putative effect” (p. 2). He offers two insights in approaching the study of media convergence: (1) that convergence should not in any way be narrowed to a single entity, but rather seen as a changing model where new entities are constantly added or created that eventually leads to the magnification of capabilities; and (2) that as things converge, unpredictable effects will be produced, that could not have been “predicted from within the technological horizon of understanding” (p. 2).

Cunningham also examines the Internet to some extent as it represents the first truly converged medium. He provides a narrative history of the Internet from its advent to present-day and identifies some situations of convergence throughout history and in everyday lives today. Finally, he concludes by stating
the fact there are also problems with the infrastructure of the Internet that prevents it from achieving its full potential at convergence. One example would be the inability of a many-to-many medium to adapt to the structure of a one-to-many broadcast model, as current technology can only provide poor-quality audio and video streaming. Another example is that of "unicasters" – where Internet users communicate only on a one-to-one basis. A thousand recipients of a message would have a thousand copies sent to a thousand different computers where there is no shared data stream. Although accessing text messages does not create this problem, accessing a high bandwidth source like a video stream would create glitches in the transfer of information.

In the working paper *Communications Policy in the Era of Choice and Convergence with Reflections on the Markle Foundation*, Noll and Price (1997) discuss advances in information technology and the media since the 1960's, while drawing parallels in the evolution of the Markle Foundation, "a leading supporter of research on the social and economic effects of these changes" (p. 1), under the leadership of its president, Lloyd Morrisett. The authors identify two characteristics in the development of information technologies: choice and convergence. Choice offers a diversified number of options for those who seek communication, information and entertainment. Convergence occurs when the capabilities of a single media form extends and overlaps the capabilities of another.

While integrating Morrisett's policies into the working paper, the authors elaborate on choice and convergence in the past, present and future eras in the
development of information technologies. Prior to 1960, there was no significant choice in electronic communication technologies. The American Telephone and Telegraph Company (AT&T) controlled the lion's share of local and long distance telephony, the motion picture industry was still controlled by a handful of studios and television consisted mainly of just three main commercial networks – CBS, NBC and ABC (Noll & Price, 1997). The lack of choice and ubiquitous monopolies made “communications policy in 1960... ...as fragmented as the technologies” (p. 8), and it was this lack of choice that made the laws passed in the Communications Act of 1934 still very relevant to the media environment almost three decades later.

According to the authors, the 1960s was the turning point in media revolution. The computer industry had created parallel processing and remote access in networks, MCI had provided AT&T with competition, and consumers with choice, over long distance carriers. Cable television had emerged and the Public Broadcasting Service (PBS) was created to operate as a national non-commercial network to offer a choice outside the three main networks. Deregulation of media was starting to be offered was “convergence with choice” (p. 15).

Towards the end of the 20th Century, consumers of information technology are offered an even wider variety of choices due to media convergence. Monopolies and oligopolies in media industries have been broken down, and most significantly, the advent of widespread Internet use “holds the promise of completing the convergence of all communications media” (p. 16). The initial
convergence of digitized computer technology and telephony has introduced more competition in the media environment—where traditionally fragmented media forms of print, broadcast and even postal services (through electronic mail) can deliver their products online with greater capacity. The authors note that the convergence of information technologies may not possibly converge into a single media form as each technical system has its own individual benefits and flaws. Although there is no current way in gauging how complete media convergence is in the 1990s, the authors predict that this will change in the next decade. The authors summarize their theme of choice and convergence by stating:

The convergence of the media has transformed communications and our ability to manipulate, store and gain access to information and knowledge. As new services become widely available, they are changing the ways in which we live and work, and altering our perceptions, beliefs and institutions. It is essential that we understand these effects in order to develop our electronic resources for the benefit of society. (Noll & Price, 1997, p. 41-42)

Baldwin (1997) provides a picture of the transitions to the modern communication system in Convergence: Its Meaning, Scenarios, Effect on Industry. He also provides a dichotomy of convergence by attempting to explain the meaning of convergence, providing scenarios of convergence in the business sector, and explaining the effects of convergence on the service and content provider industry. Baldwin notes that true convergence has yet to exist because
of obstacles from economic, technical and even residual government-imposed separations policy. In a conference presentation (1997), he also dichotomizes media convergence by identifying four different sectors of media convergence: technical, economic, international, and content.

Technical convergence refers to the integration of the hardware of the telephone, multichannel television and computer industries that has a capacity for the transfer of electronic data. For example, instead of just delivering voice messages through a telephone, a telephone line would be able to provide digital access to voice, video and data services through a modem. Such convergence gives consumers and businesses greater access to digital technologies and encourage development and invention within the electronic hardware industry.

Economic convergence refers to the convergence of commercial providers of electronic services. Since technical convergence makes it technically possible for a single company to offer video and data services, and high-speed voice and data access, there is an incentive to do so. For example, a telephone company such as AT&T would be able to offer both phone and online provider services, or a cable company offering digital cable access and high-speed cable modem access. However, Baldwin (1997) states that it is unlikely that any government would permit a private monopoly of such services and in any country that has private communication service providers (such as the United States), convergence in the industry would lead to competition. Competition from an integrated services provider would force incumbent provider to counteract by
taking up alternative business strategies, thus encouraging improvement in technology and lowered costs for the consumer.

Multimedia, the convergence of voice, video and data services is the direct by-product of content convergence. Content convergence refers to the coming together of producers of media and informational materials with software experts to create the content of integrated media. For example, a journalist would be able to post a story on the Internet with the help of someone with web-authoring skills. Or a graphic artist would be able to create advertising banners if he/she had the knowledge of how to upload a scanned picture onto the Internet. According to Baldwin, such scenarios require a convergence of talent between the analog industry and the new electronic age (1997).

Finally, international convergence paves the way for joint ventures between providers who want to integrate experience and cultural knowledge of markets in advanced communication services. For example, a country can model its online policies based on working models of other countries. International convergence also contributes to the economies of scale, especially where there is heavy capital investment involving uncertain demand and heavy risks.

By breaking down the broad term of convergence into these four sectors, studies of media convergence can be more clearly understood and evidently defined. Baldwin concludes by predicting the effects of convergence on the development of corporations and international conglomerates. Convergence does have positive effects: “International communication and commerce will be greatly enhanced. Geographic and cultural barriers will fall. Information and
entertainment will be conveniently available in incredible volume with the most specific individual interest satisfied. People will be able to create and communicate far beyond present capabilities” (1997, p.8). However, there are also negative effects, such as a loss in cultural integrity and domestic business sovereignty, where less developed individuals and countries are more likely to fall behind because of high cost.

Dowling, Lechner and Thielmann (1998) provide a critical comparison between television, which is considered a more traditional media form, and the Internet. Citing earlier research, the authors state that television industry has become less attractive to media consumers since the advent of the Internet. The primary reason of the decreased interest in television is that today’s television industry is split into three different market segments — public television, free television and pay television. As public and free television offers more current and original programming compared to pay television, providers of the latter compensate for diminished income by raising fees. With the convergence of services offered by online service providers, consumers would rather pay subscription fees for the plethora of services offered via the Internet than pay for television viewing.

Parallel to Baldwin’s (1997) concept of technical convergence presented earlier, they also present a model of convergence. Innovation technology is driven by the forces of demand and supply which leads to the “growing integration of functions into formerly separate produces or services or the emergence of hybrid products with new functions” (1998, p. 33) or technical
convergence. As discussed previously, Noll & Price (1997) and Baldwin (1997) observed that technical convergence spawns competitive convergence and hence industry growth. However, Dowling et. al. present a second dimension of the effects of convergence – complementary convergence (Greenstein & Khanna in Dowling, et. al., 1998).

