

A near-invisible niche for the vast majority of its existence, computer culture has only recently stepped into the big leagues and has yet to even learn the rules. Sprung from a world of digital absolutes, nerd brains are woefully unprepared for the fuzzy gray shadings inherent in the legal system. But if they can't play the game, they might as well just forfeit to save themselves the beatings.

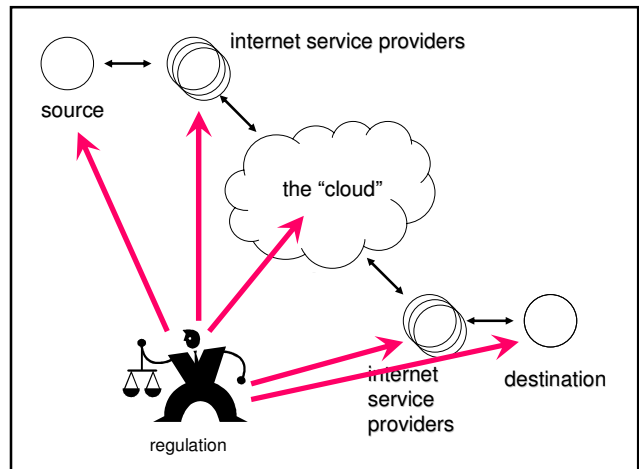
-- Greg Knauss (*Suck Magazine*, Sep. 8, 2000)

## 6.805: Ethics and Law on the Electronic Frontier

Fall 05  
Thu: 2-5  
CIM

## Regulating speech

How the **legal** architecture of the Net changes attitudes and assumptions, creates new tensions, and unintended consequences



## *The First Amendment*

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.

5

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Under penalty of sanctions, members of the university community may not stigmatize or victimize individuals or groups on the basis of race, ethnicity, religion, sex, sexual orientation, creed, national origin, ancestry, age, marital status, or handicap.

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## *Doe v. University of Michigan*

While the Court is sympathetic to the University's obligation to ensure equal educational opportunities for all of its students, such efforts must not be at the expense of free speech.

-- US District Judge Avern Cohn, Sept. 22, 1989

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## Miller Test

- Whether the work depicts/describes, in a patently offensive way, sexual conduct specifically defined by applicable state law,
- and
- Whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest,
- and
- Whether the work, taken as a whole, lacks serious scientific, literary, artistic, or political value.

US Supreme Court, *Miller v. California* (1973)

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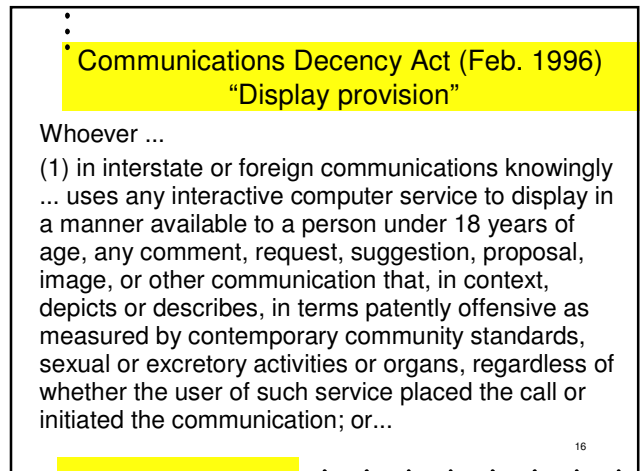
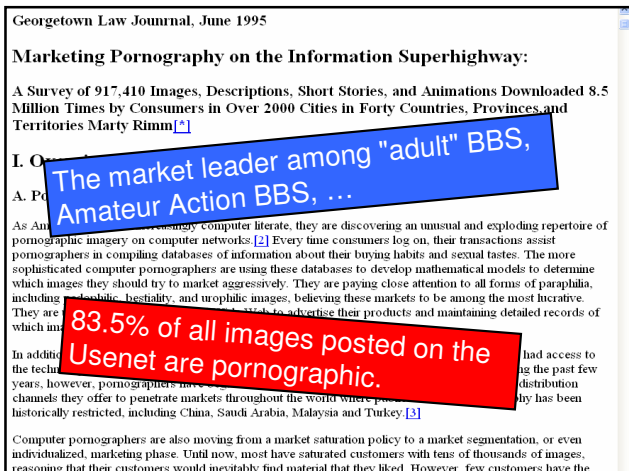
10

*The nastiest  
place on earth*

The screenshot shows a Yahoo! Auctions page for an item titled "Adolf Hitler 54th Birthday Mint NH Nazi Stamps". The page includes a navigation bar with "Shopping", "Warehouse", "Auctions", and "Classifieds". The main content area is divided into "Seller Info", "Auction Info", and "Place a Bid or Buy It".

