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**Regulating the Online Medium in an Age of Transnational Communication:
A Socio-Historical Analysis**

by
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**A thesis
submitted to the Faculty of Graduate Studies and Research
in partial fulfilment of the requirements for the degree
of Doctor of Arts in Philosophy**

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Abstract

Since the early 1990s, it has been all but impossible to ignore the media hype prompted by the sudden advent and appeal of the computer-mediated communications context. However, as alarmist tales of alleged online dangers have moved to the fore, legislators in some jurisdictions have called for new regulatory measures to limit its communicative potential. This dissertation undertakes a socio-historical analysis of this phenomenon. Influenced by the historical perspective of Ithiel de Sola Pool (1983), its initial goal is to illuminate how the introduction of print, common carrier and broadcast-based communications technologies has prompted key social actors to advocate, or create, particular regulatory regimes and practices. This will show how certain political, economic and moral interests and agendas have shaped the uses and development of previous communications technologies. Following this analysis, an examination of the rhetoric underlying contemporary efforts to regulate the online medium is presented. This will bring focus to how new communications technologies are defying traditional, territorially-bound models of regulation and control. Thereafter, a case study of the communicative roles and relationships that have informed present-day regulatory initiatives is undertaken. Guided by theoretical and methodological insights culled from the sociological literature on moral panics, it uses relevant print and online media sources to expose specific meaning-making practices that triggered the outbreak of an international panic over the alleged pervasiveness of online pornography in mid-1995. This will highlight the extent to which the mainstream media - via representations of the interests and agendas of actors and groups from a range of societal sectors - have influenced new communications policy debates. In addition, it will demonstrate how the online medium's unique communicative potential has empowered some of its users to reinterpret and counter the agenda-setting influences of the traditional media. To conclude, a critical examination of self-regulatory alternatives to government-sponsored legislation is undertaken. It is argued that it is premature to assume that self-regulation will be the panacea that will preserve online users' apparent capacity to engage in free and unfettered expression. In closing, suggestions for future research are offered.

Résumé

Depuis le début des années 1990, il est devenu impossible d'ignorer le battage médiatique provoqué par l'arrivée et l'attrait des nouveaux réseaux de communication informatique. Les récits alarmistes des risques liés à l'usage de ces réseaux ont cependant poussé les législateurs de diverses juridictions à revendiquer l'instauration de règles limitant les échanges possibles. Notre thèse présente une analyse socio-historique du phénomène. Influencé par la perspective historique de Ithiel de Sola Pool (1983), son objectif premier est de démontrer que l'avènement de l'imprimerie, des modes de télétransmission et des modes de télédiffusion ont poussé des acteurs sociaux clés à revendiquer et à imaginer des pratiques et des systèmes de contrôle. Cette première démonstration explique comment les préoccupations politiques, économiques et morales ont modelé l'usage et le développement des premières technologies de la communication. Au terme de cette démonstration, nous examinons les fondements de la réglementation contemporaine des nouveaux réseaux de communication. C'est alors que nous démontrons à quel point ces nouveaux réseaux défient les modèles traditionnels de contrôle et de surveillance basés sur le territoire. Par la suite, une étude de cas est présentée. À la lumière des fondements théoriques du phénomène des paniques morales, nous avons analysé des exemples de pratiques ayant contribué à créer une panique internationale face à l'omniprésence présumée de matériel pornographique sur les nouveaux réseaux de communication au milieu de l'année 1995. Les exemples retenus, tirés de la presse écrite et de cybermédias, illustrent à quel point les médias de masse - en offrant une tribune à des acteurs et à des groupes sociaux ayant différents intérêts - ont influencé le débat entourant les nouvelles politiques en matière de communication. D'autre part, nous démontrons comment les cybermédias ont amené certains internautes à contrer la subjectivité des choix effectués par les médias traditionnels. De façon à suggérer une alternative à un contrôle gouvernemental du nouveau médium, nous proposons, en dernier lieu, un examen critique des possibilités d'autorégulation des nouveaux réseaux. Toutefois, nous démontrons qu'il serait prématuré de croire que l'autorégulation permettra aux internautes de conserver leur soi-disant liberté d'expression. Nous concluons en suggérant des pistes de recherche qui pourraient faire l'objet de travaux ultérieurs.

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As a Masters student at the University of Alberta, I spent hundreds of hours connected to Edmonton-area computer bulletin board systems; mostly as an excuse to avoid thinking about my thesis! Upon reflection, I am surprised by the extent to which my work avoidance redirected my career path. Not only did my new-found hobby alert me to the far-reaching implications of the computer-mediated communications context, but it equipped me - both instrumentally and intellectually - for more employment and academic opportunities than I could possibly list.

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Introduction

A. Dissertation Overview

Since the early 1990s, it has been all but impossible to ignore the sensationalistic media hype that has accompanied the sudden advent and appeal of computer-mediated communication (CMC) spaces. In parallel, the term *cyberspace* has entered the popular lexicon as a descriptor for these new communicative contexts. Science fiction writer William Gibson first popularized this term in *Neuromancer* (1984), a tale of a technologically advanced near-future where computer hackers, software thieves, scientists and corporate players worked, played and struggled for survival across a globally linked computer matrix. However, unlike the information-rich, utopian future so often envisioned by some of today's new media enthusiasts, this interactive sphere was instead associated with a dystopic lifestyle of neural implants, paranoia and pain where corporate hegemony and urban decay were the norm.

Michael Benedikt argues that despite the negative subtext underlying its conceptual origins, understanding "cyberspace" can help us situate "a new stage, a new and irresistible development in the elaboration of human culture and business under the sign of technology" (1993: 1). To this end, he offers a wide array of alternate interpretations. "Cyberspace," he argues, is a "new-universe, a parallel universe created and sustained by the world's computers and communication links . . . a place, one place, limitless . . . Everywhere and nowhere, a place where nothing is forgotten and yet

everything changes . . . A common mental geography . . . The realm of pure information, filling like a lake, siphoning the jangle of messages transfiguring the physical world, decontaminating the natural . . .” (1993: 1-3). And his list goes on. For Benedikt, the definitional possibilities are endless, yet, at the same time, there is an inherent futility to his exercise. Indeed, as he ultimately concludes, “Cyberspace . . . does not exist” (1993: 3). It is purely conceptual. It is an abstraction.

To elaborate, Benedikt draws from philosopher Karl Popper’s proposed framework of the world. For Popper, the world can be separated into three interrelated realms. World 1 is the objective, material, natural world and its physical properties. World 2 is the subjective realm of consciousness, “intentions, calculations, feelings, thoughts, dreams memories . . . [and] individual minds” (1993: 3). And, finally, World 3 is the space where “objective, real and public structures which are the not-necessarily-intentional products of the minds of living creatures” interact with each other and the elements of World 1 (1993: 3). This is the context where purely informational forms of social interaction and organization take place and this is where mediated patterns, ideas, images, sounds and stories begin their existence. Furthermore, physical manifestations such as libraries, cinemas, theatres, newspapers, books, films, video, art exhibits and compact discs are all examples of ways in which World 3 structures have fed back into Worlds 1 and 2.

With these criteria in mind, it is within Popper’s World 3 that Benedikt locates today’s computer-mediated communications spaces. These new contexts, he argues, represent “nothing more, or less, than the latest stage in the evolution of *World 3*, with the

ballast of materiality cast away . . . and perhaps finally” (1993: 4). But at the same time, he is quick to note that the online medium is not a sphere that will replace earlier components of World 3. Instead, he suggests that it will displace them by finding and defining “its own niche and causing the earlier elements more closely to define theirs too” (1993: 4). Thus, in much the same way that previous innovations in communications technologies - such as the printing press, the telegraph, the telephone, radio and television - disrupted the dominant orders of Worlds 1 and 2, Benedict foresees Popper’s World 3 undergoing yet another abrupt evolution.