The authors illustrate competitive convergence, also known as the “substitutes paradigm” (p. 34) dimension in the equation that 1 + 1 = 1. Technological convergence would often provide competition when existing industries merge with or acquire firms from other industries to create a convergent market environment. The current spate of mergers and acquisitions in the media industry exemplifies this paradigm – that competition would create a substitute industry that will take over the bigger market share from several smaller firms that do not have the ability to compete. Contrary to competitive convergence, complementary convergence or “cooperative paradigm” (p. 34) is represented by the equation of 1 + 1 = 3, which occurs when existing separate industries combine resources to form a new market. The current state of the Internet falls under this category – where print, broadcast and hypertext are combined to create a new media form.

Competitive convergence between television and online services is only likely to be restricted to computer-oriented television viewers or television advertisers to users of computers and online services. However, complementary convergence would more likely be scrutinized as media convergence becomes more distinct. The authors state that as television moves away from mass
communication to more user-specific communication, the priority will be the "fulfillment of customer needs in terms of service design and quality" (p. 35). This is currently not possible while there is still standard free-to-air television. On the other hand, there are limiting factors like pricing structures and user convenience that prevent the Internet from moving towards mass communication. The authors conclude by predicting that because of innovation in technology, television programs and online services would start converging towards each other sometime in the near future.

In *Regulation under a Converged Environment: Principles and Transition*, Houpis (1997) acknowledges the implications of convergence and raises the need for an effective public policy to successfully regulate the Internet. He provides a framework to assess the need for regulation under convergence by addressing the questions of why regulate, what to regulate, how to regulate and who should regulate — respectively the objectives of regulation; which services or area of activity to regulate; through what instruments should regulation be enforced, and which institutions have the right to enforce regulation.

Houpis explains his rationale for advocating regulation for converging technologies, particularly that of governments and regulators taking any or all of the following interventionist roles in society: (1) an allocative role to rectify market failure in an inefficient economy; (2) a distributive role, so as to intervene when any outcome of convergence is deemed socially undesirable; and (3) other roles such as paternalism, consumer protection, promotion of culture and so forth (1997, p. 1). He also presents several general principles for which regulation
policy could be based upon, particularly issues of abuse and dominance, universality and affordability.

Finally, Houpis makes several recommendations on approaching regulation policies through the right transitional path. These include maintaining sector-specific where a network regulator can enforce jurisdictional control across all its network industries; encouraging competition between technologies; avoiding dominance in the industry by allowing public service broadcasters into a pay market; and migrating data protection laws from the traditional media environment to the converged environment. Although these recommendations are preliminary, the author argues that they are necessary for the "appropriate regulatory arrangements for the transition path to a converged world" (1997, p.14).

In examining the literature put forth, there are limited answers that can be presented in order to address Pavlik's three questions on the consequences of convergence. Firstly, media convergence has undoubtedly created a new media environment, which does provide a lot of benefits, but also does not come without its downfalls. Convergence spurs competition that urges industries towards development and innovation and which offers consumers affordability and choice. However, convergence has also blurred the edges of definition between media forms, thus making it difficult to create effective policies to manage online systems and regulate content.

Second, media convergence has created both social and financial costs for both industry and consumer. Research and innovation of new products
definitely involves significant monetary costs, but demand for integrated technologies would drive the costs to the individual consumer down. On the other hand, the consumer who is struggling to keep up with the costs of convergent media technologies will fall behind in the race on the information highway.

Finally, the review of literature can lead one to conclude that convergence is a concept that will continue to evolve. However, a truly converged medium has yet to emerge as there are barriers to convergence in the media. The timetable for change is dependent on the speed of innovation, which is in turn almost directly affected by the need to fulfil the demand for convergent technologies. Houpis notes that important implications of convergence: "the removal of scarcity, a transfer of control from broadcaster to consumer, new revenue opportunities to exploit economies of scope" (1997, p. 1) which raises the need for regulatory policy-making. However, along with the cost of technology and extent of research resources, government-sanctioned regulations are also considered an impediment to the progress of convergence.

Summary

Several characteristics and issues of media convergence have been raised and discussed in the literature review. Several points regarding the attributes of media convergence were approached. Firstly, there is no clear or fixed definition for convergence, although the broad definition of convergence can be segregated into four hierarchical sectors of technical, economic, content and international convergence. These sectors can be studied individually or
researched in its progressive phases so as to provide a researcher with a more segmented view of a convergent market.

Secondly, although the Internet is often considered a converging media form, there is yet to be a medium that exists which can be classified as truly convergent. This is because there are external barriers that prevent the Internet from becoming a fully converged media form. Thirdly, convergence fuels competition, which drives the innovation and development of new technologies. This subsequently provides consumers with a variety of choices and hence competitive pricing.

Finally, convergence has blurred the boundaries of what once were segregated media. Laws, policies and regulations that once independently governed media content of the pre-convergence era cannot control convergent media with equal efficiency. For example, a convergent medium such as the Internet cannot be successfully governed by print laws, or by broadcast laws, or earlier telecommunications policies. Since the Internet is a hybrid of telephony, print, broadcast and hypertext among others, perhaps the only successful way to effectively manage online content would be to create a hybrid of such laws to adapt to the change in technology. The next two chapters will discuss the historical acts in the pre-Internet era and present the problem of Internet regulation based on such traditional media laws.
CHAPTER 3

MASS MEDIA LAWS OF THE PRE-INTERNET ERA

Overview

According to Pember (1998), mass media law has historically been enacted according to the four principal domains of print, broadcast, cable and telephony. Of these four categories, print enjoys the highest amount of freedom from governmental control whereas broadcast media is subject to the largest amount of government scrutiny and regulation. Cable television resides somewhere in the middle, and telephone lines are treated as common carriers – where "anyone who can pay the toll can send a message over the telephone" (Pember, 1998, p. 112). However, the distinctiveness between these categories is blurred when considering that media today take on a convergent form.

However, many decisions in online obscenity law have been based in precedents of such traditional law. To a certain extent, these traditional media laws are relevant as they control all forms of mass media. However, the Internet also transcends the boundaries of print, broadcast, cable and telephony, making it difficult to find a compatible precedence to Internet law. This chapter will provide a survey of some historical cases, prior to the advent of the Internet that
distinctly governed a single medium, and examine how they have been applied to
the Internet.

The First Amendment and Media Law

The most powerful laws in America today are constitutional in origin, and
the highest law of the United States is the U.S. Constitution. The section of the
U.S. Constitution that grants an individual the freedom of expression and the
media freedom of press is the First Amendment, which states:

Congress shall make no law respecting an establishment of
religion, or prohibiting the free exercise thereof; or abridging the
freedom of speech, or of the press; or the right of the people
peaceably to assemble, and to petition the government for a
redress of grievances.

Infringing the freedoms provided by the First Amendment is considered an
encroachment of the legacy left by the forefathers of the United States. Mass
media law is largely (although not solely) concerned with the First Amendment,
as it is through different forms of media where the press can freely report a
situation, and it is often through the mass media where an individual can be
granted the freedom of speech and expression. A widely debated issue, both
past and present regarding the First Amendment is that of the censorship of
sexually explicit material in the mass media.
A Critical View of Obscenity Law and the Media

The Comstock Approach and Online Communications

The Comstock Act of 1873 made it a crime to distribute, by mail, material on birth control and abortion (which were then considered obscene acts). Anthony Comstock, a special unpaid agent of the Post Office Department and Secretary of the Committee for the Suppression of Vice targeted this act at people who crusaded for accurate birth control information. Because of Comstock's campaign, "publishers had to censor scientific and physiological works, druggists were punished for giving out information about contraception, and average Americans had to live with censorship of their mail, and without access to reliable information about contraception" (Lectric Law, 1996). Although the act was modified to disclude the prohibition on birth control, the prohibition on abortion still remains. In today's information-saturated society, the Comstock Act would criminalize: (1) an Internet posting of the referral directory of a local media society and the Internet Yellow Pages with medical listings; (2) an online consultation between two doctors conferring about abortion methods to save a patient's life; or (3) uploading or downloading medical journal articles about safe abortion techniques.