Seller Info	Auction Info
<b>Seller (seag)</b> <a href="#">newest (339)</a>	Current Bid: \$3.50
<b>Payment Types Accepted:</b> <ul style="list-style-type: none"><li>• Accepts <a href="#">Yahoo! PayCenter</a></li><li>• Accepts Personal Checks</li><li>• Accepts Certified Checks and Money Orders</li></ul>	Buy Price: \$3.50
<b>Shipping Info:</b> <ul style="list-style-type: none"><li>• Buyer Pays Shipping</li><li>• Seller Ships on Payment</li></ul>	Time Left: 6 days 7 hrs <a href="#">(Cashiers Ticker)</a>
<b>Buyer Protection Info:</b> <ul style="list-style-type: none"><li>• Premium Protection Coverage</li><li><a href="#">Yahoo! Store Business Member</a></li></ul>	High Bidder: <b>name</b>
<b>Seller's Current Auctions</b>	Available Qty: 1
<b>Seller's Closed Auctions</b>	# of Bids: 0 <a href="#">(Bid History)</a>
<b>Comments About Seller</b>	Started at: \$3.50
<a href="#">Ask Seller a Question</a>	End Increment: \$0.25
<input type="checkbox"/> Not Online <a href="#">View Sign Up</a>	Location: <a href="#">Woodland Hills, CA</a>
	Opened: Nov 16 13:45 PST
	Closed: Nov 22 23:45 PST
	ID #: 56882077
	News:
	• Auctions does not get automatically extended
	• Bids will ship internationally
	• There is a buy price on this auction of \$3.50.

At the bottom of the page, there are two small images of the stamps being auctioned, each featuring a portrait of Adolf Hitler.



Communications Decency Act (Feb. 1996)  
"Display provision"

Whoever ...

(1) in interstate or foreign communications knowingly ... uses any interactive computer service to display in a manner available to a person under 18 years of age, any comment, request, suggestion, proposal, image, or other communication that, in context, depicts or describes, in terms 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; or...

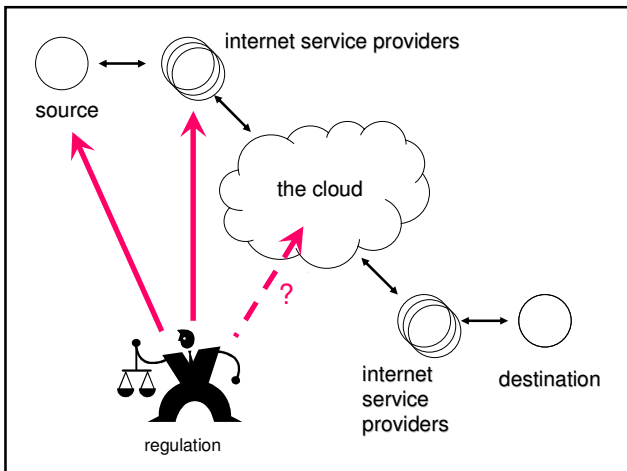
17

Communications Decency Act (Feb. 1996)  
"Display provision"

(2) knowingly permits any telecommunications facility under such person's control to be used for an activity prohibited by paragraph (1) ...

shall be fined under title 18, United States Code, or imprisoned not more than two years, or both.

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Communications Decency Act (Feb. 1996)

- Policy: It is the policy of the United States to ... remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material...