And it is through the prism of these earlier societal disruptions that this dissertation will begin. According to Ithiel de Sola Pool, “Each new advance in the technology of communication disturbs a status quo. It meets resistance from those whose domain it threatens, but if useful, it begins to be adopted” (1983: 7). Pool further argues that as soon as the potential of a new communications technology is even dimly recognized, “entrepreneurs, interest groups, and political organizations” begin fighting to control it and court and government agencies then act as arbiters (1983: 7). Furthermore, these arbiters consistently apply “familiar analogies from the past to their lay image of . . . new technologies [to] create a partly old, partly new structure of rights and obligations” (1983: 7). Jay Weston (1994) concurs and notes that the struggle to control communications technologies is nothing new. He explains that “since it was first observed that there [was just] not enough available bandwidth to let everybody send smoke signals or bang drums, we’ve been organizing and reorganizing to determine who would, and who would not, get

their hands on the blankets and the drums -- and the presses, the microphones, and the cameras.”

The sudden emergence and subsequent integration of the online communications context into our daily lives has followed this same course. When it was hardly understood, the mainstream media told optimistic or technologically deterministic tales of its limitless potential. Consequently, government legislators and policy-makers seemed less concerned with the need for restrictive regulatory regimes and more concerned with the development of flexible policy approaches to maximize corporate, government and public access to such electronic communication services. However, by early 1995, in the wake of increasingly lurid, tabloid-style tales of pornographers, purveyors of hate, pedophiles and stalkers lurking behind every computer screen, what was previously considered a low priority, suddenly moved to the forefront of many government agendas around the world. The online medium was coming of age. Buzzwords such as “cyberspace” and the “information superhighway” - which just a few months earlier had been hailed as symbolic of a new, utopian information age - were beginning to sour in the minds of many.

Communications theorist Neil Postman has been one of the most vocal critics of today’s new communications technologies. He complains that modern communications technologies are creating an information deluge, one that will drown out what he believes are the last remnants of coherent cultural and intellectual discourse. He worries that without even realizing it, what is most valuable in Western civilization will be lost until years from now when it will be realized that information technologies, while “of great

value to large-scale organizations . . . [will] have created at least as many problems . . . as they have solved" (1986: 161). He further asserts that the unchecked growth of new communications technologies subverts a vital source of our humanity and "creates a culture without moral foundation" which, in turn, will undermine "certain mental processes and social relations that make human life worth living" (1992: xii).

However, while critics such as Postman rarely offer coherent solutions, he does make some relevant suggestions for the present exercise. Of particular note is his proposal that all subjects be framed by a relevant historical discourse. That is, rather than passing on information and knowledge as commodified products, he suggests that they be situated within relevant histories so that they can be given an appropriate contextual meaning. He explains: "every subject has a history, including biology, physics, mathematics, literature, music and art. To teach what we know . . . without also teaching what we once knew . . . is to reduce knowledge to a mere consumer product . . . For to know about your roots is not merely to know where your grandfather came from . . . It is also to know where your ideas come from and why you happen to believe them" (1992: 189). Furthermore, to know where your ideas come from, he contends, will shed light on "where your moral and aesthetic sensibilities come from" (1992: 189).

And it is through this communicational perspective that this dissertation will situate its exploration of the rhetoric underlying the new era of computer-mediated communication. With an emphasis on the advent of print, common carrier and broadcast-based platforms, its initial goal will be to illuminate how the introduction of previous communications technologies has prompted particular actors and interest groups to

advocate, or create, particular regulatory regimes and practices. Not only will this show how certain political, social, economic, judicial and moral considerations have at times shaped the uses and long-term evolution of particular communications media, but it will simultaneously highlight some of the ways in which judicial and legislative precedents developed for previous communicative innovations have impacted subsequent technologies. In turn, it will help clarify the extent to which disparate structural characteristics of each new communications mode have differently compromised, protected or enhanced free expression.

It is further anticipated that this historical framework will establish a suitable foundation for an examination of the rhetoric underlying contemporary efforts to regulate the online medium. In the process, it will be seen how present-day policy-makers have been modelling new regulatory proposals after legislative metaphors derived from past communications technologies, with mixed, and in some contexts, hazardous results. As such, this reliance upon the past will call into question the merits of using controlling metaphors derived from past communications technologies to regulate a medium, that, in effect, represents the convergence of bookstores, libraries, the post office, telegraphy, telephony, radio, television, photography and film. Moreover, this process will bring into focus the reality that the online medium, as Wade Rowland aptly asserts, “is in fact a *metamedium* . . . the most sophisticated, engaging, all-embracing medium of communication ever seen,” which, by its very nature, can defy traditional modes of legislation, control and territoriality (1997: 1-2).

While the regulatory challenges stemming from the sudden advent of computer-mediated communications technologies will be extensively exposed through the use of a macroanalytic, socio-historical perspective, David Silverman, warns that the microlevel should also be addressed if “sound analysis and intelligent conceptualisation” is to be conducted (1986: 70). Thus, to bridge this macro/micro polarity, this dissertation will also present the findings of a microanalytic case study of the communicative roles and relationships that have been informing present-day online regulatory initiatives. Guided by key theoretical and methodological insights stemming from the sociological literature on moral panics, the case study to be undertaken will use relevant print media and Internet-based information sources as a strategy to explore the circumstances surrounding the outbreak of an international panic over the alleged pervasive availability of online/Internet pornography in mid-1995. Moral panic theory draws from a range of sociological fields, including deviance, collective behavior, social problems and social movements. According to Goode and Ben-Yehuda, moral panics typically “clarify [the] normative contours’ and ‘moral boundaries’ of the society in which they occur, [and] demonstrate that there are limits as to how much diversity can be tolerated in society” (1994: 29). Furthermore, moral panics show how negative reactions to new phenomena “do not arise solely as a consequence of a rational and realistic assessment of the concrete damage that [a] behaviour in question” is purported to inflict on society (1994: 29), but through the complex interrelationship of “positions, statuses, interests, ideologies, and values” (Cohen, 1972: 191).

Coupled with the findings from this dissertation's historical overview of regulatory regimes devised for previous communications technologies, the Internet pornography panic case study is expected to highlight how the mainstream media, via their selective representations of particular societal actors' and groups' interests and agendas, have impacted the development of new regulatory policies for the online sphere. In addition, it will demonstrate that the online medium - unlike previous new communications platforms - offers a hitherto unseen communicative dimension which enables its users to congregate and engage in self-reflective, multidirectional and multinational debates. Furthermore, it will be shown that the online medium, by its very nature, empowers its users to extensively challenge traditional regulatory mechanisms and processes. As such, it will be argued that this makes it a powerful context through which actors from the grassroots, middle and elite societal levels may reinterpret and counter the agenda-setting and meaning-making influences of the mainstream media's representations of dominant social and cultural ideologies, norms and values.

In light of the findings stemming from the present socio-historical exploration of the online regulation debate, this dissertation will conclude with a critical examination of self-regulatory strategies that are presently being used, developed and proposed for the online sphere. To this end, some self-regulatory alternatives that have emerged in opposition to government efforts to regulate online communication will be described. Thereafter, the merits and drawbacks of these approaches will be discussed. In particular, it will be argued that it is premature to assume that self-regulation will in fact pre-empt government-sponsored communications policies for the online medium. Moreover, based

on this dissertation's overview of past and present-day regulatory trends, it will be contended that it is overly simplistic to assume that self-regulation will be the panacea that will preserve today's online users' apparent capacity to engage in free and unfettered expression. To conclude, some future research directions for communications scholars will be offered.