Former U.S. House Representative Pat Schroeder challenged the validity of the bill, stating that it was a clear infringement of the First Amendment right to freedom of speech. She urged Congress to get the "unconstitutional, obsolete language out of this bill and out of the computer age" (Lectric Law, 1996). The intent was not to decriminalize abortion, but to free up communication channels.
that were impeded while the bill (which violated the First Amendment right to freedom of speech) was still in effect.

The Comstock Act is an early example of how traditional laws governing communication forms do not have the same effectiveness today as it did over a century ago. The absolutism of the First Amendment in the Supreme Courts was demonstrated by Justice Black as he stated in his concurring opinion in Smith v. California (1959) that the First Amendment was the supreme law of the land, and that Congress was to make no law that abridged or infringed the freedom of speech or of the press. The First Amendment "has thus fixed its own value on freedom of speech and press by putting these freedoms wholly 'beyond the reach' of the federal power to abridge" and that "no other provision of the Constitution purports to dilute the scope of these unequivocal commands of the First Amendment (Smith v. California, 1959, p. 157-159).

A similar viewpoint expressed by Justice Douglas in his dissenting opinion in Paris Adult Theater I v. Slaton (1973), is that the philosophy of the First Amendment presupposes that no government should be keeper of an individual's tastes, beliefs, and ideas, and it is the freedoms provided by this amendment that set America apart from other nations of the world. Although the absolutist views of Black and Douglas, as well as similar opinions expressed by other Supreme Court justices, have been influential in the judicial regulation of pornography, it is not determinative as an absolute ruling on all the cases involving obscenity and the First Amendment (Hunter et. al., 1993). Contrary to absolutism is the
balancing approach. Both these approaches will be examined by discussing the "Miller Test."

**Applying the "Miller Test" to Internet Judicial Decisions and its Limitations**

The main shortcoming of the absolutist Comstock approach to regulate obscenity was that the judges failed to state the reasons why material on abortion and birth control should be considered obscene. This loophole caused most juries who applied the Comstock test to any court case to conclude that the contested material was obscene (Belt, 1998). More contemporary cases regarding obscenity in the media have been subjected to what is known as the "Miller Test." In *Miller v. California* (1973), the defendant was convicted of mailing unsolicited advertising brochures containing sexually explicit imagery, which was in offense of a misdemeanor according to California statutes. Justice Warren Burger stated the majority opinion that material could be considered obscene only if:

1. The average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest; 2. the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and 3. the work, taken as a whole, lacks serious literary, artistic, political or scientific value. (*Miller v. California*, 1973; in Hall, 1992, p. 548)
Although a more balanced and content-specific approach compared to the Comstock Act, the "Miller Test" does have its shortcomings when applied to Internet regulatory policies.

The term "contemporary community standards" is appropriate to the geographical nature of the print and broadcast media, where there is a centralized producer and distributor of content. If individuals in a community feel that photos of scantily clad women published in a local newspaper are obscene, it will be deemed obscene according to the Miller test, and the newspaper will be forced to stop the reproduction and distribution of such pictures (Hunter et. al., 1993).

Parts (2) and (3) of the "Miller Test" question individual standards of obscenity. Michaelangelo’s famous sculpture _David_ or the _Venus de Milo_ could be considered "patently offensive" to fundamental puritans, although they are considered historical artifacts by a large majority of people. Similarly, with Internet websites, pomographic website owners can claim that the sexually explicit material on their sites are photographic art forms, or sexual aids (Spender, 1995; Easton, 1994; Hunter et. al., 1993) rather than obscenity.

This brings up the question of variable obscenity and the part it plays in drawing a distinction between art and pornography, or rather lack of. According to Hunter, et. al. (1993), the term variable obscenity was coined when the Miller Act was enacted as the standard for judging what was obscene. As the Miller Act questions only "contemporary community standards", it is hard to draw a fine line that marks the point at which the individual conscience can be freed from
regulation. This is because the distinction itself is "a highly normative ability dependent on thresholds of ethical-erotic 'maturity' decided within the pedagogic regulation of sensibility" (Hunter et. al., 1993, p. 212) – that contemporary community standards are difficult to determine as each community consists of people with different levels of maturity, education and values.

The regulation of obscenity in the media could take either one of two approaches in Court decisions. As stated earlier, Black and Douglas have taken an absolutist stance in approaching the First Amendment. An absolutist approach is one that permits no exceptions to the protection of free speech. It tries to define the scope of free speech as narrowly as possible. Easton (1994) states that "pornography, taking this (absolutist) view, should be entitled to the same protection as political speech, as any attempt to suppress it exposes the people to further governmental control of other forms of speech, such as political or literary works" (p. 95). On the other hand, stringent commitments to the right to publish pornography strengthen the protection of free speech, but suppress unconventional political thinking and artistic expression.

Absolutism has been compared and contrasted with the balancing approach (Hunter et. al., 1993; Easton, 1994) as demonstrated by the "Miller Test", where the Supreme Court was prepared to considered other interests and competing rights when determining the degree of protection for free speech rights. However, according to Easton, balancing also raises the question of who should "determine the weight to be accorded to each claim and the factors to be taken into account" (Easton, 1994, p. 96). Mill (1991) states that when two
conflicting viewpoints arise out of the "Harm Condition" principle, the one that holds more precedence would be that one that provides the most benefits. Mill's harm principle states that an individual possesses natural moral rights to freedom of speech and expression, and that the state should not interfere with the expression of ideas, that "over himself, over his own body and mind, the individual is sovereign" (p. 31). However, the only exception to this rule is when an individual, while exercising his or her right to free speech, interferes with another individual's ability to express himself/herself.

A case that addresses the harm principle is New York Times Co. v. United States (1971), where the New York Times published extracts from a classified study of the U.S. involvement in the Vietnam War commissioned by the department of defense. A temporary restraining order was obtained to stop the paper from publishing the material on the grounds that it threatened national security. The presiding judge, Justice William Brennan stated that "only governmental allegation and proof that publication must inevitably, directly and immediately cause the occurrence of an event kindred to imperiling the safety of a transport at sea can support even the issuance of an interim restraining order" (New York Times Co. v. United States, 1971).

Proponents of media censorship argue that it is because pornography causes harm, and therefore should not fall under the jurisdiction of the First Amendment. (Spender, 1995; Easton, 1994; Hunter, Saunders & Williamson, 1993). By examining several studies that research the exposure to pornography, Spender (1995) concludes that extensive exposure to pornography causes an
individual to become desensitized to sex crimes like molestation, rape and pedophilia. Easton (1994) comments that sexually explicit material portrays women in a degrading manner, and causes men to think that women should be subjugated to them. Since, as Easton argues, pornography causes harm, it should not receive First Amendment protection. However, this puts forth the argument of what constitutes pornography?

"Contemporary community standards" are applied to a fixed, tangible geographic region. The distribution of books, newspapers and magazines can be segregated into regions by a distribution network. Television and radio broadcasts can be controlled by bandwidth to only reach a limited geographical area. However, given the decentralized nature of the Internet, where users constitute people from different countries, cultures and standards, it is difficult to define community in geographic terms. Although the Internet and established media forms share some fundamental principles of media theories, legislators could realize that there is a need to devise new standards in creating laws for converging media technologies. The next chapter will examine why legal attempts to regulate the Internet using traditional media laws and principles have caused impediments in the endeavor to promote some order in the anarchic realm of cyberspace.

