

# COMMENTS

## ANY WHICH WAY BUT LOOSE: NATIONS REGULATE THE INTERNET

*Governments of the Industrial World, you weary giants of flesh and steel, I come from Cyberspace, the new home of the Mind. On behalf of the future, I ask you of the past to leave us alone. You are not welcome among us. You have no sovereignty where we gather.*

*We have no elected government, nor are we likely to have one, so I address you with no greater authority than that which liberty itself always speaks. I declare the global social space we are building to be naturally independent of the tyrannies you seek to impose on us. You have no moral right to rule us nor do you possess any methods of enforcement we have true reason to fear.<sup>1</sup>*

*- John Perry Barlow, Declaration of the Independence of Cyberspace*

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1. JOHN PERRY BARLOW, *Declaration of the Independence of Cyberspace*, visited Apr. 15, 1996, <<http://www.eff.org>>. Mr. Barlow co-founded the Electronic Frontier Foundation in 1990 to promote civil liberties in cyberspace.

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With the advent of improved telecommunications and increased access to the Internet, interest in the “information superhighway” has reached new heights.<sup>2</sup> For example, in recent months many new alliances among software companies, on-line service providers, and telephone companies have been negotiated or formed.<sup>3</sup> In addition, the industry has grown at an explosive rate in the past year.<sup>4</sup> Concomitant with this interest, new legal questions have begun to surface. The purpose of this Comment is to examine the legal implications of borderless technology, as well as to provide an analysis of how various countries have attempted thus far to control the exchange of information over the Internet.

## I. INTRODUCTION

In 1969 the United States Department of Defense (DoD) designed an experimental computer network, the ARPAnet.<sup>5</sup> The DoD wanted to be able to maintain links between computers so that in the event of a catastrophe, military and scientific information could be exchanged with relative ease.<sup>6</sup> Gradually, universities throughout the United States were linked to this web of computers, mostly in the math and sciences departments.<sup>7</sup> A few years later, commercial on-line services, although not a part of the Internet *per se*, began to provide “gateways” and software so that nonacademics could access the Internet.<sup>8</sup> Today, the Internet has

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2. Jared Sandberg, *America On-line Stars in Soap-Opera-Like Internet Action*, WALL ST. J., Mar. 18, 1996, at B4; see Thomas E. Weber, *Tiny IDT, An IPO, Bucks Trend Against Internet Porn*, WALL ST. J., Mar. 22, 1996, at B4 (discussing IDT's sixfold growth in subscribers and doubling of annual revenue, largely due to niche-marketing).

3. Sandberg, *supra* note 2, at B4.

4. Weber, *supra* note 2, at B4.

5. ED KROL, *THE LAWYER'S GUIDE TO THE INTERNET* 11-18 (1995).

6. *Id.*

7. *Id.*

8. See *id.*; see also G. BURGESS ALLISON, *THE LAWYER'S GUIDE TO THE INTERNET* 29-35, 46-47, 102-03 (1995).

become a vast web of telecommunication links—a worldwide web<sup>9</sup>—connecting computers all over the world. The analogy to a highway, although tempting, is not accurate because the Internet is neither linear nor cohesive.<sup>10</sup> Moreover, the Internet is neither tangible nor concrete, except as it appears on a computer screen or hard drive.

## II. SPEECH AND THE INTERNET

Freedom of speech is assumed by Internet users.<sup>11</sup> Such “speech” or expression, however, is arguably not the same as traditional speech or even the same as printed material. For example, conversation is a highly personal entity which is not equivalent to words on a page or computer screen. Body language, gesticulation, intonation, inflection, patterns, rhythm, and melody<sup>12</sup> are all lost in the transition from the tongue and mouth to the keyboard. In order to remedy this problem and prevent misunderstandings, Internet users have created a new form of communication for use in e-mail<sup>13</sup> and chat groups.<sup>14</sup> Initially meant to indicate sarcasm or joking, the now-ubiquitous sideways “smiley” face has spawned a host of similar characters representing virtually all emotions.<sup>15</sup>

Additionally, the written word may be more often misunderstood on the Internet because of an author’s unfamiliarity with the recipient and the immediacy of communications such as e-mail. What one person considers to have a plain meaning may connote something entirely

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9. As opposed to the “World Wide Web,” a hypertext-based system for finding and accessing Internet resources. KROL, *supra* note 5, at 363.

10. The information superhighway “is the mother of all bad metaphors . . . . [T]his thing is nothing whatsoever like a highway; it’s an organism. It’s not like an organism; it is an organism, or an ecosystem.” John Perry Barlow, Papers and Comments of A Symposium on Fundamental Rights on the Information Superhighway, Keynote Address at the New York University School of Law, in 1994 ANN. SURV. AM. L. 355, 360 (1994).

11. Cf. THE ELECTRONIC FRONTIER FOUNDATION, *The First Amendment as Local Ordinance*, visited Apr. 15, 1996, <[http://www.eff.org/papers/eegtti/eeg\\_86.html#SEC87](http://www.eff.org/papers/eegtti/eeg_86.html#SEC87)>.

12. See DIANE ACKERMAN, *A NATURAL HISTORY OF THE SENSES* 182-86 (1990).

13. Electronic mail (e-mail), is an asynchronous and often informal method for sending messages from one person to another. See KROL, *supra* note 5, at 91-126.

14. A “chat room” is an area where many people can “talk” at the same time. “Talking” is exchanging e-mail messages simultaneously and instantaneously. KROL, *supra* note 5, at 256-58.

15. To see the “smiley” face [ :-) ] tilt your head to the left. An entire catalog of smileys ranging from the basic wink [ ;-) ] and frown [ :-( ] to those wearing turbans [ @:-) ] or propeller beanies and sticking out his tongue [ K:P ] are available on the Internet at many sites. See, e.g., DAVID W. SAUNDERS, *Widely used Smileys*, visited Apr. 15, 1996, <[http://www.eff.org/papers/eegtti/eeg\\_52.html#SEC53](http://www.eff.org/papers/eegtti/eeg_52.html#SEC53)>.

different to another user.<sup>16</sup> Hence, even with smiley faces and similar symbols, communication problems may still exist.

A. *Self-Regulation*

Self-regulation of the Internet is also common: in a “chat group” or by e-mail, breach of the common rules of Cyber-etiquette, or “Netiquette,”<sup>17</sup> may result in a flurry of reproaches in the form of “flaming.”<sup>18</sup> Persons in countries which heavily regulate or monitor the Internet may also voluntarily restrict their communications to avoid criminal sanctions.<sup>19</sup>

B. *Problems with “Free Speech” on the Internet*

Whatever form the communication over the Internet assumes, the legal problems with free expression still exist. For example, what form of speech is analogous to an Internet chat room, and what level of protection should it be given? Is that a private meeting of individuals or a public, town-hall type of meeting? If two Internet users at the chat group leave to continue a conversation on their own, is that interchange the electronic equivalent to a face-to-face meeting in a public place, speaking on the phone, or the exchange of private letters? What if the users are in two different countries and those countries have vastly different laws regulating speech? Although it is not exactly clear who has jurisdiction over cyberspace, a handful of countries have already begun regulating speech on the Internet.

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16. For example, many people have had the experience of others interpreting their written words in a manner other than what they intended. See STANLEY FISH, *The Law Wishes to Have A Formal Existence*, in THERE'S NO SUCH THING AS FREE SPEECH 114, 114-56 (1994) (discussing plain meaning of language, parole evidence rule, and Uniform Commercial Code § 2-202).

17. Breaking the rules of etiquette can range from asking naive questions about how the Internet works to “spamming,” which is the equivalent of electronic junk mail. Spamming is the practice of sending the same message to a very large number of people. Such messages are usually advertisements, get-rich-quick scams, or political in content. Recipients of such messages often retaliate by sending a rude message back. The flood of thousands of messages back to one mailbox can cause that site to shut down. ALLISON, *supra* note 8, at 338.

18. “Flaming” is a virulent and often personal attack against the author of a posted message. *Id.* at 333. Emphasis is provided by “yelling,” i.e., sending a message IN ALL CAPITAL LETTERS. *Id.*

19. See *infra* Section D (discussing Internet regulation in China and Singapore).

If a crime took place everywhere and nowhere, what authority would prosecute it?<sup>20</sup> Although this sounds like a perplexing Zen riddle, the issue embedded in the conundrum is real. The current trend of technologically advanced nations is to prosecute, or threaten to prosecute, those who offend the laws or norms of their society, even if the alleged offender has no idea that he has committed a crime.<sup>21</sup> Meanwhile, many nations are taking more prophylactic measures to ensure that the offending materials never reach the computer screens of their populace in the first place.