In his ground-breaking study of the relationship between historical trends in the development of communications technologies, the regulatory controls under which each has been placed and their subsequent impacts on free expression, Pool (1983) notes that "It would be dire if the laws we make today governing the dominant mode of information handling . . . were subversive of its freedom." He further argues that "the onus is on us to determine whether . . . societies in the twenty-first century will conduct electronic communications under . . . conditions of freedom, or whether that . . . [it] will become lost in a confusion about new technologies" (1983: 10). On this note, he proposes mapping the questions of new communications policies onto five central topics: (1) definition of the domain in which the policy operates, (2) availability of resources, (3) organization of access to resources, (4) establishment and enforcement of regulations and controls and (5) problems at the system boundaries (1983: 9).

With these categories serving as guiding principles, the following statement best captures the question to be explored in this dissertation:

It seeks to determine whether the online medium can be regulated in an age of transnational communication and, if yes, how?

To this end, through a theoretical and methodological coalition of historical and institutional narratives stemming from regulatory regimes that have impacted previous communications innovations - and a microanalytic examination of agenda-setting media rhetoric that has shaped more recent debates over the online context's alleged drawbacks - this dissertation will assess whether lessons from the past are of any relevance in an era in which communication and information exchange is no longer limited by traditional notions of time, space and territoriality.

Since it is the online context that will serve as the primary unit of analysis for a large portion of this dissertation, some background information on the nature of the computer-mediated communications context is necessary before turning to a direct consideration of the larger questions that have been raised to this point. Therefore, to better situate subsequent discussions, the remainder of this chapter outlines and describes relevant components of the online medium.

B. Mapping the Online Medium

Breaking down the various components, contexts and communicative possibilities that make up the online medium is a complex undertaking. One of the best ways to organize this vast domain is to divide it into three parts. The first is to treat it as a "technology." In doing so, one might ask: what can be said about its history, who was involved in its creation, what societal forces led to its conception and how has it evolved? The second is to treat it as a "communications medium." In other words, what can be said

about the disparate communicative possibilities that it affords, who has access, in what way does it enhance traditional communicational practices and how: Does it impact communication across space and time? And, finally, a third strategy is to treat the medium as a “set of knowledges.” That is, what kinds of information can be obtained, how is it accessed and who may participate?

This section organizes the advent of the online medium, particularly the Internet, around these three categories. While they are by no means mutually exclusive, it is anticipated that they will nevertheless provide an effective classificatory framework for delineating the general range of technological, communicative and information-based characteristics of the online realm. As such, it is expected that a better understanding of the communicative issues confronting today’s new communications scholars will be brought to the fore. Furthermore, it is anticipated that the timeliness and relevance of this dissertation’s research topic will be highlighted.

1. The Online Medium as a Technology

The online medium is largely an unintended consequence of the simmering cold war atmosphere of the post-World War II era. In 1957, the USSR launched Sputnik, the first artificial earth satellite. Threatened by this technological advance and its far-reaching geo-political implications, the United States government formed the Advanced Research Projects Agency (ARPA) within the Department of Defence. As such, its mandate was to reestablish the American lead in military science and technology research.

During this same period, the RAND Corporation - an American cold war think-tank - was contemplating the unpleasant prospect of how authorities would maintain communications channels in the event of a nuclear holocaust. In 1964, RAND made public its vision: it proposed that with the use of existing communications lines, a computer network could be organized in which no single network node would be of greater importance than any other. Furthermore, to heighten data security, message packets could be divided, scattered and reassembled before reaching their intended destination(s).

The notion of a near-anarchic, redundancy packet-switching network without a centralized control or outage point was quickly adopted by ARPA researchers. Beginning in 1965, ARPA sponsored a series of studies on the cooperative networking of time-sharing computers and packet-switching protocols. The end result was the creation of the ARPANET, a network launched in December 1969 that established links between computers at four universities in the western United States (UCLA, Stanford, UCSB and the University of Utah).

To a great extent, the ARPANET's creation marks the point of origin for computer-mediated communication and the online medium. Bruce Sterling notes that within months of the ARPANET's formation, its traffic was manifesting a curious and unexpected byproduct. Apart from its intended use for long-distance computing and research activities, its "users had warped the computer sharing network into a dedicated, high-speed, federally subsidized electronic post-office" for the exchange of news, gossip and personal communiqués (Ogden, 1994: 716). "As has always been the case," notes

Ogden, "people took a tool developed for one purpose and used it for another totally unintended purpose, much to the surprise of the original developers!" (1994: 716).

Throughout the course of the 1970s, ARPANET membership grew at a geometric rate. In 1971, 23 host computers were added and, in 1973, the first international links to University College of London (England) and the Royal Radar Establishment (Norway) were established. Concurrent with this rapid expansion was an effort to improve the network's capacity to communicate with a range of dissimilar computers. In 1974, Vint Cerf and Bob Kahn released the Transmission Control Program (TCP), a method to connect disparate hardware and software networks, into the public domain. Thereafter, the creation and interconnection of new ARPANET nodes and networks was greatly facilitated. For example, in 1979, the USENET, a public message exchange network between Duke University and the University of North Carolina was established. Two years later, BITNET (Because It's Time NETWORK) was started as a cooperative network between City University of New York and Yale University to provide electronic mail, mailing list (listserv) and file transfer services. And, then, in 1983, MILNET was formed when the ARPANET's military segment opted to become an autonomous unit.

Upon the military's split from the ARPANET, its overall purpose shifted to research and support services. This prompted the National Science Foundation's Office of Advanced Scientific Computing to propose the creation of NSFNET, a national supercomputer network with newer, high-speed computers and high-capacity communications lines. Launched in 1986, NSFNET at first operated in parallel with the ARPANET, but soon became the primary carrier, or backbone, for networked

communications. Consequently, being “a happy victim of its own overwhelming success,” the ARPANET’s slower networking system was retired and replaced by NSF computers in 1989 (Ogden, 1994: 717). It was from this point on, that the NSF’s computer networking system became known as the “Internet.”¹

Following in the footsteps of its ARPANET cousin, the Internet has continued to experience remarkable membership growth. In 1989, no fewer than 80,000 host computers were thought to be connected to the network. By mid-1996, this figure was nearly 13 million, with at least 134,000 separate networks links worldwide. More recent estimates reveal that roughly 60 percent of all Internet hosts are in the United States (Zakon, 1996); furthermore, in early February 1998, the network’s host computer population surpassed 30 million.²

Using the NSF backbone, the Internet of the mid-1990s has maintained its intentionally chaotic cold war design and continues to permit formal gateways and loose associations with hundreds of other smaller networks, including USENET, BITNET, CSNET (the Computer Science Network) and FidoNet (the first non-commercial, privately operated amateur computer bulletin board network). As such, no single entity, whether academic, corporate, government or non-profit has any administrative jurisdiction over the network’s overall operation. Ironically, then, the Internet’s “existence” is in fact

¹ See Zakon (1996) [<http://info.isoc.org/guest/zakon/Internet/History/HIT.html>] for a detailed Internet timeline and history.

² The American firm, Belcore, has a Website which tracks the Internet’s growth. See [<http://www.netsizer.com>] for the most current estimate.

the unintended consequence of a national defense technology strategy that was appropriated and applied by thousands of private network operators, located worldwide.

2. The Online Medium as a Communications Medium

Given its structural evolution, today's Internet users are not limited to a centralized data storage site, nor do they enter through a unique gateway or control point. Instead, data and informational resources are scattered in a seemingly chaotic manner at computer sites throughout the world. This places the onus on individual users to determine how they will access, use, exploit, modify or enhance the ever-expanding array of communicational channels and options available. With these factors in mind, this section briefly reviews key Internet access methods that are of relevance for subsequent discussions. Furthermore, to contextualize the full scope of the online realm, other computer-mediated communication spaces that have emerged in parallel with the evolution of the Internet will be discussed, where applicable.

i. Contexts of Online Communication

There are many options available for individuals seeking access to the Internet and other computer-mediated communications sites. Since the early 1990s, Internet access has become a staple for faculty, non-academic staff, students and researchers affiliated with academic institutions throughout North America and the world. Such access is normally offered via direct links in offices, computer labs, campus libraries and residences, as well as through remotely accessible, dial-up ports that can be reached with a personal computer

and a modem (a hardware device that converts analog data into a digital format).