This chapter has examined and discussed several cases that envelop one of the four distinct divisions of mass media law. The Miller obscenity test, employing the concept of "contemporary community standards", has been used to determine standards of obscenity even in laws governing new media
technology today. The prime, and often most-debated examples of the Miller Test being applied are the now defunct proposed amendment to the CDA, and its follow-up, the COPA. The subsequent chapter will discuss both positive and negative implications of attempting to regulate Internet content using traditional media precedents, and the attempt to promote some form of social order in the currently anarchic realm of cyberspace.
CHAPTER 4

OBSCENITY LAW AND THE INTERNET

Overview of Internet Regulation

The widespread use of the online services in households has also drawn attention to the availability of sexually explicit material on the Internet. Attempts have been made to control the amount of online sexual content (e.g., Reno v. American Civil Liberties Union, 1996; Reno v. American Civil Liberties Union II, 1998), but there is very little regulation by the government. The lack of regulatory policies has made online adult-oriented sites remain constantly popular despite threats of regulation and censorship. This raises the question of why pornography on the Internet is so popular? For people who live in countries where pornography is illegal, the only way to view such material without being prosecuted is to obtain it online. In more liberal countries where pornography can be easily obtained from the local adult store, Elmer-Dewitt offers his observation:

You can obtain it in the privacy of your home — without having to walk into a seedy bookstore or movie house. You can download only those things that turn you on, rather than buy an entire magazine or video. You can explore different aspects of your
sexuality without exposing yourself to communicable diseases or public ridicule. (Elmer-Dewitt, 1995)

The online sex industry rakes in an estimated $600-800 million dollars a year in worldwide sales, advertising and subscriptions (Internetstats, 1999; Intellquest, 1999; Headcount, 1999), and it is no doubt an extremely lucrative industry. It is obvious that online merchants are unwilling to give up their source of income and revenue, and most argue against censorship by stating that their constitutional rights give them the right to publish sexually explicit material on the Internet (Elmer-Dewitt, 1995; Spender, 1995; Rheingold, 1993). As an increasing number of people bank on the profitability of the online porn market, it also alerts people to the negative effects extensive exposure to pornography can do to the individual and society (Zillman & Bryant, 1985; Wilkins, 1997; Jensen, 1995). As the Internet offers the unrestricted viewing of a plethora of sexually explicit material, such studies have created an alarm that led to the formation of blanket laws such as the CDA.

Governments around the world have attempted several methods of breaking down the anarchic state of the Internet, many to no avail. In the United States, the most recent attempts to bring some order to the Internet are that of the CDA and the COPA. Most clauses in these two acts have failed to pass in Congress as they were considered unconstitutional, and infringed the First Amendment rights to freedom of speech. However, a more critical examination reveals that such bills were written using laws that succeeded in censoring traditional media forms as precedence. The Internet is a new media technology
that converges several aspects of traditional media, hence making laws previously applicable to traditional media obsolete when applied to new media technologies.

The Decentralized Nature of the Internet and the Censorship of Pornography

Unlike television and radio stations that broadcast via bandwidth to a limited region, or newspapers and magazines that originate from a main printing press or publisher, the Internet does not have a centralized producer or distributor of material. Anyone with access to a computer and a modem can obtain or provide any form of content as he or she wishes.

It can be said that the Internet is a form of political anarchy, and to many, the last bastion to freedom of speech in the United States (Spender, 1994; Rheingold, 1993; Easton, 1994). Although there are technological methods to control pornography available in the form of filter software (e.g., Netnanny, 1999; Cybersitter, 1999; Cyberpatrol, 1999) and firewalls, these methods are not foolproof, and many slip through the cracks of electronic censorship. They also require self or institutional implementation, something which many individuals, companies and organizations are unwilling to do because of the mechanisms' potential to censor sites other than those with sexual content. Although there are state laws that include clauses regarding online pornography (e.g., California Assembly Bill 295, 1996; Florida Senate Bill 156, 1996; New York Senate Bill 210E, 1996), most of these bills criminalize the distribution of pornography to minors, or give the right to prosecute people who use minors as subjects in their
sexual materials. Other than the failed CDA and the currently restrained COPA, there are no federal laws in effect today that regulate or control online content.

Many issues have arisen in the debate for and against regulating obscenity on the Internet. Lanham explains that human race has a "discipline of discourse" where "we all like to teach and always, in one form of another have taught. But no one has ever been able to prove that it does conduce to virtue more than to vice" (Lanham 1995, p.155). Those who are for the regulation of obscenity on the Internet are eager to teach that viewing and producing pornographic material is wrong, but are unable to take the stance of whether denying the basic human right to freedom of speech is a greater evil. Conversely, those who are against the regulation of pornography on the Internet take on what Lanham terms as 'the Weak Defense' – first denying the problem resolutely, and then constructing a good rhetoric and a bad rhetoric. They vehemently protest that pornography does no harm to those who view it, and when that argument failed, they use the good rhetoric – freedom of expression – for their own causes, and thrust the bad rhetoric – the suppression of free speech – into their opponent's arms.

Lanham also explains the converse term "the Strong Defense" (1995, p.156) when viewing the question of protection – in that no one will know what is good or bad until the law determines it. This defense against argument of protection infers that truth is decided by social dramas, although some more formal than others, but are all created by people. Truth would become referential in legal precedent. Proponents of Internet regulation are more often than not
eager campaigning for governments and legislative bodies to create laws that would enable prosecution to those who post obscene material on the Internet. If the law takes their side, they would be able to take the strong defense and argue their case more strongly. Unfortunately for them, opponents of Internet regulation in the United States already have the law on their side in the form of the First Amendment of the United States Constitution – allowing them their right to freedom of speech, as exhibited by the demise of the Communication Decency Act (CDA).

Government regulation of the Internet exists in varying levels of city, state, regional or federal legislatures. However, even in the United States where freedom of speech is consecrated by the First Amendment, one cannot ignore the influential power of mass media industries to carry the burden of freedom of speech provided by the First Amendment. The power of First Amendment rights granted to the mass media is evidenced by censorship laws such as the CDA (Reno v. American Civil Liberties Union, 1996) and more recently COPA (Reno v. American Civil Liberties Union II, 1996). According to Pogorelic (1998), if censorship laws were taken to either extreme of the regulatory spectrum, i.e. no regulation or complete censorship, the Internet will be subject to being controlled by a single authority, which can impose complete censorship of content without much objection from other online industry entities.

One also cannot ignore the fact that users of the Internet and distributors of online content do not fall within the jurisdictional boundaries of the United States. Even if the distribution of pornography on the Internet is banned in the
United States. Citizens of foreign countries, where pornography is still legal, can and will still continue to distribute such material, without overstepping the judicial boundaries of the United States. Unless a blanket global agreement on the standards of sexually-explicit materials is reached, there is no way the United States government cannot prosecute someone in another country for breaching U.S. laws.

Motives, Policy and History

The Communications Decency Act (CDA) of 1996

The CDA of 1996 was proposed as part of Title V of the Telecommunications Act of 1996. It was a bill proposed by Senator Jim Exon (R-Nebraska) and passed in Congress. However, the act was contested by the American Civil Liberties Union (ACLU), which claimed that certain provisions in the act made it unconstitutional. The two main provisions that they challenged in Reno v. ACLU (1996), were:

Section 223(a)(1)(B): which provides in part that any person in interstate or foreign communications who "by means of a telecommunications device... knowingly... makes, creates or solicits" and "initiates the transmission" of "any comment, request, suggestion, proposal, image or other communication which is obscene or indecent, knowing that the recipient of the communication is under 18 years of age... shall be criminally fined or imprisoned" (Reno v. ACLU, 1996); and
Section 223(d)(1) which makes it a crime to use "an interactive computer service to send or "display in a manner available" to a person under age 18, "any comment, request, suggestion, proposal, image or communication that in context depicts or describes, in terms of patently offensive as measured by contemporary community standards, sexual or excretory activities or organs, regardless of whether the user of such service placed the call or initiated the communication." (Reno v. ACLU, 1996)

Senator Exon proposed the CDA in 1996. The act “prohibited the knowing sending or displaying of patently offensive messages in a manner that is available to a person under eighteen years of age” (Reno v. American Civil Liberties Union, 1996). The bill was passed, and contested by the American Civil Liberties Union (ACLU) in 1996. The ACLU claimed that censoring the Internet breeches the First Amendment, and even though the law is aimed at censoring sexually explicit images, it may intimidate online webmasters to remove pictures that could even tread slightly on the waters of the CDA, and would eventually lead to a stifling of other freedoms that the First Amendment protects.

