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## REMARKS OF SENATOR LEAHY

### SYMPOSIUM ON *THE STATE OF THE FIRST AMENDMENT AT THE APPROACH OF THE MILLENNIUM\**

As a way to communicate, the Internet in some ways is different only in scale from everything that predates it – but what an enormous scale. It allows the exchange of ideas and information faster and in more abundance than anything before. The Internet is also a change agent that fosters democracy. Nevertheless, it also tests our commitment to the free speech principles that undergird and sustain democracy. Every other new instrument of communication has tested our commitment to free speech, but perhaps none will challenge our resolve the way the Internet will challenge us. Our Constitution reflects the Founders' confidence in a government by and of the people, a government that welcomes rather than fears dissenting or offensive views. The cornerstone of democracy is the free flow of information guaranteed by the First Amendment.

#### *The Internet Fosters Democracy*

Democracy and freedom of expression move in tandem, one fueling the other. Neither survives alone. We have seen again and again that as countries move toward freer and more open societies, the rights of the press and the public to speak freely also increase. New information technologies, such as the Internet, make accessible vast amounts of information from around the world, and the Internet is proving to be a catalyst for change in emerging democracies. Just look at what is happening in Serbia, where pro-democracy activists set up Web sites and used the Internet to disseminate uncensored news and to fight back when President Slobadan Milosevic annulled local election results last year. After months of protest, the Bosnian leadership finally capitulated and restored the election results. Totalitarian regimes fully appreciate the power of the Internet to give their citizens unfettered ac-

cess to information from around the globe. And so we see efforts springing up by governments around the world – from China to Singapore to Burma – to cut off those countries from the Internet by creating internal “intra-nets,” to censor and control the electronic information reaching the computer screens of their citizens.

#### *The Temptations of Censorship*

It is easy for us as Americans to take our First Amendment rights for granted. When the going gets rough, and the choices get tough, political pressures build to compromise those rights. Frustrated by violence, pornography and other inappropriate material available to children in multiple media, on film, on TV, in video games or online, politicians are sorely tempted to invoke government censorship, in the guise of government protection. Indeed, many of the censorship initiatives we see today are offered in the name of protecting our children or family values. Congress is not yet what you would call a repository of expertise on even the technical and practical aspects of regulating or censoring the Internet. Many Members in Congress view the computer monitors in their offices as television sets that don't get CNN. Too many Members fear the demagogic syllogism that if they vote against a censorship law they must be in favor of exposing children to inappropriate violent or pornographic material. The Communications Decency Act, which passed last year as part of the Telecommunications Act, is a stark example of what I am talking about. I prosecuted child abusers as State's Attorney in Vermont and have worked my entire professional life to protect children from those who would prey on them. The 16 of us who voted against the Communications Decency Act did not vote in favor of child pornography and none among us would defend child pornographers. On the contrary, we all want to protect our children from indecent and inappropriate materials, whether that material is broad-

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\* The symposium was held on March 5, 1997 at The Catholic University of America, The Columbus School of Law, and was co-hosted by The Media Institute and the COMMLAW CONSPECTUS. The entire symposium, including

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Senator Leahy's remarks, can also be found on The Columbus School of Law's Web Page at <<http://www.law.edu>>.

cast over the airwaves, carried over cable lines or transmitted to our computer screens. This Senator – and I am confident every other Senator – agrees with that. But there are better ways to target offenders. We have a duty to ensure that the means we use to protect our children do not do more harm than good. We should be wary of efforts by the government to jump into regulating the content of any form of speech. Mixing government and politics with free speech issues often produces a corrosive concoction that erodes our constitutional freedoms. The court holding unconstitutional the so-called Communications Decency Act's Internet censorship provisions recently noted: "Laws regulating speech for the protection of children have no limiting principle, and a well-intentioned law restricting protected speech on the basis of content is, nonetheless, state-sponsored censorship. Regulations that 'drive certain ideas or viewpoints from the marketplace' for the benefit of children risk destroying the very 'political system and cultural life' and that they will inherit when they come of age."