Furthermore, to enhance their staffs' information and research needs, an increasing number of government departments, businesses and non-profit agencies are installing high-speed Internet connections.

Individuals who do not have access to the Internet or other online contexts via academic or employment settings have many alternatives. For example, to provide its citizens with low-cost access to local informational resources, the city of Cleveland, Ohio, established the Cleveland Free-Net Community Computer System in 1986. Since that time, hundreds of freenets have been established throughout the United States, Canada and the world. Moreover, in parallel with the Internet's rapid expansion, many now offer rudimentary Internet access (e.g., electronic mail, USENET discussion groups, file transfer services and/or text-only World Wide Web access).³

Another way many individuals access online spaces is through commercial computer networks such as America Online, CompuServe Inc. and the Microsoft Network. These services offer national, and in some instances, international dial-up access at fixed hourly or monthly rates. Prior to the mid-1990s, most commercial networks were closed systems that offered an extensive array of proprietary content such as online newspapers, stock quotations, airline reservation services, discussion forums and real-time chat conferences. However, in the wake of the Internet's popular appeal, gateways have

³ Freenet access is normally provided at a low cost through dial-up modem ports and via computer terminals located in public facilities such as libraries or universities. Most are operated by non-profit community groups, libraries, or academic institutions. Funding is typically raised through small annual membership fees, fund-raising drives, government grants and support from a range of community partners.

since been added which allow commercial network users to access the Internet's wide range of informational resources and services.

People may also engage in computer-mediated communicational activities through smaller-scale, privately operated computer bulletin board systems (BBSs). In February 1978, the first privately operated BBS was launched by the American software developer, Ward Christensen (Salemi, 1991: 232). Since that time, thousands of BBSs throughout North America and the world have been established. Computer bulletin boards can range from a single computer connected to a telephone line, to a sophisticated multi-node operation with several dozen telephone lines connected to a series of computers. BBSs are relatively low-cost operations and are normally run by computer enthusiasts, non-profit organizations, special interest groups or small businesses. Most are offered at no cost to subscribers, while others charge a small registration fee for access to additional system features (e.g., file access), or extra online time. Individuals who call BBSs can expect to find local and networked message areas, online games, informational bulletins, public domain software⁴ and, on multi-node systems, real-time chats with other system users. In addition, some BBSs offer limited direct or indirect access to the USENET or Internet services such as electronic mail and mailing lists. Conversely, some BBSs, such as The Well (Whole Earth 'Lectronic Link), located in Sausalito, California, can either be accessed locally, or nationally and internationally via Internet connections.

⁴ While a discussion of their socio-cultural implications is beyond the scope of this dissertation, it is worth mentioning that most communities also have a small number of so-called "warez" boards that illegally distribute copies of commercial software. See Bruce Sterling's *Hacker Crackdown* (1992) and Katie Hafner and John Markoff's *Cyberpunk* (1991) for some insights into this community of online users.

Besides freenets, commercial networks and computer bulletin board services, Internet service providers (ISPs) offer yet another gateway into computer-mediated communications spaces. Most ISPs offer single-line modem access to a remote computer that is in turn linked to a high-speed Internet connection at flat monthly rates. In addition, hourly rate Internet access can also be found in "cybercafés" - coffee shops that offer online connections as well as drinks and light snacks. Also, many cable and telephone companies now offer high-speed Internet connections at fixed monthly rates. And, lastly, Internet terminals for patron use are increasingly being installed in public and university libraries.

ii. Methods of Online Communication

To this point, the advent of the online medium and a range of methods whereby individuals may access the Internet and other online spaces has been reviewed. While the Internet is by no means the only context in which computer-mediated communication occurs, it is evident from the preceding review that it is rapidly becoming the platform of choice for many users of the online realm. Given this trend, this section turns to a selective review of methods whereby, and contexts in which, Internet-based, online communication often takes place. These methods can be separated into five general categories: (1) one-to-one messaging, (2) group discussion lists, (3) publicly distributed discussion groups, (4) real-time textual communication and (5) audio/video communication.

The most commonly used mode of Internet communication is electronic mail, or "e-mail." Since every Internet user has a unique account identifier (i.e., e-mail address), this permits the composition, addressing and transmission of messages to one or more Internet subscribers. Although this form of interaction is akin to sending a letter through the postal system, it has two notable differences. First, e-mail message delivery is normally made within seconds or minutes of transmission and, second, e-mail messages are not generally "sealed." As a result, because an e-mail message travels from one host computer to the next, it can be intercepted or viewed at any point. E-mail messages are normally text-based, but computer files or programs can also be appended as "attachments." Messages may also be encrypted to reduce the possibility of unwanted interception or viewing.⁵ In addition, anonymous one- or two-way message exchanges are also possible if a user routes e-mail through a "remailer," a host computer configured to strip message header information before it is forwarded to its intended recipient.

Aside from one-to-one communication, e-mail can also be used to engage in group discussions. Indeed, there are several thousand automatic mailing lists (listservs) that offer computer-mediated communications services for Internet users who share similar interests. Since most listservs are automated, a prospective member joins by sending an e-mail subscription request to the appropriate host computer. Thereafter, the contributions of other list members will be forwarded to that user's e-mail address. To participate, a user sends a message to a listserv's e-mail address which in turn forwards the contribution to

⁵ Several strategies to prevent the unwanted viewing of private e-mail have been developed. The most notable example is *Pretty Good Privacy (PGP)*, a software encryption program developed by Phil Zimmerman.

all list members. In some instances, lists are "closed"; as such, all contributions are either forbidden or are screened for content by a designated moderator.⁶

Publicly distributed message groups share many similarities with electronic mail listservs, but are accessed in a different manner and context. The most widely used online message services are the USENET newsgroups. These are user-sponsored and controlled public message exchange bases in which almost every imaginable topic can be discussed. Unlike listservs, a newsgroup subscription is not required; instead, online users access newsgroups by using a software program to directly connect with a host computer that offers a USENET feed. Once connected, a user may participate in a newsgroup by composing and submitting a message (sometimes known as an "article") to that group. This message will then be disseminated into a network of over 200,000 USENET computers at locations around the world. If a newsgroup is moderated, all contributions will be forwarded to a designated reviewer before being released to the public. Depending upon each host computer's configuration, messages will either remain in a server's database for a pre-defined period of time, or until a purge is required to accommodate the endless arrival of new messages. In 1997, there were more than 20,000 newsgroups, with a cumulative average of approximately 100,000 new postings each day.

There are two basic modes whereby online users engage in real-time, textual communication over the Internet. The most common method is the Internet Relay Chat (IRC), a service that permits real-time, textual interaction between online users at

⁶ To reduce the number of incoming e-mail messages on lists with a high traffic flow, most listserv processors also allow a day's messages to be compiled and sent in "digest" mode.

locations all over the world. In a sense, the IRC is the computer equivalent of CB radio. It offers countless thousands of channels in which a collective of tens of thousands of users can engage in one-on-one or multi-user conversations, 24 hours a day, 365 days a year. To participate, a user connects with an IRC host computer and either selects a channel from a seemingly endless list of topics, or initiates an additional topic by forming a new channel. Most IRC channels are open for all users, however, some are moderated by channel operators, while others are sometimes populated or controlled by automated software programs known as "IRCBots."

A close cousin of the Internet Relay Chat is the Multi-User Domain/ Dimension/ Dungeon, or MUD (also known as MOOs, MUCKs and MUSHs). A MUD is a multi-user, textual or graphically-defined interactive gaming context in which users interact in real-time with other online "characters." By inputting appropriate commands, MUD users can explore particular multi-user spaces, collect items, acquire points or gain greater status. Hundreds of these interactive gaming contexts operate on Internet host computers. Some have tight membership requirements, while others are open for all to participate.