The Child Online Protection Act (COPA) of 1998

In 1998, President Clinton presented COPA, also known as the CDA II. The COPA addressed the vagueness of the original CDA by providing a more specific objective that required “persons who are engaged in the business of distributing, by means of the World Wide Web, material that is harmful to minors
to restrict access to such material by minors, and for other purposes (Electronic Privacy Information Center, 1998). Again, the outlook for such a bill being passed by Congress looked bleak. The plaintiffs (which constituted of individuals and profit-oriented organizations who were content providers, as well as users of the Internet) filed a complaint in the District Court for the Eastern District of Pennsylvania that the COPA infringed their First and Fifth Amendment rights.

**Current Status**

The ACLU won the case against the CDA, when in 1996, the Supreme Court of the United States declared that the provisions in the CDA were unconstitutional (Reno v. ACLU, 1996). The Supreme Court stated that trying to regulate the Internet amounts to "content-based" restrictions instead of time, place and manner restrictions, which govern the print and broadcast media. The opinion of the court noted that the "vagueness of the CDA" would cause a severe stifling of free speech, and because it constituted of a criminal statute, "the severity of criminal sanctions may well cause speakers to remain silent rather than communicate even arguably unlawful words, ideas and images" (Reno v. American Civil Liberties Union, 1996).

The COPA was issued a temporary restraining order in November 1998, and twice more – once on February 1, 1999 and another time on April 2, 1999 (Electronic Privacy Information Center, 1998). On October 4, 1999, the Federal Communications Commission (FCC) filed a petition for a rehearing en banc (in front of a full bench of judges) of the COPA in an Eastern Pennsylvania district.
court, stating that “this case involves question of exceptional importance affecting governmental efforts to protect the privacy of telephone customers and to promote competition in the telephone industry” (Electronic Privacy Information Center, 1999). The reasons given by the court for providing the temporary restraining order was that the plaintiffs had to raise “questions going to the merits so serious, substantial, difficult and doubtful, as to make them fair ground for litigation and thus for more deliberative investigation” (Reno v. American Civil Liberties Union II, 1998). United States District Judge Lowell Reed addressed that fears of prosecution under the COPA will lead to self-regulation of online materials so as to avoid being prosecuted, and that “it is well established that the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury” (Electronic Privacy Information Center, 1998). The court’s opinion stated that if First Amendment rights of individuals were suffocated under the attribute of censoring sexually explicit material, other First Amendment liberties, totally unrelated to the adult oriented industry, will also be compromised.

Weaknesses in Creating Laws for the Internet

Both the proponents of the CDA and the COPA take into assumption that the media are a single entity that can and will be governed by a common law. However what lawmakers have failed to take into account is that the Internet has convergent qualities, which makes it possess characteristics that transcend more than a single media form. Branscomb (1995) provides several reasons for the
failure to successfully implement any regulation or policy, and attributes the failure to the inability of legislators to discern between the real world and cyberspace. Three of the reasons offered pertain to that of the First Amendment and pornography on the Internet. First, existing rules of the “real” community are not the same as the rules in the cybercommunity. Just because restrictions on adult-oriented books and magazines have succeeded in confining them into the alcoves of adult bookstores, or the regulation of radio and television resulted in industry codes of self-governing, does not mean that the same legislative methods would work for that of the Internet. Smith (1995) argues that, in regulating the Internet, there should not be an addendum clause in the Communications Act that annexes itself to an obsolete system of governance, but rather, there should be an entirely new regulatory approach that will recognize the new realities of the communications marketplace.

Second, “real world” rules are often unsuccessfully translated into cyber-rules. In the “real world”, existing rules protected the publisher or producer of material from legal liability. However, in cyberspace, where users could also be producers of material, there is a difficulty in applying “existing legal metaphors into a Networld in which an information provider may logically seem to fall under the ambit of several legal regimes” (Branscomb, 1995, p. 1651).

Third, governments have tried to impose local community rules on an unyielding cybercommunity. In United States v. Thomas (1994), sexually explicit images were uploaded in California, but downloaded in Memphis, Tennessee, deep within the Bible Belt, where such pictures were considered obscene under
“contemporary community standards,” according to the “Miller Test.” The case was initiated in Memphis rather than in California, and the defendant’s lawyers claimed that the prosecutors were taking advantage of the more conservative climate in the Southern community. This case raised the issue of which community’s standards should be applied – California or Tennessee. This case illustrates the complexity of applying “real world” rules to cybercommunities without considering whether an imposition will cause a greater burden than necessary in the battle for First Amendment rights of freedom of speech and autonomy in a conversational environment. Branscomb (1995) suggests that one possible solution would be to “change the standards governing obscenity from the ‘local community’ to the ‘virtual community’” (p. 1656).

There are already non-official standards set by Internet users themselves in the virtual community. “Operators” on Internet Relay Chat channels impose regulations that restrict profanity and sexually explicit talk. Users who flout these regulations receive warnings or could even be banned from the channel. Localized Internet Service Providers (ISPs) can implement firewalls to block certain sites that a town, city or state may deem unfit according to community standards. There already is some form of regulation occurring at a small-scale level in the “virtual community” where online communities enforce their own rules and restrictions. Examining how these standards are enforced would help provide a framework that could be used in online regulation at an industry level.

The primary concern in developing theories relevant to issues of legislation on the Internet is to determine what sort of mass medium the Internet
is. Cunningham and Finn (1996) state that the Internet is similar to other established mass media forms in that it is still potentially a form of mass communication, and it is a form of delivering information and entertainment (p. 85). It is partly because that the legal status of cyberspace is so uncertain that there are difficulties about framing laws for the control of pornography. At present we can fairly say that "the nature of the law is reflective and responsive, not proactive" (Kramarac & Kramer in Spender, 1994, p.217).

Krattenmaker and Powe (1995) argue for the need to reconcile the technological and media convergence with the legal presumption of distinct treatments. They offer three models in discerning regulation of distinct media forms. (1) The print model, which is a coherent and complete system of regulatory ideas, and employs canons of text, history, structure and tradition, congruent to constitutional interpretations; (2) the broadcast model, which recognizes the relationship between speech and the distribution of economic resources, and asserts the principle that the provision of the First Amendment that provides for "freedom of the press" and "freedom of speech" may change with the times; and (3) the general model, which is a hybrid of the print and broadcast model. This third model enables the government some flexibility, when necessary, to regulate the broadcast model while cutting back on its intrusiveness into areas of programming. In the "progressive congruence of telecommunication technologies" (1995, p.1720), the general model might serve as the catalyst for the jurisprudential developments — that in order to create laws for converging media technologies, legislators have to be able to alienate the
broadcast model from the general model, but simultaneously realize that basic
First Amendment principles, and not a new or unique set of rules, can still lead
the way in public regulation of new media technologies.