### III. REGULATION OF THE INTERNET

#### A. *The United States*

The United States has traditionally protected the freedoms of speech and expression.<sup>22</sup> These freedoms are guided by the metaphoric marketplace of ideas, where truth emerges from expression free from government suppression.<sup>23</sup> This marketplace tolerates ideas that may be loathsome or repellent to the listener.<sup>24</sup> In the United States, the level of protection afforded depends upon the type of speech involved. Private speech is given utmost protection, whereas the level of protection given to public or commercial speech will vary.<sup>25</sup>

The United States, as the initial host of the Internet, is at the forefront in reckoning with legal and policy issues at stake in Internet regulation. Although it is true that no one person “owns” the Internet, the web is partially supported by federal funds, and its growth and

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20. Barlow, *supra* note 10, at 356.

21. This is also true for those nations not actively promoting the Internet. Apparently an Islamic cleric has requested the U.S. State Department to extradite pop singers Madonna and Michael Jackson to Pakistan because their music, which is played there, violates Islamic law. Madelaine Drohan, *Nations See Internet As Threat To Security*, DALLAS MORNING NEWS, Feb. 11, 1996, at 20A, available in Westlaw, ALLNEWS Database.

22. U.S. CONST. Amend. I (1789).

23. *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting).

24. *Id.* (“the expression of opinions that we loathe and believe to be fraught with death”).

25. For thorough discussions of the First Amendment and the Internet, see William Bennett Turner, *What Part of “No Law” Don’t You Understand?*, WIRED, Mar. 1996, at 104; Robert F. Goldman, Note, *Put Another Log On The Fire, There’s A Chill On the Internet: The Effect of Applying Current Anti-Obscenity Laws To Online Communications*, 29 GA. L. REV. 1075 (1995); Note, *The Message in the Medium: The First Amendment on the Information Superhighway*, 107 HARV. L. REV. 1062 (1994).

development are promulgated by the federal government.<sup>26</sup> Hence, the argument made by many Internet users, or “netizens,” that the authorities “can’t rule us” is severely weakened.<sup>27</sup>

Regardless of one’s opinion as to Internet regulation, the U.S. Telecommunications Act of 1996 (Telecom Act) will likely serve as a model for other countries.<sup>28</sup> The Telecom Act amends the Telecommunications Act of 1934,<sup>29</sup> adding Internet restrictions and overhauling legislation in the areas of local and long-distance telephone service, broadcast and cable television, and cross-ownership concerns.

The Communications Decency Act of 1996, as the Internet-related section of the Telecom Act is known, holds on-line service providers liable for transmitting “indecent” material without restricting access to minors.<sup>30</sup> Offenders potentially face up to two years in prison and a \$100,000 fine.<sup>31</sup> Although protecting minors from pornography is laudable, the Act fails to pass muster under constitutional analysis.

In the United States, “indecent” is a form of protected speech as it is one step higher than obscenity, which has no constitutional protection.<sup>32</sup> In addition, there is no clear definition of “indecent” in U.S. jurisprudence.<sup>33</sup> Moreover, the U.S. obscenity standard is a local one;<sup>34</sup>

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26. KROL, *supra* note 5, at 15; *see also* Testimony of Dr. Melvyn Ciment, Federal Document Clearing House Congressional Testimony, May 10, 1994, *available in* LEXIS, LEGIS Library, CNGTST File. In 1994, the acting assistant director of the National Science Foundation asked for \$329 million to fund its high performance computer and communications program, a large amount of which is marked for Internet use. *Id.*

27. *Cf.* Turner, *supra* note 25.

28. *See Report on the Regulation of Computer Online Service* (Nov. 1995) (Australia), visited Apr. 15, 1996, <<http://senate.aph.gov.au>> (noting that “the contents of online services sourced from overseas cannot be vetted in any practical sense” and recommending “an industry-based body to adjudicate on claims of breach of content standards”); *see also* Peter Morton Washington, *Canada’s Telecom Future Seen In New U.S. Legislation*, FIN. POST, Feb. 3, 1996, at 5.

29. Communications Act of 1934, 47 U.S.C. § 201 et seq.

30. 47 U.S.C. §223(a) - (h); *Likely Mergers Herald An Era of Megacarriers*, WALL ST. J., Feb. 2, 1996, at B1.

31. *Likely Mergers Herald An Era of Megacarriers*, *supra* note 30, at B1. The bill was signed by President Clinton on Feb. 8, 1996. Evan Ramstad, *Telecom Law Rings In Changes*, NEW ORLEANS TIMES-PICAYUNE, Feb. 9, 1996, at C1, *available in* LEXIS, NEWS Library, NOTPIC File. A number of lawsuits challenging the Bill have already been filed. *See* STEVE SILBERMAN, *Defending The First Amendment in The Global Public Square*, visited Apr. 17, 1996, <<http://www.hotwired.com/special/lawsuit/>>; AMERICAN CIVIL LIBERTIES UNION, *Complaint*, visited Apr. 17, 1996, <<http://www.aclu.org/court/cdacom.html>>. The ACLU complaint was filed Feb. 8, 1996, the same day the Bill was signed. AMERICAN CIVIL LIBERTIES UNION, *supra*.

32. *See* *Miller v. California*, 413 U.S. 15 (1973).

33. *Alliance for Community Media v. F.C.C.*, 56 F.3d 105, 130 n.2 (D.C. Cir. 1995).

however, since the Internet is global, a local community standard is impossible. For example, a picture considered risqué but artistic uploaded in Los Angeles is legal because the picture may be merely “indecent,” and hence receive Constitutional protection. However, the Internet file could be downloaded,<sup>35</sup> unbeknownst to the sender, in another area of the United States, where the picture is considered obscene by local standards. Since the Communications Decency Act does not specify which locality’s standard applies, that part of the statute may be found void for vagueness.<sup>36</sup>

Furthermore, assuming *arguendo* that the statute defined “indecent” or specified which community standard applied,<sup>37</sup> the Communications Decency Act remains problematic because Internet users may download files or send e-mail anonymously.<sup>38</sup> Once the material is actually downloaded, it then takes a tangible form, either in hard drive, diskette, or printout. At this point, previously-existing laws regulating speech would apply, thereby trumping the Communications Decency Act. Holding the uploaders liable, as the Act does, is inequitable

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34. The second prong of the test for obscenity is whether the work is “patently offensive” according to local community standards. *Miller*, 413 U.S. at 25.

35. “Uploading files” is the process of copying the file from the user’s hard drive onto the Internet. “Downloading” is the opposite—copying a file from the Internet and saving it onto the user’s hard drive. *Cf.* ALLISON, *supra* note 8, at 113-28 (explaining how to access the Internet). The uploading/downloading distinction is important because the community standards at the two locations could differ significantly.

36. *See* United States v. Thomas, 74 F.3d 701 (6th Cir. 1996). Before the passing of the Communications Decency Act, Robert and Carleen Thomas operated a pornographic Bulletin Board Service (BBS) from their home in California. A Memphis, Tennessee postal inspector, working undercover, downloaded images from the Thomases’ service. The Thomases were tried and convicted of interstate distribution of obscene materials. The Tennessee jury applied the local community standard of obscenity. *Id.* at 710-11. *See also* Goldman, *supra* note 18, at 1105-06.

Note, however, that a BBS is not part of the Internet, although it is similar. A user dials into a BBS, usually a single computer, and then exchanges information available at that BBS. Some BBS networks charge a fee and some also provide a link to the Internet. ALLISON, *supra* note 8, at 47-48.

37. That is, whether the local community standard of the place of uploading or of downloading applies. Some critics suggest that the standard applied should “control, if need be, what people take off the Internet, not what they put on it.” *Sex On The Internet*, ECONOMIST, Jan. 6, 1996, at 18.