One- and two way modes of audio and video communication are also becoming commonplace on the Internet. For example, several hundred real-time and prerecorded audio "narrowcasts" (or "cybercasts") are available via Internet host computers. One of the most common Internet-based platforms for audio transmissions is *RealAudio*. With the use of a *RealAudio* receiver, a software program that converts audio data packets into a continuous sound stream, an online user can access a wide range of programming, including live or recorded sporting events, concerts, music, speeches and other special

events.⁷ In addition, there is a handful of Internet-based radio stations that narrowcast music and other programming.^{8 9}

A second example of online audio transmissions available via an Internet connection is real-time, two-way audio communication. These are generally available in two formats: (1) computer-to-computer and (2) computer-to-telephone. Via data packets routed through a remote host, computer-to-computer connections allow two-way spoken interactions between two or more Internet users. Sometimes referred to as the "Internet telephone," this interactive context is essentially an audio version of the Internet Relay Chat. By contrast, the computer-to-telephone method allows Internet users with the appropriate hardware and software to place long-distance telephone calls via their personal computers to individuals located within a given remote computer's local calling district. However, because this method is still in its developmental stages, only a handful of computers around the world are configured for this mode of interaction.

Finally, there are also several emerging formats for one- and two-way modes of Internet-based, audiovisual communication. For example, the data-streaming program *VDOLive* enables the transmission and near-instantaneous viewing of audio-visual images. Similarly, using a program called *Cu-C-Me*, individuals or organizations with high-speed data connections (and the appropriate hardware), can engage in two-way audiovisual

⁷ In 1994, Las Vegas radio station RT-FM, became the first to offer simultaneous Internet narrowcasts of its signal.

⁸ *RealAudio* sound quality can vary considerably depending on network traffic; however, with a stable link, it is possible to receive near-CD quality, stereo transmissions.

⁹ The first *RealAudio* cyberstation, Radio-HK, began Internet narrowcasts in 1995.

conferencing. At present, however, the potential for the widespread use of these Internet-based, audiovisual communications technologies is constrained by the limits of existing compression software and available bandwidth. A more promising technology for high speed modem users, however, is *RealVideo*, an audiovisual data-streaming program from the developers of *RealAudio*. This platform offers personal computer users real-time access to news telecasts and a limited range of music, film, television and general interest videos. While the bandwidth restrictions of a conventional high-speed modem do place some limits on frame rate and picture quality, *RealVideo* nevertheless offers an intriguing taste of what lies ahead for Internet-based communication.

3. The Online Medium as a "Set of Knowledges"

Contexts of information retrieval - that is, methods whereby individuals may access particular sets of knowledge - is the third, and final, computer-mediated communications category of relevance for this dissertation. *Telnet*, *ftp*, *gopher* and the *World Wide Web* are the four most common ways in which Internet users connect with remote computer sites to access knowledge databases or information servers. *Telnet* is an interface that enables a direct, real-time (synchronous) connection with a remote computer. Its possible uses include connections with special interest computer bulletin boards, the analysis of complex data sets on high-powered mainframe computers and basic information retrieval. By contrast, *ftp*, *gopher* and the *World Wide Web* lack a synchronic interface, but nevertheless offer online users near-immediate access to an extensive array of informational databases and services located on remote computers around the world. For

example, via an ftp (file transfer protocol) connection, individuals can connect with a distant computer, obtain a list of available files and download (i.e., transfer) whatever information or program is required. Similarly, via a gopher or World Wide Web connection, users can view or request files, access information or take advantage of countless services ranging from up-to-the-minute news reports, to the delivery or provision of goods and services.

Since late 1994, it has been this latter method, the World Wide Web (often referred to as the "Web"), that has become the most recognizable and popular Internet feature. Running on hundreds of thousands of Internet host computers around the world, the Web is a decentralised, distributed information system. Its appeal is its user-friendly interface that allows individuals to access a vast range of online documents containing text, images, animation, sound or video. In addition, the Web is an integrated platform that can incorporate or enhance, telnet, ftp, gopher, e-mail and USENET access.

Web documents are designed with a flexible formatting language known as HTML (hypertext markup language). Using a Web "browsing" program such as *Lynx*, *Netscape* or the *Microsoft Internet Explorer*, Internet users can access HTML documents located on computers all over the world. Most Web documents contain links (also known as "hyperlinks") to other pages or locations. To encourage visitors to visit these additional links, textual markers are either highlighted in blue, underlined or emphasized with a graphic image or icon. As such, Web-based hyperlinks allow information and resources to be organized in diverse and creative ways and enable individuals to locate and access a

remarkable range of information, even if it is scattered across computers on a wide array of remote computer sites.

The Web was conceived and launched in 1991 at CERN, the European Particle Physics Laboratory, as a method to facilitate the Internet-based distribution of research findings between members of the high energy physics community. Not long after its creation, the technology was quickly appropriated by other academic communities who were similarly dependent on the distribution and dissemination of collaborative research information. Since that time, the Web has rapidly reached well beyond these scientific and academic communities to include Internet users from all walks of life. As a result, many individuals, governments, universities, non-profit groups and businesses now have some form of online Web presence.

An online site is commonly referred to as a “home page.” Like an e-mail address, each page has a unique identifier, also known as a “URL” (uniform resource locator). Once a page is loaded, a user may then access other pages by “clicking” on highlighted links. Some will be housed on the same host computer, while others will transport users from one host to another. It is this ease of movement that gives the Web a seamlessness, as if it is a unified database of knowledge and information.

Since the Web is essentially a platform through which private citizens, governments, organizations and many others may converge to offer information on any topic, it is often referred to, or equated with, “publishing.”¹⁰ To become a Web

¹⁰ A set of commonly agreed upon and flexible HTML standards are used to format most Web pages. These standards facilitate the viewing and creation of home

(continued...)

“publisher,” an individual needs storage space on a computer that has a full-time connection to the Internet. These computers need not be sophisticated and can range from a low-cost personal computer, to a multi-million dollar mainframe computer. Most Web publishers lease disk storage space from ISPs who have the necessary equipment. In addition, many small businesses now offer professional home page design services.

Concurrent with the Internet’s geometric expansion since the early 1990s, the Web has also experienced equally extraordinary growth in its size and use. In June 1996, it was estimated that there were at least 230,000 Web sites (Zakon, 1996), housing over 150 million pages (Kelly & Wolf, 1997). With thousands of new page appearing on a daily basis, it is expected that there will be over one billion Web pages by 2000 (Kelly & Wolf, 1997).

Given its ever-increasing scope, a range of searching facilities, or search engines, have been developed to simplify the task of finding a specific piece of information or Web site. Web search engines such as *AltaVista*, *Excite*, *Lycos*, *Magellan*, *Webcrawler* and *Yahoo!* allow users to search for topics via pre-arranged categories, or by entering key terms into a command-line interface. For example, if a user enters a key term or phrase into a search engine, a new page will be generated with a listing of anywhere from zero to several thousand sites that purportedly contain this term or sequence of words. As such,

¹⁰(...continued)

pages no matter what computer platform an individual is accessing or using. Although Web standards are constantly evolving to meet the increasingly demanding needs of today’s online publishers, basic Web publishing is sufficiently simple that any individual can create a personal home page.

these search engines are fast becoming one of the most popular Web resources; indeed, without such services, locating desired information would be almost impossible.

As noted earlier, the sudden popularization of the online medium is already raising numerous regulatory and control issues in government circles around the world. At the same time, the preceding review of the online medium's history - and the communicative and knowledge-based possibilities stemming from some of its present-day applications - has shown that this new communications context is greatly enhancing particular communicational practices that were - at least to some degree - previously limited by structural, temporal and geographic restraints. Thus, in light of its geometric growth and widespread integration into the day-to-day lives of people in countries around the world, the timeliness and relevance of this dissertation's exploration of regulatory regimes that might impede such novel communicational practices seems all the more pressing.