Possible Alternatives

This chapter has examined two of the most widely debated attempts to
provide legislature to regulate Internet content. Although there is a no hard and
fast law that can completely control online content within a tangible geographic
region, there are several possible legal and non-legal alternatives that have been
offered by different individual and organizations to help manage the flow of
information to specific individuals. Some such solutions would be to practice
industry self-control, promoting online content awareness, allowing the Internet to
remain unregulated or to formulate policies completely independent of traditional
mass media laws. The final chapter will provide a review of these different
perspectives and examine the viability of such proposed amendments in the
effort to regulate Internet media.
CHAPTER 5

POTENTIAL SOLUTIONS IN INTERNET REGULATION

Questions for Regulation

As presented in earlier chapters, media convergence has led to the deregulation of the Internet. According to Houpis (1997), convergence has created several important implications, such as the "removal of scarcity, a transfer of control from broadcaster to consumer [and] new revenue opportunities to exploit economics of scope" (p. 1). These new implications have created new issues like ease of access to online pornography, that call for the need for some form of regulatory agenda to control questionable content on the Internet. Until this date, there has yet to be an appropriate legal solution that successfully regulates all aspects of the Internet. However, there have been other non-legal alternatives to online regulation, such as self-regulation and parental control.

Houpis (1997) notes that in order to approach the development of public policy, there has to be a framework to help analyze the regulatory implications of convergence and assess the need for regulation under convergence. To help achieve these goals, he provides the following questions that have to be addressed: (1) Why regulate? – which evaluates the objectives of regulation; (2) What to regulate? – which services or area of activity to regulate; (3) How to
regulate? – which evaluates the types of tools used in the regulation process; and (4) Who should regulate? – which describes the institutional aspects of regulation. Using this framework of questions, this chapter will assess the need for regulation for a converging medium such as the Internet.

Why Regulate?

The first step in deciding the fine points of developing a regulatory policy is determining whether there is an absolute need for regulation. Despite arguments against regulation or government-sanctioned regulation, many people associated with the media have put forth rationales that support the need for online regulation. Using Baldwin’s (1997) four levels of convergence as a structure, regulation and public policy have to be made based on these four levels – technical, business, international and content convergence.

The need for regulation at both the technical and business levels basically stresses inhibiting concentration of ownership to that of one company. Noll and Price (1997) provide the historical example of the deregulation of the Communications Act of 1934 raised issues on how to prevent monopolies from exploiting consumers through “high prices, low quality and insufficient investment in capacity” (p. 8). Monopolizing the market would also prevent the growth of innovation and technological change. The lack of government intervention in the industry would hinder the development of smaller, incumbent companies in the market and encourage the growth, and eventual monopoly of larger companies. A more modern day repercussion of this would be the Microsoft Anti-trust lawsuit, where the software giant, which has the lion’s share of the market in operating
systems, is being accused of violating the Sherman Antitrust Act as amended in 1980, in which consumers are protected from businesses fixing prices, rigging bids or allocating customers (Sullivan, 1999).

Regulation at an international level is currently seen as impractical, and to some extent, impossible. The Internet is a worldwide and borderless new media form that anyone in any single country can access. As this involves a diversity of constitutional rights, civil rights, freedom of expression and regulatory levels, having a blanket policy or law that transcends the laws of every country is virtually unattainable. Thus, this points to the need to regulate the Internet at a more local level.

This brings the issue of regulation to the final level of media convergence – content. Content regulation of online material is possibly the most widely discussed and debated issue on the Internet. As presented in the first chapter, material of "questionable" and possibly even harmful natures do exist on the Internet, one such example being obscene images, sounds and videos. Although there are no federal laws that restrict or prohibit access to such material, lawmakers have decided, through the CDA and COPA, that some form of content control should be involved, particularly to restrain the viewing of such material by young children. Although a government-sanctioned policy is rejected by many, there are those who do agree that some form of regulation (outside government intervention) is necessary. This answers the second question that assesses the need for regulation: What should be regulated?
What to Regulate?

As presented above, it is necessary for the government to intervene in the industry where hardware providers and online service providers and businesses are subject to governmental regulations. Government regulation at an industry level would encourage competition, and hence discourage the formation of monopolies through mergers and acquisitions. Such actions would allow a greater capacity for industry growth and innovation, and competition between different corporations would provide indigent consumers the opportunity to obtain low-priced, yet high-quality products.

However, governmental policies regulating online content are not as welcome. Unlike traditional media involving solely print and broadcast forms, corporations are not the sole providers of content on the Internet. Any individual with minimal web-authoring skills has the opportunity to express his or her opinions online, and governmental control of content would mean infringing the First Amendment rights of any individual living in the United States. Collins (1998) advances the concept that there are two contradictory principles that need to be reconciled through any system of content regulation – that stricter control is needed for material to which people are involuntarily exposed, compared to material that people seek out on their own free will. Collins states that according to these principles, over-the-air television should hence be subject to more regulatory scrutiny compared to that of the Internet, as people have little control to what they are exposed to on the television, whereas people selectively view content on the Internet.
How to Regulate?

Instruments of regulation are mainly that of hardware and software. A network provider can restrain access to certain sites through a firewall (Ypsilanti, 1997). However, this method can only work on a small-scale, possibly only through Local Area Networks (LANs), or at most Wide Area Networks (WANs), and is not considered an effective method of wide-scale control. The individual online user can restrict access of children to sites of questionable content through the use of filter software. Earlier versions of software blocked out almost all sites containing the word “sex” or “porn”, even those without sexual content. However most filters have been subject to a ratings system, where parents can set the level of sex, nudity, violence and language to an acceptable level. The problem with this method, however, is that only a few hundred thousand out of the millions of online websites contain the meta-tags to make them eligible for rating. Unless more webmasters participate in the program by allocating a rating to each of their webpages, this method is rendered less than effective (Johnson, 1996). The only other tangible instrument that could provide some form of wide-scale control to the Internet is the law, and as discussed earlier, even the law has its negative implications.

Who should Regulate?

Through proposed bills, acts and laws, localized governments in the United States have, or at least attempted to provide some form of standardized control to online content. As discussed earlier, there is no unopposed federal law passed that controls access to online content. However, regulation of the Internet
does not have to solely be enforced by the government. There have been several suggestions put forth as to who also has the authority to enforce some form of regulation independent from government intervention – mainly the ISPs, online content providers, parents of young children, or even having no regulation at all.

ISPs can enforce online regulation by providing client guidelines as to what is considered suitable content. Already, large ISPs in the United States with specific online communities such as America Online and CompuServe have stipulations in their sign-on agreements that they will refuse to host webpages that have any form of sexual or illegal content, or cancel access to any user who infringes on their policy. Online content providers, particularly those who offer sexual content could also implement some form of restrictions, so as to prevent underaged viewers from accessing such material. This could take the form of age checks, where users are required to provide some form of identification (usually a credit card, or a driver's license) to prove that they are of age. Another alternative would be to have a series of contents and disclaimers, where the user is required to click on a link on every page to go to the next. The series of meta-tags prevents “accidental” access to sites with sexual content, as it makes the links more unlikely to show up on the first few pages of a search engine (Ypsilanti, 1997). This makes it less likely for anyone who does not wish to view these pages to stumble onto such content. Yet another method would be to prevent anyone direct access to a page with “questionable” material, if that person did not click on a series of introductory pages that linked to the final content page. With the industry taking their own cautionary measures in restricting the ease of
access into websites, rather than completely censoring access to material, the Internet would be considered less of a threat, and hence there would be less likely avenues for the government to intervene in the regulation process.

Parental control of what children access on the Internet has often been advocated as a micro-level measure of controlling Internet access. However, several issues that need to be addressed because of this measure include: (1) whether parents have the adequate technical skills to monitor what their children access; (2) whether parents rely solely on filter technologies, which are not the most effective method of online regulation, to control the content their children access; and (3) whether parents aware of the "dangers" that could be hidden among the mass of online webpages (Collins, 1998).