Last week's criticism by a Republican congressman of NBC's broadcast of "Schindler's List" is a fresh example. The Congressman denounced the airing of that award-winning motion picture, depicting the horrors of the Holocaust and the heroism of Oskar Schindler, because of the nudity and violence and abhorrent behavior it depicted. I agree with the observation of the NBC executive who said the Congressman's attack, quote, "should send a chill through every intelligent and fair-minded person in America." Some 65 million Americans watched this brilliant movie about a defining event of the 20th Century, but in the name of protecting children this Congressman would not have shown it. This illustrates, again, the dangers of involving the government in content regulation. Whatever the control, it is always subject to criticism and second-guessing. Whatever the control, it will never be ratcheted down strictly enough for everyone. This is too easy a subject on which politicians can demagogue and pontificate. We can spend much time and energy in Congress trying to out-muscle each other to the most popular position on regulating the content of television programs or Internet offerings, and from all appearances, we probably will. The Communications Decency Act penalizes with two-year jail terms and large fines anyone who transmits in-

decent material to a minor, or displays or posts indecent material in areas where a minor can see it. In short, this law will effectively ban such speech from the Internet, no matter its political, literary, artistic or scientific value and no matter that the speech is between consenting adults. The Supreme Court will hear the constitutional challenge to the CDA on March 19. That argument will not be televised or cybercast. Perhaps that is fortunate, because the decor in the courtroom might cause an ironic stir. The friezes directly above the Bench where the nine Justices sit contain allegorical figures symbolizing the rights of the People in the pursuit of Happiness and the protection of innocence. These figures include frontally nude children and bare-breasted women. Under the vague terms of the Communications Decency Act, the question arises about whether such sexually explicit artwork could be suspect if the images were offered on-line. I remain hopeful that the Court will agree with the findings of two separate panels of federal judges that the Communications Decency Act flunks the constitutionality test. The Supreme Court should provide clear guidance that we do not forfeit our First Amendment rights when we go on-line. Only such guidance will stop wrong-headed efforts in Congress and in state legislatures to censor the Internet. In bookstores and on library shelves, the protections of the First Amendment are clear, even for indecent speech. Altering the protections of the First Amendment for on-line communications could cripple this new mode of communication. Censoring the supply of information on the Internet is a current concern in the Congress and in the courts. The demand side of the Internet equation also warrants our attention.

#### *Information Is Not Wisdom*

The Internet is a tool – a powerful tool – offering any user a torrent of unfiltered information. Information contributes to wisdom, but information alone is not the same as wisdom. Wiring every classroom to the Internet is a marvelous goal. We should do it. But that should only be the beginning. One of the continuing challenges we will face in making the best use of our burgeoning information technologies is in adding value to all that they offer. Anyone who uses the Internet knows that there is a lot of junk out

there. Just ask Pierre Salinger. A student searching for background on the Holocaust may easily come across diatribes on the Internet claiming that the Holocaust never happened. In our classrooms, in our homes, in our libraries, we must teach our children to be discerning users of this powerful new tool. And finally, we have another important task. The institutions and the individuals who appreciate the freedom of the Internet also have the moral obligation to help cultivate an ethic of self-restraint on the Internet. We are blessed in the United States to enjoy the oldest and most effective constitutional protections of free speech anywhere. The struggle facing succeeding generations of Americans in preserving

free speech liberties often is difficult, and it means standing firm in the face of sometimes fleeting but usually intense political pressures. The United States is in the vanguard of grappling with these issues, and the world is watching closely to see how we resolve them. What we have to offer is the capability and the temperament to show the world how the Internet can be used to its fullest. We must not succumb to short-sighted political pressures and provide, instead, a model of censorship. Giving full-force to the First Amendment on-line would be a victory for the First Amendment, for American technology, and for democracy.