What follows in chapter II is a selective survey of literature related to the computer-mediated communications medium that has emerged from the social science, humanities and legal contexts. Its primary emphasis will be to identify the principal strategies that have been employed by scholars seeking to better understand the uses and implications of the online realm. In addition, to frame the discussion for subsequent chapters, key theoretical, methodological and communicational influences will be reviewed and discussed.

II

Analytic and Empirical Approaches to the Study of the Online Communication

In his survey of the field, Ronald Rice (1992) notes that scholars have frequently lamented the lack of useful theory and the relative absence of empirical studies on the possible uses, impacts and implications of the computer mediated communications (CMC) context. This assessment of the literature, however, is to some extent misplaced. Yes, CMC research has at times been theoretically or methodologically suspect, but it has hardly been lacking. This misperception, argues Rice, has in part emerged because CMC research has often been published in a diverse array of new and often unknown journals, spanning a wide range of disciplines. As a result, the full scope of the literature has typically been overlooked by members of any one discipline attempting to survey the field (1992: 113).

With the above issues in mind, this chapter surveys CMC literature from the humanities, the social sciences and law as a strategy to identify communications-oriented scholarship of relevance for the present exercise. It begins by identifying some of the principal issues that have guided scholars intent on making better sense of the online medium. Thereafter, it conducts a considered review of three communications scholars - Ithiel de Sola Pool, Dan Lacy and Carolyn Marvin - whose methodological influences will be of greatest relevance for this dissertation's exploration of online regulatory issues. And, to conclude, it discusses some key theoretical considerations stemming from communications discourse which will shape this dissertation's socio-historical perspective.

A. Review of the Literature

While research on computer-mediated communication has been conducted across a range of disciplines for nearly two decades, the Internet's heightened popularity since the early 1990s has contributed to an extraordinary increase in the number of published studies, reviews, articles and books. This literature can be grouped into three general categories. The first, *expository/utilitarian* studies, usually explores CMC's capacity to enhance academic research (e.g., Benson, 1994), teaching (e.g., Burke, 1996), collaborative research (e.g., Beck, 1995), health care (e.g., Keane, 1991) or distance education (e.g., Gregor & Cuskelly, 1994); while, the second, *social-psychological/human impact* studies, typically investigates the influence of online communication on individuals and small groups (Hiltz, Johnson & Turoff, 1981, 1989; Czajkowski & Kiesler, 1984; Sproull & Kiesler, 1986; Spears & Lea, 1992; Hollingshead, McGrath & O'Connor, 1993). However, while these two bodies of literature are often informative, they all too often rely upon descriptive or anecdotal data, or betray a weak grasp of online communications technologies and their potential uses or impacts. Furthermore, a great deal of this discourse has been plagued by contrary findings, hyper-utopian rhetoric, weak theoretical frameworks and a lack of generalizable conclusions. Consequently, although these two research areas do advance a broad range of preliminary insights, they offer little of use for the present research endeavour.

The third CMC research category, *societal implications/impact* studies, differs from the first two categories insofar as this literature is typically less optimistic and considerably more cautionary when addressing the potential merits or risks of today's new

communications media. Most vocal in this group have been communications scholars such as Haywood (1995), Kroker & Weinstein (1994) and Postman (1992); social scientists such as Ellul (1990), Klapp (1986), Roszak (1994) and Turkle (1996); and humanists such as Birkerts (1994) and Slouka (1995). Examples of assertions made by these types of thinkers include warnings that: information overload will be a byproduct of the new information age (Postman, 1992); the gap between the haves and have-nots will be aggravated (Haywood, 1995; Golding, 1996); online communication will reduce attention spans or distract from reality (Slouka, 1995; Birkerts, 1994); excessive corporate involvement in the online domain will create an underprivileged, information-poor class subject to unemployment, deskilling and isolation (Boehringer, 1995); the unchecked pursuit of the virtual world will impede current social advances and lead to abuses and inequalities characteristic of the colonial era (Kroker, 1996); and traditional regional economic and geography models of enterprise will be severely impacted (Hepworth & Waterson, 1988).

Thus, a readily apparent theme emanating from the above discourse is an implicit rejection of the hyper-utopian enthusiasm that has characterized many mainstream media and academic representations of the online realm. Connell (1996) concurs and proposes that in much the same way that an intense scrutiny has been applied to other communications media, the time has come for a considered examination of the impacts that the online domain may be having on existing societal structures and relations. To date, those who have most effectively undertaken this challenge have been communications scholars, political scientists and policy-makers who have examined how

the online context could be used to impact public opinion (Sachs, 1995; Beniger, 1995), encourage the formation or advancement of activist/lobby movements (Myers, 1994; Yerxa & Moll, 1994) or effect political change (Downing, 1989).

Along a similar vein, others have begun to question how the online medium might impact or reshape democracy. O'Sullivan (1995), for example, argues that interactive computer networks are well-suited for pluralistic, political participation and suggests that political communication will be enhanced by a process known as "teledemocracy." By contrast, Sardar (1996) contends that the online medium threatens to sanitize and erase non-Western histories and cultures and is an inherently undemocratic medium due to its access restrictions and costs. And, on a similarly cynical note, McChesney argues that today's rapid concentration of corporate interests and promarket policies will "be little short of disastrous for the quality of life for a majority of people both in the United States and globally" (1996: 118).

Legal scholars have also contributed extensively to the CMC literature. As with other disciplines, however, a great deal of what has been published has been expository or utilitarian (e.g., Waters, 1996; Bertram, 1996). At the same time, though, the far-reaching policy implications of the online medium's sudden growth have also surfaced as popular research considerations. Topics addressed include: copyright law (e.g., Cohen, 1996), intellectual property (e.g., Marchant, 1996), privacy (e.g., Galkin, 1996), surveillance (e.g., Shear, 1996), computer fraud (e.g., Adams, 1996) and transnational conflicts (e.g., Burnstein, 1996). In addition, a wide array of legal scholarship has addressed the complex challenges of protecting free speech rights and upholding community standards, while

simultaneously enforcing existing disparate obscenity laws (e.g., Kim, 1995; Lassiter, 1996).

There is also a handful of examples of academic scholarship from outside the legal profession that have addressed the regulatory and policy-making implications and challenges of the online medium. For example, Paul Burton (1996) sees inherent dangers in allowing authorities to monitor or censor the online sphere and questions what should be censored and who should act as censors of online material. Valerie Steeves (1995) concurs and further notes that it is important to recognize that the online medium is symbolic of the values of the people who inhabit it and that the protection of online communication will not be shaped by the technology but by the "values of those who construct and operate it." Similarly, Jeffrey Shallit (1996) argues that it should be the role of individuals, not governments, to determine the limits and meaning of online communications since it is his belief that existing laws - coupled with a more uniform set of international laws - offer the most reasonable solution to the question of online censorship. And, finally, in his exploration of issues associated with pornography and online censorship, computer scientist Richard Rosenberg (1993) argues that a better understanding of the online medium's potential risks, coupled with appropriate educational strategies, is the only way appropriate new communications policies will ever be developed.

Overall, then, societal implications/impact studies are a bright light in a field sorely lacking substantive research. Unfortunately, while these scholars are highly adept at pointing out a range of issues and concerns, they rarely provide clear proposals or

solutions. Therefore, this makes most aspects of this literature of limited use for a communications-oriented exploration of the regulatory challenges presented by today's computer mediated communications technologies. Similarly, because much of the relevant discourse all too often descends into pedantic constitutional debates over the sanctity of free speech provisions and legal precedents unique to the United States' Constitution, its overall usefulness for the present exercise is somewhat tempered. Nevertheless, this does not mean that this body of literature cannot offer valuable insights. On the contrary, as will be seen through the course of this dissertation, relevant literature stemming from the introduction of new communications technologies will help us understand why such a diverse array of regulatory models have emerged in the wake of particular communicative innovations. As such, the perspectives of particular scholars will extensively enhance our understanding of the rhetoric that has impacted present-day regulatory debates for the online medium. Thus, with these considerations in mind, the next section discusses three communications scholars - Ithiel de Sola Pool, Dan Lacy and Carolyn Marvin - whose methodological approaches will most notably inform this dissertation's analytic framework.