Consequences of Content Regulation

By examining the framework of questions regarding the need for regulation, it is evident that there are both positive and negative implications that arise out of content regulation. Although almost all attempts at regulation are met with some form of opposition, each proposal is backed with some form of logical rationale. For example, regulating sites with sexual content on the Internet would prevent susceptible young children from accessing such material. However, at the same time, it also infringes the rights of adults who make educated and informed choices to access such sites. In such cases, it is important to weigh both the positive and negative consequences of content regulation, and decide which is the lesser of the two evils — regulation or no regulation.
Loss of Freedom of Speech and Expression

The main concern about any form of online censorship is the loss of freedom of speech and expression. There are already online communities and organizations that defend the political freedoms that were previously enjoyed in cyberspace, before it threatened political interests. The Electronic Frontier Foundation (EFF), which aims to "develop among policy-makers a better understanding of the issues underlying free and open telecommunications, and the support of creation of legal and structural approaches which will ease the assimilation of these new technologies by society." It also "raise[s] public awareness about civil liberties issues arising from the rapid advancement in the area of new computer-based communications media" (EFF, 1999). The Electronic Privacy Information Center (EPIC), which among other issues, strongly opposes the censorship of online content and privacy of the individual from online scrutiny (EPIC, 1999). Peacefire.org is a youth-based, youth-run site that opposes censorship of the Internet, particularly that of using filter software to block out "questionable" sites.

However, those who oppose government legislation and policy regulating online content, and advocate the right to freedom of expression, caution that there are negative repercussions that exist with in an anarchical reign. Rheingold (1993) notes that the world is moving so quickly into cyberspace, that any freedoms are lost in haste will unlikely be regained later. Law enforcement agencies, in their pursuit to stem criminal activity on the Internet, may threaten the constitutional rights of other legitimate citizens to free speech and assembly.

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However, Rheingold also notes that “the online community has a responsibility to the freedom it enjoys, and if it wants to continue to enjoy that freedom, more people must take an active part in educating the non-technical population about several important distinctions that are lost in the blitz of tabloid information” (1993).

Negroponte (1995) states that the only threat to the Internet comes in the form of politicians wanting to control it, usually under the banner of sanitizing the Internet for children. He acknowledges that there are people who will misuse the Internet for illegal gain, but implementing technology to stop such criminals will also impede the access of upright citizens to the benefits of technology on the Internet. He gives the example that there are “drug dealers, terrorists, and kiddie pornographers” who use the Internet, but the “bad guys are far better equipped than you or I to outsmart the Feds with encryption” (p. 235). Having laws that ban the export encryption would make the only people who have it criminals, and it also puts the average citizen at greater risk, because of the loss of privacy once provided by encryption.

Abuse of the Egalitarian System

As it was established earlier, because of convergence, governments are losing their ability to exercise control over the online industry. Those who are against online pornography also argue that an unregulated medium would also support the presence of hate groups. However, the Internet could also break down social, racial and cultural barriers. While the Internet cannot substitute for human interaction, engaging in a radical idea on a newsgroup is taking a step
towards forcing so-called subversives into an open interaction with society. It is argued that freedom of expression would force closed communities that live in hermetic isolation to leave their breeding grounds and subject themselves to extremism with all its physical threats. Because the openness of cyberspace does not allow for such seclusion, the Internet disintegrates the idea of a closed community, making it become an ally in the struggle against bigotry and racism (Zickmund 1997, p.204).

A lack of regulatory mechanisms controlling content on the Internet would also make any online user vulnerable to blatant marketing ploys that include the massive downloading of copyright text and images, obtaining lists of personal e-mail addresses and flooding each address with non-directed marketing advertisements, trafficking in specialized lists of user IDs for access into accounts and even the unknowing transmission of computer viruses (Beniger, 1996). Without a regulatory body to provide statutes or a code or conduct to manage the flow of such material, online users are susceptible spending their time online viewing such redundant and often annoying material.

Projections for the Future

Houpis (1997) provides several recommendations for the creation of appropriate regulatory policies in the face of media convergence. First, as the state of the media environment tends toward convergence, there should still be some form of sector-specific regulation. Regulation of network access could be assessed by identifying a network regulator, which addresses issues across all
network industries. For example, ISPs should provide certain guidelines to their subscribers, or Local Area Network administrators should monitor the flow of information within the network.

Second, regulation should not be solely directed at a single standardized entity, but various segments of the value chain, so as to ensure "interoperability, interconnection and transparency" between different individuals (Houpis, 1997, p. 2). This means that the blanket laws or policies should not be created to censor the Internet as a media form, but should be targeted as specific sectors or industries that censor the Internet. One example would be the use of filter software in their early development stages to censor pornographic websites on the Internet. Although the initial intention was to locate and censor sexual content by blocking sites with words such as "sex" or "porn" in them, it was soon noted that sites without sexual content were censored as well. Some examples of sites they could have censored would be sites about safe sex and birth control (e.g., www.safesex.com), anti-pornography sites (e.g., www.tonyaflynt.com), or anti-sex abuse sites (e.g., www.rainn.org).

Third, competition between technologies must be encouraged, to stimulate industrial growth and innovation. In Pornography Drives Technology: Why not to Censor the Internet, Johnson (1996) notes that the rush to censor has only bought out new media forms. For example, regulation of sexually-explicit content on television encouraged the invention and use of pay-cable, brought about the demise of Betamax by advancing the innovation of long-playing VHS tapes, and
eventually created new online programming devices that helped control Internet content.

Fourth, during the evolution of convergence, existing established players in the market would want to enter new markets. There needs to be a balance struck between fostering competition and avoiding dominance in the industry. Hence, public service broadcasters should be allowed to enter the pay markets should the need arise. And finally, as new services develop and critical mass is attained, the role and provision of public service broadcasting should be evaluated. Governments may wish to define and ensure the provision of a set of public audiovisual services. For example, governments should step in when market forces result in a few or a single provider in the industry, so as to prevent oligopolies and monopolies. This should be implemented in such a way so as to minimize secondary distortions in the market. Such is the case in the Microsoft anti-trust lawsuit.

The European Commission’s Communication on Electronic Commerce proposed the principle of “no regulation for regulation’s sake” (Green Paper 1997). This principle is to be applied to all areas and aspects of convergence in the media industry. The basic goal of this principle was to ensure that government regulation is not undermined or confused by the convergence of media. These objectives “were varied and tailored to the specific needs of different sectors” of the media industry, and had the aim to protect public and consumer interests. However, Lessig (1995) argues that “one should not exaggerate the government’s or society’s loss” on the Internet as an unregulated
medium, as there is "no doubt that it has always been possible for people to find places where their words can be understood by the intended recipient" (p. 1751).

The following section will discuss the rationale behind this principle, and discuss the positive and/or negative implications of an unregulated media form by giving examples of the regulation issues faced by other media forms in their advent.

Wallace and Mangan state that "an industry under the threat of government regulation learns to regulate itself" (1996, p. 212). Already, there are unofficial forms of self-regulation on the Internet. One example of which is that of 'netiquette' - a code which users of e-mail, bulletin board systems and newsgroups observe in order to prevent government retaliation. Governments around the world are looking for a hard and fast method of censoring the Internet almost immediately and in its entirety (e.g. CDA, 1996). However, they have to realize that the Internet is an extremely new and has to be subject to the trial and error also encountered earlier by traditional media forms.

Industry self-regulation has often been preferred over government intervention. Lee (1990) argues that people exercise self-restraint and/or self-censorship when sensitive issues are encountered by avoiding topics that might offend others. Although an individual has a right to broach such offensive subjects, respect for others' feelings makes one unwilling to exercise that right.