38. For an explanation of “anonymous ftp” (file transfer protocol) servers, see KROL, *supra* note 5, at 74-76 (1992). For discussions on anonymous e-mail, see Steven Levy, *How To Launder Your E-mail*, WIRED, June 1994, at 50-51; Joshua Quittner, *An Interview With Johan Helsingius*, WIRED, June 1994, at 50, 52-53 (both cited in Anne Branscomb, *Anonymity, Autonomy, and Accountability: Challenges to the First Amendment in Cyberspaces*, 104 YALE L.J. 1639, 1641-47 & 1643 n.12 (1995)). Furthermore, Johan Helsingius re-routes e-mail from his server in Finland so that the recipient does not, and cannot, know the identity of the original sender. Quittner, *supra*, at 52-53.

because once a file is uploaded onto the Internet, it is then accessible worldwide. Persons with a working knowledge of the Internet understand how it is unreasonable to expect a user to keep track of who has accessed his files.<sup>39</sup>

At the time of writing, several groups in the United States have attempted to block or to amend the Communications Decency Act. For example, a group of plaintiffs, including the American Civil Liberties Union, filed suit in a Pennsylvania district court against U.S. Attorney General Janet Reno soon after the Act was signed, claiming irreparable harm from infringement of their First Amendment Rights.<sup>40</sup> The court granted a temporary restraining order against the enforcement of sections of the statute "insofar as they extend to indecent but not obscene material."<sup>41</sup>

In addition, Congress has introduced two new bills that seek to regulate Internet usage. The On-line Parental Control Act of 1996 seeks to amend the Communications Decency Act by replacing "indecent" language with the term "harmful to minors," as well as by providing additional defenses to on-line service providers who actively block access by minors to indecent material.<sup>42</sup> The second bill proposes repealing all of the Internet-related language from the recent telecommunications legislation.<sup>43</sup>

### B. *Central and Eastern Europe*

During the days of the Cold War, emerging telecommunications technology, such as e-mail and facsimile, was vital artillery in the fight for democracy.<sup>44</sup> Currently, in Eastern and Central Europe, private

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39. See, e.g., *infra* note 101 and accompanying text (noting 8,000 downloads per hour of one file).

40. American Civil Liberties Union v. Reno, No. Civ.A. 96-963, 1996 WL 65464, \*1 (E.D. Pa. Feb. 15, 1996).

41. *Id.* at \*4. The section restrained was 47 U.S.C. §223(a)(1)(B)(ii). *Id.*

42. H.R. 3089, 104th Cong., 2d Sess. (1996). For an official summary of a draft of the bill, see Eff "Censorship & Free Expression" Archive, visited Apr. 17, 1996, <<http://www.eff.org/pub/Censorship>>.

43. S. 1567, 104th Cong., 2d Sess. (1996).

44. As one e-mailer in the former Soviet Union remarked, "Please stop flooding the only narrow channel we have with bogus messages and with silly questions . . . [T]his network is neither a toy nor a means to reach your relatives and friends. We need the band width to help organize the resistance." John C. Ausland, *Tales of Electronic Resistance*, INT'L HERALD TRIB., Sept. 25, 1991, available in LEXIS, WORLD Library, IHT File.



enterprise drives the growth of the Internet.<sup>45</sup> In countries such as Poland and the Czech Republic, government officials applaud the growing connection between telecommunication links, but have left most of the actual infrastructure development and policy-making to private operators.<sup>46</sup> Their goal is simply “to make Internet access cheap and available for everyone.”<sup>47</sup>

In less stable nations such as Belarus and Croatia, the Internet is seen as a tool of subversive groups and Western propagandists who undermine the “moral fiber” of the people.<sup>48</sup> Last year, Russian President Boris Yeltsin outlawed strong computer encryption,<sup>49</sup> thus frustrating any attempts at securing privacy over the Internet and e-mail.<sup>50</sup> The ban attracted relatively little media attention, most likely because encryption<sup>51</sup> is not widely understood by the general public.

Encryption is widely used in computer operating systems (for example, for identifying users and their right to access data), in data-compression programs, to protect information in data bases, to preserve confidentiality in e-mail and for other uses.<sup>52</sup> For example, single-key cryptography, where a user must type in a password or other signal (e.g., a Personal Identification Number or PIN) before accessing information, is commonly used in bank-teller machines (ATMs).<sup>53</sup> Both parties, the account-holder and the bank, know the PIN code and the PIN key allows access to the bank account. However, single-key cryptography is

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45. David Rocks, *Eastern Europe Discovers the Wonders of the Internet But Poor-Quality Lines, Traffic Crunches Block Way to Superhighway*, CHIC. TRIB., Sept. 24, 1995, at 6.

46. *Id.*

47. *Id.*

48. Ross Crockford, *Computer Links Could be the New Keys to Freedom*, PRAGUE POST, June 22, 1994, available in LEXIS, WORLD Library, PRAPST File.

49. Shannon Henry, *Laws, Damn Laws!*, WASH. TECH., Nov. 23, 1995, available in Westlaw, ALLNEWS Database.

50. See Grigory Tseitin, *In Place of An Iron Curtain, An Electronic One*, IZVESTIA, Apr. 20, 1995, reprinted in XLVII CURRENT DIGEST OF THE POST-SOVIET PRESS, No. 16, at 18 (May 17, 1995) (discussing Russian Presidential Decree No. 334 of Apr. 3, 1995, “On Measures to Ensure the Observance of Legality With Regard to the Development, Production, Sale and Use of Encryption Systems and the Provision of Services in the Sphere of Information Encryption”).

51. For a thorough description of cryptography and law, see Charles Merrill, *Cryptography for Attorneys—Beyond Clipper*, BUSINESS AND LEGAL ASPECTS OF THE INTERNET AND ONLINE SERVICES (Ellen M. Kirsh et al. eds., 1994).

52. TSEITIN, *supra* note 50.

53. CHARLES MERRILL, *A Cryptography Primer* (draft of Oct. 3, 1995), visited Apr. 15, 1996, <<http://www.courttv.com/seminars/handbook/crypto.html>>. A final copy of this article is included in THE INTERNET AND BUSINESS: A LAWYER’S GUIDE TO THE EMERGING LEGAL ISSUES (Joseph F. Ruh ed., 1996).

inadequate to protect Internet users for two reasons: trust and access. The sender and the recipient must trust each other not to share the key with anyone else because if one party posts the other's key code in a chat room, then that person's privacy is effectively destroyed and anyone can access his e-mail account, computer, or network. This degree of trust is a lot to ask of someone you have just met. The second aspect is access. In order to share the key, users must "go off-line" or use another method of communication, such as writing or telephone, to convey the key to another use.<sup>54</sup>

Whereas the simple single-key cryptography is insufficient to protect Internet users, a "public-key system," where two keys are mathematically linked together (one to encrypt and one to decrypt each message) presents a possible solution.<sup>55</sup> However, this solution is precisely what the Russian government has outlawed in its Edict of the President of the Russian Federation of April, 1995 (Russian Decree).<sup>56</sup> Article 4 of the Russian Decree prohibits any activity associated with the development, production, sale, or operation of encryption (single-key and public-key) systems without a license from the communications agency of the Russian government.<sup>57</sup> Presumably, the goal of this section is to make all information accessible to that agency, since only the encryption systems the government could break without difficulty would be licensed.<sup>58</sup> Because the information could not be encoded and hence made private, any so-called subversive or disagreeable information would be noticed or censored. In other words, by outlawing cryptography, the Russian government in effect reserves the right to read all e-mail.

Article 5 of the Russian Decree orders the Russian Customs Service to prevent the importation of unlicensed encryption systems into Russia.<sup>59</sup> Encryption software is generally transported via diskette or

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54. *Id.*

55. *Id.* Commentator Charles Merrill notes that even the "easiest" cryptography is still far too difficult for the average hacker to crack. One expert conservatively "estimates that \$1 million of specialized hardware in the year 1995 can crack a 40-bit key in .2 seconds or crack a 64-bit key in 38 days. In the year 2000, however, the time to crack the 40-bit key will reduce to .02 seconds, and the 64-bit key to 4 days." *Id.* Even without Yeltsin's ban, the future does not look bright for privacy on the net.

56. Edict of the President of the Russian Federation No. 334 (Apr. 3, 1995), *visited* Apr. 15, 1996, <<http://www.eff.org/pub>> [hereinafter Edict].