B. Methodological Considerations

As noted in chapter I, Neil Postman (1992) advocates conducting communications research within a historical framework. The work of the political scientist and communications policy analyst, Ithiel de Sola Pool, is a prime exemplar of this approach. In *Technologies of Freedom*, Pool undertakes a ground-breaking study of the relationship

between historical trends in the development of new communications technologies, the regulatory controls under which each has been placed and their subsequent impacts on the “right[s] of citizens to speak without controls” (1983: 1). Although written nearly a decade before the widespread availability of computer-mediated communications spaces, his primary concern is the prospect of strict regulatory practices that might impact these emergent communicative contexts. As such, through an examination of the United States’ “trifurcated” communications system of print, common carriage and broadcasting, he examines the historical trends that surround the formulation of new communications policies and laws. In the process, he wonders whether the oligopolistic trends that have led to networks of common carriage and broadcasting - coupled with the gradual convergence of traditional communications technologies - will endanger online communication by implanting “a permanent set of regulatory practices . . . on a system that is coming to have technical characteristics that would otherwise be conducive to freedom” (1983: 5).

Given these concerns, Pool proposes an innovative, albeit controversial, methodology for examining the relationship between the history of communications innovations and their potential impacts on free expression. Positioning himself as a ‘soft’ technological determinist, he argues that the interaction over the past two centuries between emergent technologies of communication and the practice of free speech has not been simple, unidirectional or immediate. He further asserts that institutions that have evolved in response to one technological condition have often later been “imposed on what may be a changed technology” (1983: 5). To illustrate, he notes that the United

States' constitutional protections for free expression under the First Amendment "came out of a pluralistic world of small communicators, but . . . shaped the present treatment of great national networks" (1983: 5). In addition, he points to regulatory models "that emerged for national common carriers and . . . for broadcasting" that have been inappropriately imposed upon more recent generations of electronic communications (1983: 5).

Most scholars flatly reject technological determinism as a strategy for understanding the impact of new communications technologies.¹¹ Thelma McCormack (1994) defines technological determinism as "an explanatory model which makes technology the prime mover in any sequence of psychological or social causality and the engine of social change." She notes that some of the most prominent thinkers, including Thorstein Veblen, Harold Innis, Marshall McLuhan, William Ogburn and Norbert Wiener have in one way or another assumed "that technology appears without reason, that it is born of itself, and that it can only be abused by its own defect." Pool recognizes the inherent weaknesses underlying this style of technological determinism and notes that such readings very often "fail to take account of the differences in the way things happen at different stages in the life cycle of a technology" (1983: 5).

To illustrate this alternate line of reasoning, Pool cites the process that led to the emergence of the motion picture industry in the 1920s. Due to technological constraints, the earliest films were black and white, without sound, pantomimic and viewed in public

¹¹ See McCormack (1994) for a useful overview of the perils of technological determinism.

assembly areas. By contrast, today's films have color, sounds, incorporate sophisticated special effects and are not bound to a theatrical viewing context. However, the early years of the motion picture industry "established studio, theatres, career lines, unions, funding, and advertising practices all designed to use the technology" that was in place (1983: 6). Consequently, following the tenets of soft technological determinism, technology can indirectly drive change *if* the institutions brought about by a technological innovation can constrain "its direction and pace" (1983: 6).

In keeping with these arguments, Pool further contends that the histories of other communications technologies offer useful examples of institutional controls that have later influenced emergent or poorly understood technological innovations. For example, he notes that electronic theory has reached a point where the design, development and construction of a wide array of communicational devices is limited mostly by cost; consequently, it is the market, not technology, that is setting many of today's innovational limits. However, in spite of this shift, many institutions were devised during periods when technological limits necessitated ongoing government controls. In light of these histories, it is Pool's belief that an understanding of the earliest stages of institutional control is a key methodological component for making sense of advanced, and advancing, modes of electronic communication.

The role of law-makers operates in parallel with Pool's concern for the potential impact of institutional histories on current advances in electronic communications technologies. For example, freedom of the press is widely regarded as one of the United States' oldest traditions, but Pool wonders "just what is it that the courts have protected,

and how does this differ from how the courts acted later when the media through which ideas flowed came to be the telegraph, telephone, television, or computer?" (1983: 7). Moreover, "What images did policy makers have of how each of these media works; how far were their images valid; and what happened to their images when the facts changed?" (1983: 7). Upon closer scrutiny, he concludes that the law has too often relied upon partially inaccurate perceptions of new technologies and has adapted slowly in spite of rapid rates of technological change. For Pool, this is because "each new advance in the technology of communications disturbs a status quo. It meets resistance from those whose dominance it threatens, but if useful, it begins to be adopted" (1983: 7).

Given that the communications media in the United States have historically been differently organized and regulated, it is Pool's belief that the "outcome to be feared is that communications in the future may be unnecessarily regulated under the unfree tradition of law that has been applied" to broadcasters (1983: 7). In addition, he fully expects that the gradual convergence of the print, common carriage and broadcast industries - coupled with the manner in which new communications technologies have been blurring traditional notions of space, time and jurisdictional boundaries - will trigger a vehement communications policy debate on a global scale. As such, he believes that the need for new, and enlightened, communications policies is all the more pressing.

Overall, Pool's appreciation for the historical trends underlying innovations in communications technologies facilitates a sophisticated exploration of the evolution of new communications technologies. At the same time, some critics have argued that he places too much faith in the empowerment new communications technologies might derive

from free market forces, as opposed to forms of government regulation or control (Lyon, 1986; Dutton, 1984). Indeed, as David Lyon notes, “the market certainly does not ensure that the most socially-useful system of technologies is installed. Add to this the massive influence *already* held by the big information technology corporations, and it becomes clear that Pool’s analysis is missing some important dimensions ” (1986: 451).

Nevertheless, despite these drawbacks, Pool’s argument that past regulatory activities can shape the structure of current policy debates offers an ideal starting point for addressing some of the broader aspects surrounding present-day efforts to regulate the online medium.

A scholar whose work, to a great extent, mirrors Pool’s historical method and perspective is communications theorist, Dan Lacy. In *From Grunts to Gigabytes* (1996) - a detailed exploration of the history of new communications technologies in Western societies - Lacy argues that one of the most notable outcomes of each subsequent communications innovation has been the reinforcement of particular power structures at the expense of others. On this note, he contends that each new mode of communication has helped to impart power in two ways. First, by “enlarging and speeding the flow of current communication” and, second, by providing “different ways of storing, preserving, and providing access to a society’s accumulated knowledge” (1996; xii).

Lacy further argues that the “communications system of a society not only helps to determine aggregate power but also goes far to determine the distribution of power within the society” (1996: xiii). For example, in preliterate societies, all members could speak and hear, therefore, there was a relative equality of communication, status and power.

However, each subsequent communications innovation has required the development of specialized skills, such as reading or writing, or has necessitated the acquisition of costly equipment or structural resources, such as paper, printing presses, telegraph lines, telephones, broadcast facilities or computers. Furthermore, with each new development in communications technologies, organizations for their management and control have emerged, thus serving to further concentrate power in the hands of a select few.