As the Internet is still in its beginning stages of development, many users may fail to realize that behind the anonymity of cyberspace are users who have feelings and emotions that do warrant reactions. As individuals become more experienced with the interactivity of the Internet, they may realize that practicing
self-regulation is important in maintaining the unregulated freedoms that the Internet provides.

According to Collins (1998), the inevitable fates of the CDA and COPA show that governments are losing their ability to exercise control over entry to media markets that have hitherto been regulated through government control of a scarce resource. In consequence, regulation must be different and increasingly be based on the general provisions of competition law. However, the media are different and regulation can and must also ensure provision of the information and communication services necessary to full participation in society at affordable prices. This means continuing to capture the social benefits that arise from market failure in broadcasting. The distinctive nature of media and communications, not least the task of balancing the imperatives of making markets work better through competition and ensuring the social benefits of some market failures continue to be captured in the public interest, means that a sector specific regulator will be required. However, this regulator should embrace regulatory responsibilities for telecommunications and broadcasting, which, hitherto, have often been separated. Moreover, the government's loss of entry control means that content regulation must be undertaken in a new way.

Conclusion

Present-day media convergence has led to the creation of the Internet as a media form. Although the Internet is still in its converging stages, it is quickly penetrating households and becoming part of everyday life. Among the huge
influx of information provided via the Internet, there is often the existence of sites which some may consider harmful, dangerous or even criminal content. This has resulted in concerned users calling for some form of regulation of online content.

Strong opposition against government regulation can be seen from the protests against the CDA and COPA. Government intervention is looked upon as the more restraining and least constitutional method of regulation. Although the presence of governmental control over the “last bastion of free speech” (1994, p. 213) is frowned upon, industry providers and users alike concur that there has to be some form of regulation so as to prevent total disorder in cyberspace. This form of regulation can take place at an industry (through ISPs), community (through LAN administrators), household (by parents) or individual level and may not necessarily stem from the government. Perhaps even having no regulation from the government would be the best way to regulate the Internet. However, the threat of government intervention should always be present, otherwise, industries and individuals would not be motivated to practice any form of self-control and true anarchy of the Internet as a media form will finally exist.
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http://www.ispo.cec.be/convergencegp/97623.html


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GLOSSARY OF TERMS

Analog: A representation of an object that resembles the original. Analog devices monitor conditions, such as movement, temperature and sound, and convert them into analogous electronic or mechanical patterns. For example, an analog watch represents the planet's rotation with the rotating hands on the watch face. Telephones turn voice vibrations into electrical vibrations of the same shape. Analog implies continuous operation in contrast with digital, which is broken up into numbers.

ARPANET: (Advanced Research Projects Agency NETwork) The research network funded by the U.S. Advanced Research Projects Agency (ARPA). The software was developed by Bolt, Beranek and Newman (BBN), and Honeywell 516 minicomputers were the first hardware used as packet switches. ARPAnet was launched in 1969 at four sites including two University of California campuses, the Stanford Research Institute and the University of Utah. Over time, backbones by other federal agencies and organizations were formed and interlinked. In 1995, commercial Internet service providers took control of the major backbones, and the Internet continues to grow every day.

Binary: Meaning two. The principle behind digital computers. All input to the computer is converted into binary numbers made up of the two digits 0 and 1 (bits). For example, when you press the "A" key on your personal computer, the keyboard generates and transmits the number 01000001 to the computer's memory as a series of pulses. The 1 bits are transmitted as high voltage; the 0 bits are transmitted as low. The bits are stored as charged and uncharged memory cells in the computer or as microscopic magnets on disk and tape. Display screens and printers convert the binary numbers into visual characters.

Bulletin Board System (BBS): A computer system used as an information source and forum for a particular interest group. They were widely used in the U.S. to distribute shareware and drivers and had their heyday before the World Wide Web took off. A BBS functions somewhat like a stand-alone Web site, but without graphics. However, unlike Web sites, each BBS has its own telephone number to dial into.
**Convergence:** The integration of computers, communications and consumer electronics. Data and text were converted into digital form for the very first computers years ago, however since the advent of audio CDs and now DVDs, all forms of information, both for business and entertainment, can be managed together. Using cable TV, satellite dish, optical fiber or even the telephone line, music, movies, video games and other interactive programs can be requested on demand along with the Internet's inexhaustible array of offerings.

**Cyberspace:** Coined by William Gibson in his novel "Neuromancer," it is a futuristic computer network that people use by plugging their minds into it! The term now refers to the Internet or to the online or digital world in general.

**Data Compression:** Encoding data to take up less storage space. Digital data is compressed by finding repeatable patterns of binary 0s and 1s. The more patterns can be found, the more the data can be compressed. Text can generally be compressed to about 40% of its original size, and graphics files from 20% to 90%. Some files compress very little. It depends entirely on the type of file and compression algorithm used.

**Digital:** Traditionally, digital means the use of numbers and the term comes from digit, or finger. Today, digital is synonymous with computer.

**E-mail:** The transmission of memos and messages over a network. Within an enterprise, users can send mail to a single recipient or broadcast it to multiple users. With multitasking workstations, mail can be delivered and announced while the user is working in an application. Otherwise, mail is sent to a simulated mailbox in the network server or host computer, which must be interrogated.

**Filter/Blocking Software:** Blocking the viewing of undesirable Internet content. Businesses can block content based on traffic type. For example, Web access might be allowed, but file transfers may not. Content can also be blocked by site, using lists of URLs cataloged by content that are updated frequently. Parents can restrict their children's access with special browsers and filtering programs.

**Firewall:** A method for keeping a network secure. Firewalls are used to give users access to the Internet in a secure fashion as well as to separate a company's public Web server from its internal network.

**Hypermedia:** The use of data, text, graphics, video and voice as elements in a hypertext system. All the various forms of information are linked together so that a user can easily move from one to another.

**Hypertext:** Hypertext is the foundation of the World Wide Web. Links embedded within Web pages are addresses to other Web pages either stored locally or in a Web server anywhere in the world. Links can be text only, in which case they are underlined, or they can be represented as an icon of any size or shape.
Internet: The Internet is made up of well over 100,000 interconnected networks in more than 100 countries covering commercial, academic and government endeavors. Originally developed for the U.S. military, the Internet became widely used for academic and commercial research. Users had access to unpublished data and journals on a huge variety of subjects. Today, the Internet has become commercialized into a worldwide information highway, providing information on every subject known to humankind.

Local Area Network (LAN): (Local Area Network) A communications network that serves users within a confined geographical area. It is made up of servers, workstations, a network operating system and a communications link.

mp3: (Moving Pictures Experts Group [MPEG] Audio Layer 3) An audio compression technology that is part of the MPEG-1 and MPEG-2 specifications. It compresses CD-quality sound by a factor of 12, while providing almost the same high fidelity. Greater compression ratios are also obtainable that provide reasonable sound quality. MP3 music files are played via software or a handheld device.

Server: A computer in a network shared by multiple users. The term may refer to both the hardware and software or just the software that performs the service. For example, Web server may refer to the Web server software in a computer that also runs other applications, or, it may refer to a computer system dedicated only to the Web server application. There would be several dedicated Web servers in a large Web site.

Webmaster: A person or persons who maintain a web page.


Wide Area Network (WAN): (Wide Area Network) A communications network that covers a wide geographic area, such as state or country. A LAN (local area network) is contained within a building or complex, and a MAN (metropolitan area network) generally covers a city or suburb. Following is a bandwidth comparison between major LAN and WAN technologies.

World Wide Web: An Internet facility that links documents locally and remotely. The Web document is called a Web page, and links in the page let users jump from page to page (hypertext) whether the pages are stored on the same server or on servers around the world. The pages are accessed and read via a Web browser such as Netscape Navigator or Internet Explorer.

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