57. *Id.*

58. TSEITIN, *supra* note 50.

59. Edict, *supra* note 56.

over telecommunication lines such as the Internet.<sup>60</sup> In order to fully carry out the Russian ban, it would be necessary, in effect, to cut off communications over the Internet with anyone outside the country, a step which some critics suggest would effectively isolate Russian technology and impede its growth.<sup>61</sup> Moreover, since the only way to inspect a diskette is to open its files on a computer,

the inspection of information on magnetic media is tantamount to its confiscation: in the first place, all the data could be copied and thereafter used freely by the parties conducting the inspection, and in the second place, the original returned to the owner could be damaged, or distortions could be introduced into the data, and the owner would be unable to detect such alterations at the time of the inspection.<sup>62</sup>

Finally, under Article 6,<sup>63</sup> violations of the cryptography ban are to be made public.<sup>64</sup> In short, for the encryption ban to be fully effective, constant and universal monitoring of hard drives and phone lines would perhaps become the norm.<sup>65</sup>

### C. *Western Europe*

#### 1. The European Union

The European Union (EU) thus far has espoused a hands-off policy with regard to speech on the Internet.<sup>66</sup> However, the European Parliament recently passed legislation amending the EU's broadcasting

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60. TSETIN, *supra* note 50.

61. *Id.*

62. *Id.*

63. Edict, *supra* note 56, art. 6.

64. TSETIN, *supra* note 50.

65. *Id.*

66. However, the Council of Europe of the European Union has made several recommendations concerning computers and the Internet. For example, in September 1995, the Council recommended that the Member States extend criminal searches to "computer systems within their jurisdiction which are connected by means of a network" under traditional police search and seizure powers. Recommendation No. R(95) 13: Concerning Problems of A Criminal Procedure Law Connected With Information Technology, *reprinted in* 8 EFFECTOR ONLINE No. 16, *visited* Apr. 15, 1996, <<http://www.eff.org/pub/EFF/Newsletter>>. Other Recommendations concerning computer crime, personal documents on computers, and the reproduction of documents on computers have also been issued. *Id.*

policy.<sup>67</sup> This new legislation, if enacted, would widen the definition of “broadcasting” so as to possibly include many on-line services, such as those that provide animated video images.<sup>68</sup> The proposed legislation would restrict the amount of advertising and would regulate the content of television programming.<sup>69</sup>

In 1995, the European Commission of the EU was formally asked if it had participated in discussions with the governments of Canada and the United States with regard to the “posting on the Internet of messages which it considers to be in conflict with public morals.”<sup>70</sup> The Commission’s reply was firmly negative, noting that decisions regarding public morals are the province of each Member State.<sup>71</sup> The Commission further noted that barring an international treaty, control of the Internet via censorship would also “not be feasible” because of its global nature.<sup>72</sup>

However, the EU shifted its position slightly in 1996 when an EU Consultative Commission of Racism and Xenophobia (Consultative Commission) urged Member States to “take all needed measures to prevent [the] Internet from becoming a vehicle for the incitement of racist hatred.”<sup>73</sup> The Consultative Commission noted that it did not want to interfere with free speech, but that Commission members had discussed “racism in cyberspace” and harkened to earlier EU directives in which the European Union had urged Member States “to shun television programmes which incited hatred on grounds of race, sex, religion or nationality.”<sup>74</sup>

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67. Directive 95/024, amending Directive 89/552/EEC. The Directive is not yet enacted. Shailagh Murray & Richard L. Hudson, *Europe Seeks to Regulate the Internet*, WALL ST. J., Mar. 18, 1996, at A7. EU legislation is passed only if there are enough affirmative votes by the Council of Ministers and by the European Commission. Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 3, art. 149 (as amended by Treaty on European Union, Feb. 7, 1992, art. G(60)). See also GEORGE A. BERMAN ET AL., CASES AND MATERIALS ON EUROPEAN COMMUNITY LAW 79-90 (1993).

68. Murray & Hudson, *supra* note 67.

69. *Id.*

70. Nel van Dijk, *Written Question to European Parliament, No. E-1131/95*, reprinted in SPICERS CENTRE FOR EUROPE, Sept. 4, 1995, available in LEXIS, EURCOM Library, SPICER File.

71. *Id.*

72. *Id.*

73. *EU Group Calls for Curb on Racism on Internet*, REUTER NEWS SERVICE - WESTERN EUROPE, Jan. 29, 1996, available in LEXIS, WORLD Library, TXTWE File (quoting statement made by EU Consultative Commission on Racism and Xenophobia).

74. *Id.*

## 2. Germany

The remarks of the EU's Consultative Commission were no doubt a response to the controversies which emerged in Germany and France over banned materials being uploaded or downloaded via the Internet. In December 1995, about one month before the Consultative Commission issued its statement, the American on-line service CompuServe, Inc.<sup>75</sup> banned access to approximately 200 discussion groups for fear of criminal prosecution under German obscenity laws.<sup>76</sup> Since CompuServe did not have in place the technology to close the web sites only in Germany, all sites with "alt.sex" in their title were placed off-limits to CompuServe users worldwide, which amounted to over four million subscribers in 147 countries.<sup>77</sup> Presumably, each one of those countries has different obscenity laws and standards, as well as differing levels of "freedom of speech." Although Manfred Wick, Munich's senior public prosecutor, denies pressuring CompuServe, the on-line service claims the opposite, stating: "We got some information that there was a real possibility of arrest if we didn't comply."<sup>78</sup> CompuServe's Munich office had also been searched by police on November 22, 1995.<sup>79</sup>

German officials maintain that the decision to block access to the potentially offensive newsgroups was CompuServe's alone,<sup>80</sup> but that should newsgroups with this type of content again be found in Germany,

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75. It is important to remember that CompuServe is not the same as the Internet. CompuServe is a commercial online service vendor; other similar services include Prodigy, America Online (AOL), and Delphi. For a fee, commercial service vendors supply their subscribers with software, services, and content, as well as a gateway link to the bigger, broader Internet. Most service providers limit the amount of access to the Internet, for various reasons. Internet Service Providers (ISPs) give a direct link to the Internet; examples of these are universities and some small commercial carriers. ALLISON, *supra* note 8, at 46-49. However, for the purposes of this comment, it will be assumed that the functions and breadth of the commercial service providers and of the Internet are the same because both kinds of services are multinational.

76. Mitchell Martin, *Germany Forces CompuServe to Censor Sex on the Internet*, INT'L HERALD TRIB., Dec. 29, 1995, available in LEXIS, WORLD Library, IHT File. Cf. Leslie Miller, *CompuServe Offers Parental Controls, Reopens Sites*, USA TODAY, Feb. 14, 1996, at 7D.

77. Martin, *supra* note 76. Only 10% of CompuServe's customers are in Europe. Gerald Segal, *Asians in Cyberia*, WASH. Q., July 1995, at 3.

78. *Censorship Issues On the Internet Continue to Confuse Governments*, NEW MEDIA AGE, Jan. 12, 1996, at 5, available in LEXIS, NEWS Library, MAGS File [hereinafter *Censorship Issues*]. CompuServe analogizes itself to a "bookseller" and therefore could not, under U.S. law, reasonably be expected to monitor the content of all files. See *Smith v. California*, 361 U.S. 147 (1959); *Cubby, Inc. v. CompuServe*, 776 F. Supp. 135 (S.D.N.Y. 1991).

79. *Censorship Issues*, *supra* note 78.

80. *Id.*

CompuServe would be held liable.<sup>81</sup> CompuServe reinstated all but five of the newsgroups in February 1996,<sup>82</sup> but at the same time offered free parental control software called CyberPatrol.<sup>83</sup> Since this incident, other American on-line services, such as America On-line and Prodigy, have also begun to offer similar "net nanny"-type products which allow parents to control what types of web sites their children can access.<sup>84</sup>

Similarly, in late January 1996, Deutsche Telekom cut off access to all computers linked to Web Communications, another on-line server, for fear of prosecution under German anti-Nazi laws.<sup>85</sup> Web Communications rents web space to Ernst Zundel, a German neo-Nazi expatriate living in California, as well as to approximately 1500 other entities including Deutsche Bank Securities.<sup>86</sup> Although Deutsche Telekom admitted that their self-imposed censorship was not wholly effective, they, like CompuServe, were eager to disclaim all legal responsibility for the content of the material carried over their service lines.<sup>87</sup>

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81. Miller, *supra* note 76.