20

## Communications Decency Act (Feb. 1996)

- Protection for 'Good Samaritan' Blocking and Screening of Offensive Material:

No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

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## Defamation

Statement that is

1. False
2. Communicated to a 3<sup>rd</sup> party
3. Causes damage

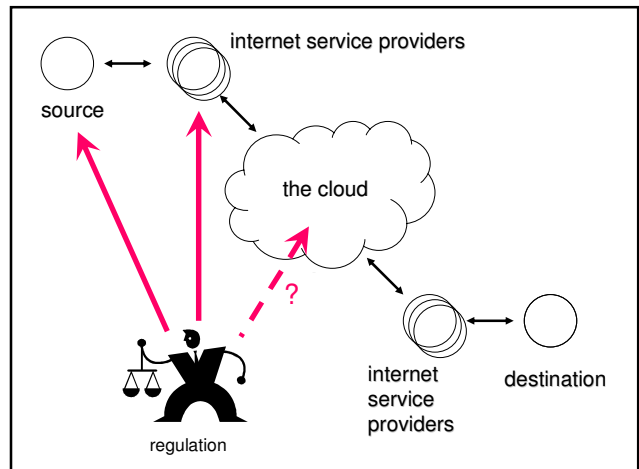
- Slander = oral
- Libel = written

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## Cubby v. CompuServe (1991)

"...CompuServe, as a news distributor, may not be held liable if it neither knew nor had reason to know of the allegedly defamatory Rumorville statements ..."

23



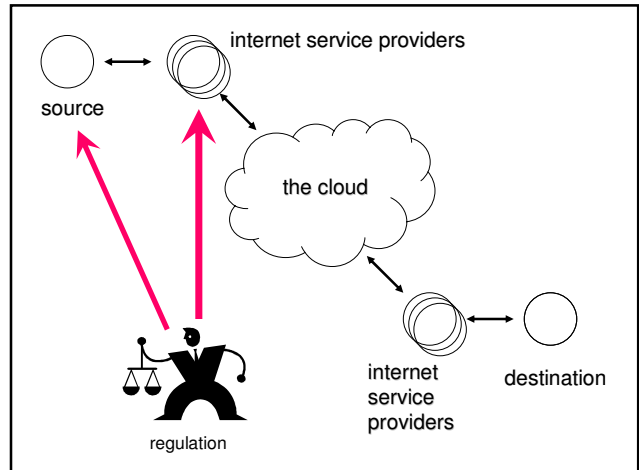
### Stratton-Oakmont v. Prodigy (1995)

PRODIGY has uniquely arrogated to itself the role of determining what is proper for its members to post and read on its bulletin boards.

Based on the forgoing, this Court is compelled to conclude that for the purposes of plaintiffs' claims in this action, PRODIGY is a publisher rather than a distributor.

- New York State Supreme Court

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### Reno v ACLU (1997)

In order to deny minors access to potentially harmful speech, the **CDA** effectively **suppresses** a large amount of **speech that adults have a constitutional right to receive and to address to one another.**

Moreover, the "**community standards**" **criterion as applied to the Internet** means that any communication available to a nation wide audience will be judged by the standards of the community most likely to be offended by the message.

- US Supreme Court

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### ACLU v Reno (1996)

... the Internet may fairly be regarded as a never-ending worldwide conversation. The Government may not, through the CDA, interrupt that conversation. As the most participatory form of mass speech yet developed, the Internet deserves the highest protection from governmental intrusion.

-- US District Judge Stewart Dalzell

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Call Ken

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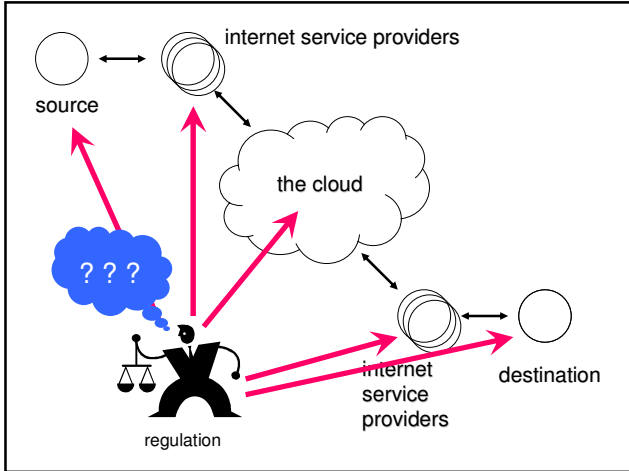
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### Zeran v. AOL (1997)

... [the Good Samaritan provision] precludes courts from entertaining claims that would place a computer service provider in a publisher's role. Thus, **lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions** -- such as deciding whether to publish, withdraw, postpone or alter content -- **are barred**.

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