82. Jared Sandberg, *CompuServe Reinstates Most of Groups On Internet It Suspended in Recent Ban*, WALL ST. J., Feb. 14, 1996, at B6. The five groups which were not reinstated all had "pedophilia" in their titles. *Id.*

83. Miller, *supra* note 76; Mark Wallace, *CompuServe Reinstates Banned Newsgroups*, REUTER EUROPEAN COMMUNITY REPORT, Feb. 14, 1996, available in LEXIS, EURCOM Library, REUEC File.

84. *Computer Connection: Eniac Revived* (CNN broadcast, Feb. 17, 1996), available in LEXIS, NEWS Library, CNN File. Cf. Mike Snider, *Coding System to Label Content Almost Done*, USA TODAY, Feb. 14, 1996, at 7D; *Filtering the Net*, USA TODAY, Feb. 14, 1996, at 7D (graphic explaining operation of Internet coding system); *CYBERSitter Filters Pornography for Worldwide Online Internet Service Customers*, BUS. WIRE, Jan. 18, 1996, available in LEXIS, NEWS Library, BWIRE File.

85. Andrew Brown, *EU Racism Demands Internet Neo-Nazi Censorship*, INDEPENDENT (LONDON), Jan. 30, 1996, at 3, available in LEXIS, NEWS Library, INDPT File. The display of Nazi symbols and the expression of pro-Nazi sentiments are illegal under German law. *Id.* For a thorough discussion of the availability of Nazi and white-supremacist views and web pages on the Internet, see Myrna Shinbaum, *The Web of Hate: Extremists Exploit the Internet*, REPORT OF THE ANTI-DEFAMATION LEAGUE, reprinted in U.S. NEWSWIRE, Feb. 28, 1996, available in LEXIS, NEWS Library, USNWR File.

86. Brown, *supra* note 85.

87. *Id.* A similar, though not related, controversy occurred in May 1992, when Apogee Productions released a shareware version of their new video game, "Wolfenstein 3D" on the Internet. In this game, the player was "trapped" in a Nazi dungeon and had to fight, shoot, and stab his or her way to freedom. Swastikas and other symbols of Nazi propaganda permeated the game. On CompuServe, most of the local system operators removed the game from their download areas, fearing illegality. Lance Rose, *The Boy Who Cried Wolfenstein*, BOARDWATCH (Sept. 1992), reprinted in BUSINESS AND LEGAL ASPECTS OF THE INTERNET AND ONLINE SERVICES (Ellen M. Kirsh et al. eds., 1994).

Critics and commentators were quick to disparage the German government's actions in both incidents, noting that it was fairly obvious to anyone with a working knowledge of the Internet to realize that on-line service providers have no real control over what travels through the web.<sup>88</sup> However, cynics noted that commercial service providers such as CompuServe "will be able to come out of this OK. . . . They will be seen as having taken a high moral ground amongst the general population—the great unwired. This is a good marketing position to hold."<sup>89</sup> Civil libertarian groups denounced the governmental action but applauded the service providers' actions, noting that it was the most workable solution at that time.<sup>90</sup> The Bavarian prosecutors, for their part, were baffled by the amount of international media attention,<sup>91</sup> and thereby confirmed any suspicions of their Internet naïveté.

### 3. France

While in 1995 only a small percentage of the French public used or had ever heard of the Internet or the World Wide Web, preferring instead the national consumer on-line service, Minitel,<sup>92</sup> that attitude has changed in the past few months with the privatization of France Telecom and the growth of fiber optic networks.<sup>93</sup> Additionally, the French government has supported the expansion of the Internet by requiring telephone access numbers to be charged at regular local-call rates.<sup>94</sup>

On the other hand, the French government also supports regulation of the Internet. Similar to the United States and Russia, France outlawed encryption technology which allowed e-mail users to send

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88. *Censorship Issues*, *supra* note 78.

89. *Id.*

90. *Id.* For example, gay groups in San Francisco boycotted German beer in response to the CompuServe incident, but lawyers for the Electronic Frontier Foundation admitted that without further education of world governments about the global nature of the Internet, CompuServe's actions were appropriate. *Id.*; *see also* Sandberg, *supra* note 82.

91. *Censorship Issues*, *supra* note 78.

92. *Government Enthusiastic for French New Media Revolution but Old Ways Still Hold Court*, *NEW MEDIA AGE*, Oct. 5, 1995, at 11, *available in* LEXIS, NEWS Library, MAGS File [hereinafter *Government Enthusiastic*].

93. *Id.*

94. Alex Duval Smith, *Minitel Tales: The French Are Keen to Use Their Home-Grown Minitel Service, but are Suspicious of the Internet*, *GUARDIAN*, Feb. 1, 1996, at 4, *available in* LEXIS, NEWS Library, GUARDB File.

messages privately.<sup>95</sup> The French Minister of Information Technology, Francois Fillon, promised to push for international agreements to regulate the Internet at a meeting of EU culture and telecommunications ministers on February 23-25, 1996.<sup>96</sup>

French regulation of the Internet attracted international attention when a banned book was uploaded onto the Internet in January 1996.<sup>97</sup> The book, *Le Grand Secret*, was immediately banned upon its publication because its author, Dr. Claude Gubler, violated French medical and secrecy laws by asserting that his patient, former French President Francois Mitterand, hid his diagnosis of cancer from the French public throughout his presidency.<sup>98</sup> Dr. Gubler also implied that Mitterand should not have run for his second term of office because of this illness.<sup>99</sup> The alleged offender was Pascal Barbaud, an owner of a cybercafe<sup>100</sup> in Besancon in eastern France. Barbaud, infuriated at what he considered to be the French government's repression of free speech, uploaded the book onto his server and the book was soon accessed over 8,000 times per hour.<sup>101</sup> Barbaud was arrested and, although the grounds for Barbaud's arrest are not wholly clear,<sup>102</sup> the fact that he reproduced and assisted in the distribution of copyrighted and banned material gives strength to an infringement claim against him, if not to criminal charges.

The concerns about the Internet in France are, some would say, uniquely French. More than any other European nation, fear of an Anglophile monopoly and harm to the native culture has created a

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95. Henry, *supra* note 49. See also Steven Carlson, *Postcard from the Cutting Edge of the Net*, BUDAPEST BUS. J., Jan. 15, 1996, at 131, available in LEXIS, NEWS Library, BUDABJ File.

96. *French Plan to Stifle Internet Freedom*, NEW MEDIA AGE, Feb. 8, 1996, at 2, available in LEXIS, NEWS Library, MAGS File.

97. Jonathan Green-Armytage, *Governments Tighten the Net*, COMPUTER WKLY., Feb. 8, 1996, at 17, available in LEXIS, NEWS Library, MAGS File.

98. *French Plan to Stifle Internet Freedom*, *supra* note 96.

99. *Id.* Dr. Gubler's book is available on the Internet as of April 15, 1996, at <<http://www.le-web.fr/secret>>.

100. A cybercafe is an actual cafe, open to the public, which provides computer workstations outfitted with software for its customers, as well as the usual food and drink. Ellen Pearlman, *Cybercafes: The Flavor of the Month?*, HOME PC, Oct. 1, 1995, at 17, available in Westlaw, MAGSPPLUS Database.

101. Smith, *supra* note 94.

102. Green-Armytage, *supra* note 97. Barbaud was also arrested. *Id.* However, at the time of his arrest, investigators discovered that Barbaud was already a fugitive from justice for abandoning his wife and family, and that may be why the authorities incarcerated him. *Id.*



skeptical attitude toward the Internet.<sup>103</sup> Concern for the purity of the French language is paramount.<sup>104</sup> The French language is seen as a precious national resource.<sup>105</sup> As Elizabeth Dufourcq, France's Secretary of State for Research, admonished, "We must assure that the beautiful springtime of the World Wide Web is not also the autumn of the French language."<sup>106</sup> In 1995, President Jacques Chirac similarly warned the leaders of other French-speaking nations that if English continues to dominate the information highway, "our future generations will be economically and culturally marginalized."<sup>107</sup> Barbaud agrees, insinuating that the controversy surrounding his arrest was spurred by official dislike of the Anglo-centric Internet: "France was resisting the Internet because it was all in English . . . . [Y]ou have to have a knowledge of English to surf, but it is not as if that poses any kind of threat to French. With any luck, we will now have more French servers."<sup>108</sup> If that happens, French authorities presumably will develop their own Internet terminology. French-Canadians in Quebec have already coined the term "butineurs de toile" to describe Internet surfers or fanatics.<sup>109</sup>

#### D. *The Far East*

Asian countries have developed a deep suspicion of the Internet and its Western influence. Similar to the United States, Singapore and China<sup>110</sup> have publicly embraced and promoted emerging technology, but both governments have pulled in the reigns of Internet access far more tightly than an American administration. Attitudes toward the Internet are deeply rooted in culture; while traditional Asian cultures value moral and

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103. *Government Enthusiastic*, *supra* note 92; Nicholas Negroponte, *Pluralistic, Not Imperialistic*, WIRED, Mar. 1996, at 216. Cf. ACKERMAN, *supra* note 12, at 182-83.

104. *Government Enthusiastic*, *supra* note 92.

105. *Id.*

106. *Group Watches the Web's Language*, NEW MEDIA AGE, Nov. 9, 1995, at 4, available in LEXIS, NEWS Library, MAGS File.

107. Negroponte, *supra* note 103.

108. Smith, *supra* note 94.

109. *Id.* For the "butineurs," the Québécois' term for "net surfers" is more Martha Stewart than Bill Gates as the French word "toile" in English does not mean "net" as in "Internet" but actually refers to a type of sheer fabric used to make window curtains. *Id.*

110. Jimmy Yap, *Cybernaut Gives Thumbs Up to Singapore*, STRAITS TIMES (SINGAPORE), Apr. 18, 1995, at 6, available in LEXIS, WORLD Library, STRAIT File; *Net for China; No Smut, No Politics, No Decadent Culture*, FIN. TIMES, July 10, 1995, at 13, available in LEXIS, NEWS Library, FINTME File [hereinafter *Net for China*].

economic order, as well as its official enforcement, such actions would offend Western ideas of personal independence and individualism.<sup>111</sup> In addition, the Internet's brassy open information-exchange paradigm runs contrary to Eastern culture's subdued, more guarded methods of communication.<sup>112</sup>

### 1. Singapore

Singapore's Minister of Information and the Arts, George Yeo, compares the Internet to a large city: "Like all big cities, there are wholesome, well-lit parts and there are dark alleys with dirt, sleaze and crime."<sup>113</sup> The Singapore government analogizes its role as helping its citizens keep to the well-lit areas and not allowing them to stray to the wrong side of the tracks.<sup>114</sup> The Chairman of the National Information Technology Committee, Teo Chee Hean, agrees: "Just as cars can knock down people, ideas can also be dangerous. . . . Ideas can kill."<sup>115</sup> In 1994, Yeo announced a "two-pronged" strategy for dealing with the Internet: "one part preventative, the other immunological."<sup>116</sup> In other words, Singapore plans to "master technology without succumbing to it."<sup>117</sup>

Singapore, a tiny island nation with a population of approximately three million, boasts the largest number of Internet chat groups and the

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111. Leslie Helm, *Asia Wary of Being Wired*, L.A. TIMES, Feb. 3, 1996, at A1, available in LEXIS, NEWS Library, LAT File.

112. *Id.* Cf. *Distant Vision: In Asia, Electronic Communications Is Growing But It Still Has A Long Way To Go*, ASIAN WALL ST. J., Nov. 18, 1994, at S2, available in LEXIS, NEWS Library, AWS File [hereinafter *Distant Vision*].

113. Sunanda K. Datta-Ray, *How to Keep Singaporeans Out of Dark Alleys of the Internet?*, STRAITS TIMES (SINGAPORE), June 24, 1995, at 32, available in LEXIS, WORLD Library, STRAIT File.

114. *Id.* Minister Yeo's comparison may strike some readers as ironic, because Singapore has the reputation for not having any "wrong side of the tracks." See WILLIAM GIBSON, *Disneyland With A Death Penalty*, WIRED, Sept./Oct. 1993, visited Apr. 15, 1996, <<http://www.hotwired.com/wired/1.4/features/gibson.html>>.

115. Glenda Korporaal, *Internet Challenge to Media Controls*, SYDNEY MORNING HERALD, June 13, 1995, at 9, available in LEXIS, AUST Library, AUSTPUB File. Chairman Hean has also compared the free flow of information to sickness: "The unfettered flow of information from abroad has its dangers, . . . just as Singaporeans who went overseas sometimes brought back nasty diseases." *Id.*

116. Datta-Ray, *supra* note 113.

117. *Id.* The Internet promotion is part of Singapore's Information Technology 2000 (IT2000) initiative, which aims at sustaining annual productivity increases of three to four percent. Gibson, *supra* note 114.

largest number of messages sent.<sup>118</sup> In addition, the government actively embraces technology in both business and children's education.<sup>119</sup> As of July 1995, there were over 347,000 personal computers in the country; about one-third of them are used in businesses and government.<sup>120</sup> Moreover, at least three Internet providers are licensed in Singapore; one of them has at least 10,000 subscribers,<sup>121</sup> a fairly large number for such a small population.<sup>122</sup>

Singapore has traditionally kept a tight lock on all news and influences from outside its borders. For example, Section 15 of the Newspapers and Printing Act, bans the distribution of newspapers printed in Malaysia; presumably the same ban applies to downloading The New York Times or other foreign press from the Internet.<sup>123</sup> In addition, the government has publicly warned that it will prosecute anyone who posts defamatory or obscene materials on the Internet.<sup>124</sup>

During the summer of 1995, an interministry committee examined possible ways to curtail undesirable information on the Internet.<sup>125</sup> As a result, the authorities read all e-mail,<sup>126</sup> and scan the

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118. Tammy Tan, *S'pore Sends Out Biggest Number of Internet Messages, Has Most Chat Groups*, STRAITS TIMES (SINGAPORE), May 30, 1995, at 40, available in LEXIS, WORLD Library, STRAIT File.

119. Fara Warner, *Asian Publishers Deem Internet Ally of the Press*, ASIAN WALL ST. J., Dec. 5, 1995, at 10, available in LEXIS, NEWS Library, AWS File.

120. *Singapore Curbs Internet Freedom*, NEW MEDIA AGE, July 6, 1995, at 2, available in LEXIS, NEWS Library, MAGS File.

121. *Id.* The Internet providers are Singapore Telecom's Singnet, introduced in 1992; Pacific Internet Pte, licensed in fall 1995 and owned by a consortium of computer and media groups; and Technet, which was established in 1991 by the government for academic and governmental use. Technet is now owned by Pacific Internet and is expected to be operated as a commercial online service. *Id.*

122. In comparison, the United States has approximately 92 million households; an estimated 25 million of them have computers. Segal, *supra* note 77.

123. Datta-Ray, *supra* note 113. Other legislation which may prove difficult to apply in cyberspace include the Libel and Contempt of Court Act, the Official Secrets Act, the Seditious Act, the Film Act, the Undesirable Publications Act, and the Singapore Broadcasting Authority Act. All of these laws aim at shielding the populace from undesirable influences. *Id.*

124. Korporaal, *supra* note 115. Certainly, Singapore is viewed as a strict enforcer of its laws. One need only remember the caning of Michael Fay, expatriate schoolboy and graffiti artist, to realize that the consequences of defying the Singaporean government may be, by Western standards, grim. For some American perspectives on Singapore, see Yap, *supra* note 110; *contra* Gibson, *supra* note 114.

125. *Singapore Curbs Internet Freedom*, *supra* note 120.

126. Helm, *supra* note 111.

Internet for pornography.<sup>127</sup> In March 1996, the government announced comprehensive Internet legislation to protect local values.<sup>128</sup> Singapore now holds both Internet users and on-line service providers legally responsible for keeping pornographic and politically objectionable material off the Internet.<sup>129</sup> The Singapore Broadcasting Authority will officially police the Internet, and also register any political or religious user groups.<sup>130</sup> At the time of this writing, penalties for violations had not yet been determined.<sup>131</sup>

However, both the government and the Internet users agree that the Internet is, to some extent, self-regulating.<sup>132</sup> If people know that they cannot attempt to access certain kinds of web pages without reprimand or criminal repercussions, it is likely that they will not try. In other areas, such as newsgroups, peer review serves as an overseer: "If you express a racist or intolerant view, expect to be challenged."<sup>133</sup> Retaliatory "spamming" or "flaming" is common throughout the Internet.<sup>134</sup> Even the Singapore government partakes in this activity by demanding the right to reply to any comments critical of its methods,<sup>135</sup> although an official reply is likely to be more refined than most flaming.

## 2. Asian Languages, Computers, and the Internet

With respect to the Internet, Singapore and other former British colonies have an advantage over other parts of the Asian world: they share a familiarity with the English language.<sup>136</sup> Most Asian countries are not as computer-oriented or keyboard-oriented as English-speaking countries. For example, a scaled-down version of the Chinese language

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127. Keith B. Richburg, *Future Shock: Surfing the Net in 'Nam: Like Other Authoritarian Regimes, Hanoi Fears 'Virtual Democracy' of Cyberspace*, WASH. POST, Nov. 19, 1995, at A24, available in LEXIS, NEWS Library, WPOST File.

128. McDermott, *Singapore Unveils Sweeping Measures To Control Words, Images on Internet*, WALL ST. J., Mar. 3, 1996, at B6.

129. *Id.*

130. *Id.*

131. *Id.*

132. Zuraidah Ibrahim, *Politics Enters Cyberspace*, STRAITS TIMES (SINGAPORE), Jan. 20, 1996, at 34, available in LEXIS, WORLD Library, STRAIT File.

133. *Id.*

134. Walter Mossberg, *Going Online Is Still Too Difficult to Lure A Mass Audience*, WALL ST. J., Feb. 22, 1996, at B1.

135. Wayne Madson, *Securing Access and Privacy on the Internet*, COMPUTER FRAUD AND SECURITY BULLETIN, Jan. 1, 1996, available in LEXIS, NEWS Library, NWLTRS File.

136. *Distant Vision*, *supra* note 112.

still has approximately 5,000 characters; a computer keyboard accommodating all the characters would be approximately the size of a kitchen table.<sup>137</sup> Computer companies have developed ways to represent various Asian-language alphabets, but no one method is universally accepted.<sup>138</sup> Voice-activated computers and pen (handwriting recognition) technology, while promising, are still not yet developed enough for the Asian mass consumer market.<sup>139</sup> An additional problem is the nonuniformity of the networks within the Internet system. It has been commented that “[a]s messages hop across a patchwork of computers, subtle variations in the way the computers transmit data—including, sometimes, the routing software’s inadvertent removal of identification codes called escape sequences that identify the Asian-language characters—can turn a message into a string of nonsensical letters and numbers.”<sup>140</sup>

### 3. China

Despite such barriers, China’s first link to the Internet began in early 1995 with the China Education Research Network (CERNET), which connected to ten top universities.<sup>141</sup> Before CERNET, only a small handful of academics had access to outside information via computer as information was strictly controlled.<sup>142</sup> This miniversion of the Internet currently links only a handful of universities, but it is expected to expand to thousands of schools throughout China by the year 2000.<sup>143</sup> With the aid of foreign telecommunications technology, the Chinese government officially opened up the Internet to the public at large in April 1995.<sup>144</sup> The foreign press immediately hypothesized that the citizenry’s access to global information would foster increased political dissent.<sup>145</sup> Government censors predicted that Internet users

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137. *Mass Chinese PC Market Stymied by Massive Keyboard*, WALL ST. J., Feb. 21, 1996, at B1.

138. *Distant Vision*, *supra* note 112.

139. *Mass Chinese PC Market Stymied by Massive Keyboard*, *supra* note 137.

140. *Distant Vision*, *supra* note 112.

141. *China to Build National Network Tied to Internet*, ASIAN WALL ST. J., Jan. 27, 1995, at 1, available in LEXIS, NEWS Library, AWS File.

142. *Id.*

143. *Id.*

144. *Id.* Cf. Segal, *supra* note 77.

145. *China to Build National Network Tied to Internet*, *supra* note 141.

would try to access pornography<sup>146</sup> and, as predicted, they found video clips such as "Sexual Fighter" on university computers in Tianjin.<sup>147</sup>

China has been closed from outside influences for centuries and has been continually wary of other cultures.<sup>148</sup> It is not surprising that upon the proverbial opening of the computer gates, Chinese officials announced that they would exercise "tighter control over information,"<sup>149</sup> fearing "spiritual pollution" from the West.<sup>150</sup> A "monitoring room" was established to track, but not block, information entering the country from abroad.<sup>151</sup> The move was accompanied by a public surge of nationalism.<sup>152</sup> Reinforcing this idea was the Ministry of Posts' announcement in November 1995 that it plans to build an "Intra-Net" whose scope will be limited to within China.<sup>153</sup> Persons within China will be able to communicate freely on this Intranet; however, there will be few hookups to the outside world.<sup>154</sup> As Chinese Minister Wu Jichan notes, "by linking with the Internet we do not mean the absolute freedom of information."<sup>155</sup> Current on-line subscribers, like those in Singapore, claim that government interference does not matter because responsible citizens will censor themselves.<sup>156</sup>

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146. *Beijing Relaxes Rules on Internet Use*, INTER PRESS SERVICE, May 16, 1995, available in Westlaw, ALLNEWS Database.

147. *Chinese Firewall: Beijing Seeks to Build Customized Internet With a Muzzle on It*, WALL ST. J. EUR., Feb. 1, 1996, at 1, available in Westlaw, WSJ-EURO Database [hereinafter *Beijing Seeks to Build Customized Internet*].

148. JENNIFER LIN, *Issues of Internet Access and the Country of China* (Feb. 1996), visited Apr. 15, 1996, <<http://guide-p.infoseek.com/NN/NS/frames/DB?2,,A307858,qt=CHINA&col=NN&st=0&rt=NA>>.

149. *China to Tighten Control on Internet Linking*, XINHUA NEWS AGENCY - CEIS, June 22, 1995, available in LEXIS, NEWS Library, XINHUA File.

150. *China to Police Internet Service as Access Grows*, ASIAN WALL ST. J., June 22, 1995, at 1, available in LEXIS, NEWS Database, AWS File.

151. *Chinese Firewall: Beijing Seeks to Build Version of the Internet That Can Be Censored*, WALL ST. J., Jan. 31, 1996, at A1.

152. *Beijing Seeks to Build Customized Internet*, *supra* note 147. As China has gained economically and "Westernized," it also has stepped up on its pro-nationalist rhetoric. *New Nationalism: China's Hubris Blossoms in Step with Its Economy*, ASIAN WALL ST. J., June 26, 1996, at 1, available in LEXIS, NEWS Database, AWS File.

153. *China to Build Internet Backbone Project*, XINHUA NEWS AGENCY - CEIS, Nov. 6, 1995, available in LEXIS, NEWS Library, XINHUA File.

154. *Id.*

155. *Net for China*, *supra* note 110.

156. *The O.J. Simpson Trial and Analysis* (CNN broadcast, July 22, 1995, Transcript #16).

In China, the Internet is officially considered a business tool, not a way to access pornography or communicate with friends.<sup>157</sup> As Western commentators note, the Internet is a “fluid medium for the two things China’s authoritarian government most dreads, political dissent and pornography. . . . More disconcertingly for authorities, the Internet has become a means for the overseas Chinese dissident community to keep in touch with and send information to sympathizers in China.”<sup>158</sup> Hence, China Internet Corp., a Hong Kong on-line service provider and subsidiary of the official Chinese news agency Xinhua, allows only limited Internet access and screens all incoming information.<sup>159</sup> James Chu, CEO of China Internet, denies political motives, claiming that by limiting his service to business-only web sites, he can “make better use of resources at a lower cost.”<sup>160</sup> He also notes that, should China wholly shut the doors to the Internet, his operation will be the only service in the area.<sup>161</sup> Hence, his operation carefully complies with Beijing’s standards.

Predictably, Chinese officials have found the Internet more difficult to control than expected. In January 1996, a moratorium on new users was announced.<sup>162</sup> Concern for national sovereignty was cited as the official reason for the ban.<sup>163</sup> At the same time, severe restrictions on the flow of economic and business news from outside the Intranet were implemented.<sup>164</sup> President Jian Semín announced, “We cannot sacrifice culture and ideology merely for a short period of economic development.”<sup>165</sup> At the same time, a leading Communist newspaper, the People’s Daily, debuted on the web,<sup>166</sup> perhaps in an effort to provide Chinese users with more appropriate surfing material. A few days later, all Internet providers, and Internet and e-mail users, were required to file

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157. *Net for China*, *supra* note 110.

158. *Beijing Seeks to Build Customized Internet*, *supra* note 147.

159. *Net for China*, *supra* note 110.

160. *Id.*

161. *Id.*

162. *China Restricts Dissemination of Finance Data National Security Cited In Move to Rein In Flow of Business News*, *ASIAN WALL ST. J.*, Jan. 17, 1996, at 1, available in LEXIS, NEWS Database, AWS File.

163. *Id.*

164. *Id.*

165. *INT’L TRADE DAILY (BNA)*, Feb. 7, 1996, available in LEXIS, BNA Library, BNAITD File.

166. “*People’s Daily*” *Connected With The Internet*, *XINHUA NEWS AGENCY - CEIS*, Jan. 18, 1996, available in LEXIS, NEWS Library, XINHUA File. The People’s Daily can be accessed at <http://www.egis.com>. *Id.*

with the police.<sup>167</sup> Failure to do so led to heavy fines and imprisonment.<sup>168</sup> In addition, all net users must now promise not to commit crimes or harm the country.<sup>169</sup> Not surprisingly, a black market for old e-mail addresses has emerged.<sup>170</sup> By buying an old or unused e-mail address, Chinese citizens and/or dissidents can try to communicate without being detected.<sup>171</sup>

#### IV. CONCLUSION

##### A. *Current Regulation of the Internet*

Although some vocal Internet users vehemently protest any government interference with Cyberspace,<sup>172</sup> their protests fall on deaf ears. All governments, republican, authoritarian, seek to control their citizens in various ways. It is unlikely that any government is going to relinquish any of its authority simply because new media have developed or, in the case of the Internet, expanded and popularized.<sup>173</sup>

The countries illustrated here have created new legislation and applied existing domestic law to the Internet, with varying results. The legislation of the various countries share a common goal of preventing undesirable materials from reaching curious eyes. The United States has

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167. *China to Tighten Access to International Internet*, ASIAN WALL ST. J., Feb. 5, 1996, at 6, available in LEXIS, NEWS Database, AWS File; *China's Internet Users Must File with Police*, NEW ORLEANS TIMES-PICAYUNE, Feb. 16, 1996, available in LEXIS, NEWS Library, NOTPIC File.

168. *China to Tighten Access to International Internet*, *supra* note 167; *China's Internet Users Must File with Police*, *supra* note 167.

169. *Computer Connection* (CNN broadcast, Feb. 17, 1996, Transcript #46).

170. *China Clamps Down on Computer Interfacing* (CNN broadcast, Feb. 9, 1996, Transcript # 92-9).

171. *Id.* Although it is not clear from the CNN report, a purloined e-mail address would presumably protect the sender because any messages, if traced, would lead back to the official owner of the e-mail address, not to the actual sender of that message. Alternatively, if the e-mail address has been abandoned, then it may not be on file with the police and therefore it would not be monitored.

172. There are many groups organized specifically to promote civil liberties on the Internet. *See, e.g.*, THE ELECTRONIC FRONTIER FOUNDATION, *supra* note 1. For lists of similar organizations, see <http://www.eff.org>.

173. *Cf. Segal, supra* note 77. "George Orwell believed that new technology offered new ways of controlling society. The Soviet Union and other Communist countries certainly believed for a long time that modern technology was an effective way to manage information and therefore power. Fortunately, they were wrong. There is plenty of evidence that suggests that before too long, information technology comes to empower individuals and threaten large centers of power." *Id.*



sought to protect children from indecent and obscene materials on the Internet; the European Union and Germany have sought to eliminate racism and hatred; and France has censored a purloined book. Simultaneously, governments of countries with less-developed telecommunications networks, such as those in Eastern Europe and Asia, have actively promoted limited growth of the Internet. Asian countries have sought to control the information disseminated on the Internet so as to align the Internet with the norms of the countries' respective cultures.

However, upon closer inspection, it appears that most of the authorities in many of the countries do not fully appreciate the global nature of the Internet. Local legislation cannot successfully control a large international network. On the other hand, it is logical to assume that governments desire a modicum of cohesiveness and continuity in their legislation.<sup>174</sup>

#### *B. Future Regulation of the Internet*

The United States is arguably the leader in Internet development and access. Although the U.S. government has had a head start in accessing and regulating the Internet, the global ramifications of the Communications Decency Act and the proper scope of the First Amendment, as applied to new technology, remain to be seen. Some have argued that the First Amendment applies to international law, and therefore to the Internet, because a "right to communicate already exists under international law that embraces commercial speech and transborder data flows."<sup>175</sup> Furthermore, although "there is no specific authority extending the First [Amendment] adopted by the Supreme Court to international law. . . . [T]he Court's decisions have influenced the development of international law in the past."<sup>176</sup>

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174. For example, a sexually graphic photograph with no artistic or social value would be prohibited in the United States. See *Miller v. California*, 413 U.S. 15 (1973). If the photo was uploaded onto the Internet, under U.S. law it would be given no Constitutional protection. Cf. *United States v. Thomas*, 74 F.3d 701 (6th Cir. 1996).

175. Mark B. Feldman, *The Right to Communicate Under International Law*, TOWARD A LAW OF GLOBAL COMMUNICATIONS NETWORKS 343 (Anne W. Branscomb ed., 1986). This argument relies on Article 19 of the Universal Declaration of Human Rights, which was adopted by the United Nations in 1948. This Declaration and the International Covenant on Civil and Political Rights expressly state that the freedom to exchange information and ideas applies to any medium. *Id.*; see also THE ELECTRONIC FRONTIER FOUNDATION, *supra* note 11.

176. Feldman, *supra* note 175.

However, the opposite may also be true. Methods of communication are personal and are deeply rooted in differing cultures. Nationalism and sovereignty also play important roles. Although the United States is the first in line for Internet access, that does not necessarily mean that its methods are the best, nor that they should be adopted by all.<sup>177</sup> It is unlikely that American methods will be wholly adopted in other nations because of their varying principles regarding freedom of expression.

Possible solutions to the question of Internet regulation include developing an international treaty and self-regulation. The problems with pursuing a treaty are obvious: scope issues, cultural differences, varying standards of computer technology and telecommunications networks, inherent difficulties in reaching a consensus, and being able to enforce a binding agreement. Alternatively, self-regulation could be the domain of the network providers. Such companies could police their subscribers because "each such network functions as a gatekeeper for its users in cyberspace."<sup>178</sup> Since the Internet is inherently "a-jurisdictional,"<sup>179</sup> and a state's ability to impose sanctions on violators of the law is dependent on the need for physical control and/or confinement,<sup>180</sup> commercial regulation by each network provider is a compelling solution. With the aid of technology (like that used in China's Intranet), each provider could alter their gateways to comply with each separate country's laws,

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177. American individualism has often been seen as a double-edged sword. As one commentator maintained:

To some extent, the proof that our [American] virtues and vices are connected comes from abroad, where the advance of American values has created a natural experiment in social change. The loosening of tight social controls in Russia, China and South Africa has led to more freedom—and crime. In Europe and Japan, prosperity and the celebration of individuality have coincided with more divorce and crime. Between 1970 and 1991, divorce rates rose 40 percent in Germany and 50 percent in Japan (though both remain well below U.S. levels.).

Robert J. Samuelson, *The Vices of Our Virtues*, NEWSWEEK, Mar. 11, 1996, at 65, available in LEXIS, NEWS Library, N WEEK File.

178. David G. Post, *Anarchy, State, and the Internet: An Essay on Law-Making in Cyberspace*, 1995 J. ONLINE L., art. 3, ¶ 31. Cf. Mitch Wagner, *Firms Spell Out Appropriate Use of Internet For Employees*, COMPUTERWORLD, Feb. 5, 1996, at 55, available in LEXIS, NEWS Library, CMPWLD File (discussing companies that financially penalize employees who abuse corporate computer networks by sending flaming e-mail or downloading pornographic pictures from Internet during business hours).

179. Post, *supra* note 178.

180. *Id.*

provided that those laws are not vague or unworkable. There is another side to this theory, however: should the global Internet be run, by and large, by private corporations? It is unlikely that any government would give up that amount of control. Alternatively, service providers could comply with individual nations' requests for parental control software, thus placing the burden of controlling access, as well as the risk of criminal sanctions, with the Internet user. In the least, though, as the laws regarding Internet regulation continue to evolve and usage grows rapidly, governments will be forced to respond quickly to the pressing issues that arise from Internet access.

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