In light of these historical trends, Lacy worries that despite the benefits of a “greatly enlarged . . . audience for communication,” the convergence of new communications media is simultaneously narrowing “control over the input of information” into the hands of large institutions, corporations or agencies, thus prompting unwarranted government intervention (1996: xiii-xiv). Echoing Pool, he notes that since the earliest days of printing, measures have been undertaken to prevent the circulation of information or ideas that have challenged the status quo. In addition, each successive communications technology has, at least initially, spawned “a small privileged class that has had the requisite skills and facilities to use the new technology” (1996: xiv). As a result, given the manner in which communication from one source “to larger and larger bodies of individual recipients without the necessity of passing through a hierarchical chain” has increasingly been made possible, it is his belief new interactive technologies are only benefitting a select few and are, by extension, further concentrating “the residence of power” (1996: xiv-xv).

Overall, Lacy’s perspective offers some valuable theoretical and methodological insights for the present exercise. In particular, his focus on competing power relationships

stemming from the mainstream popularization of new communications platforms, brings into focus an issue that is largely absent in Pool's historical overview of past technological innovations. Indeed, Pool, as a free speech absolutist, seems much more concerned with protecting freedom of expression, than with the societal implications of disparate power relationships. Furthermore, his emphasis on the empowerment new communications technologies might derive from free market forces - as opposed to modes of government regulation or control - sets aside any consideration of the potentially legitimate reservations that less empowered societal actors and segments might hold toward an unregulated new communications environment. For these reasons, Lacy's perspective - when used in conjunction with aspects borrowed from Pool's socio-historical examination of the legal discourse stemming from past communications innovations - will be a valuable supplement for chapter III's review of the regulatory rhetoric that shaped early policies for the print, common carrier and broadcast-based communications media.

While Pool and Lacy's methods offer an ideal macroanalytic template for examining some of the historical and institutional forces that have impacted new communications policies, an aspect still missing is one that simultaneously affords a microlevel examination of the ways in which today's new communications media are reshaping, or compromising, societal relationships. To fill this gap, the work of communications theorist and media historian, Carolyn Marvin, offers some useful insights. In *When Old Technologies Were New: Thinking About Communications in the Late Nineteenth Century* (1988), Marvin conducts a richly textured, retrospective analysis of early electronic communications technologies. Drawing from nineteenth century popular

technological and general press sources, she challenges traditional views of the social origins of electric communications technologies by attempting to supplement more artifact-centred histories with an approach which treats new communications media as “a series of arenas for negotiating issues crucial to the conduct of life” (1988: 4).

In essence, Marvin’s exercise is a history of unexplored uses and of prophecies unfulfilled. From her perspective, the early social history of a medium must be understood from the period where an industry first organized to build, manufacture and promote. She explains that the electric media became part of western daily life near the end of the nineteenth century as groups with “competing logics of experience” began experimenting with potential uses for electric technologies (1988: 232). She further notes that through the authority of their skills, knowledge and expertise, specialized groups such as engineers and electricians attempted to control these instruments of communication. This resulted in the marginalization of women, minorities and societal ‘have-nots’ and served to further reinforce traditional assumptions and prejudices as to who was capable of mastering such technologies and who was not.

Through the course of her efforts to uncover the many and varied responses to nineteenth century modes of electric communication, Marvin introduces and applies a method of textual analysis that effectively illuminates the ways electric communication threatened boundaries of family, gender, class, race and nation. Hers is an approach that implicitly rejects all forms of technological determinism. Instead, she is concerned with the ways people interpret and react to new communications technologies. As such, she is

able to demonstrate how these new technologies were sites of societal struggle and negotiation between those with and without electrical expertise.

Through an examination of technical journals and newspapers, Marvin is also able to demonstrate how advances in communications technologies were perceived as a threat to the status quo. Similarly, she uncovers useful insights into societal thinking through textual analyses of nineteenth century utopian and futurist reflections on new communications technologies. This process serves to reveal how the ethnocentric and Anglo-Saxon biases of some writers shaped visions of a future in which instantaneous long-distance communication would annihilate space and time and initiate a period of societal and “global harmony” under a common (i.e., western) cultural order (1988: 193).

Several critics have observed, however, that a limitation with Marvin’s approach is the narrowness of her source material (Lipartito, 1989; Rudolph, 1989; Winston, 1989). Indeed, although her approach does provide some valuable insights into how some electrical experts understood and conceptualized applications for new electric media, very little is said about what other groups thought of these media. Moreover, Richard Rudolph notes that Marvin very often uses anecdotal evidence “to describe aspects of the social dynamic that accompanied media appliances, rather than providing the reader with an in-depth analysis of how various groups dealt with each other to control the new forms of electrical communication” (1989: 1349). These factors, however, should not dissuade one from attempting these types of analyses. Indeed, Marvin recognizes this methodological limitation and argues that in spite of its drawbacks, the actors whose world she has uncovered and explored through her review of nineteenth century electric discourse offers

an insightful “window on the way in which an entire society confronted the introduction” of electric communications technologies (1988: 232).

Thus, despite its drawbacks, Marvin’s method offers an important building block for moving beyond conventional historical and institutional narratives, to one where it is possible to explore how new communications technologies can reshape or compromise social relationships. Her rejection of the linear thinking that has typically shaped popular histories of new communications technologies uncovers hidden paths of technological development and persuasively demonstrates how experts, laypeople and societies have in some instances made sense of, and used, new electric media. For this reason, if coupled with Pool and Lacy’s broader-based policy mapping strategy for examining the influence of past regulatory models, Marvin’s predominantly microanalytic method for the study of the early history of electric communications and its impact on social relationships, offers a useful way to rethink a purely historical approach to the study of advances in communications technologies and, by extension, the formulation of new communications policies.

One way to address the methodological deficiencies of Marvin’s approach is through an integration of *moral panic theory*. Stemming from a range of sociological fields, including deviance, collective behavior, social problems and social movements, moral panic scholars explore how negative societal reactions to new phenomena sometimes impact social relationships and, by extension, public policy through the complex interrelationship of “positions, statuses, interests, ideologies, and values” (Cohen, 1972: 191). Echoing Marvin’s media-centred approach, this line of thinking explores how

the interests and agendas of actors from various societal segments (e.g., the general public, the media, the police, legislators, experts and activists) are represented by particular media sectors. In addition, it proposes a sophisticated analytic method that can effectively illuminate the way new communication technologies sometimes threaten societal power relationships. For this reason, it is believed that moral panic theory offers an ideal methodological stepping stone for learning more about the ways in which rhetoric stemming from key societal segments can impact the development of new communications policies.

Chapter V will undertake a selective review of the theoretical and methodological components of moral panic theory that will be of relevance for this dissertation. For now, it can be noted that it is expected that this approach will be extremely useful for pinpointing the way particular actors and groups have shaped the discourse of new communications technologies and policies. In addition, it is anticipated that this approach will extensively illuminate the mainstream media's central role as an agent of social construction through which various societal agents' interests and agendas are sometimes disseminated, reinforced and reified.

Taken together, it is believed that the approaches of Pool, Lacy and Marvin - once supplemented by relevant aspects of moral panic theory - provide an ideal conceptual framework for exploring the rhetoric that has been shaping present day efforts to regulate the online medium in an age of transnational communication. Pool's method offers a template for examining historical and institutional narratives stemming from legislative circles. Lacy reminds us that disparate societal power relationships are an inescapable

reality that will inevitably impact the formulation of new communications policies. And, finally, moral panic theory offers a rigorous methodological strategy that overcomes the analytic deficiencies of Marvin's socio-historical approach. As such, it is anticipated that this dissertation's socio-historical framework will not only serve as a vehicle to illuminate the complex array of historical, social and cultural variables that are impacting on present-day movements for, and against, online regulations and controls, but will simultaneously provide an ideal foundation for connecting the regulatory histories of past communications technologies with some of the socio-cultural interests driving and shaping new communications policies for the online sphere.

C. Theoretical Influences

To capture general thematic issues and trends which have informed the academic literature stemming from the advent of new communications technologies, the past two sections have selectively outlined a broad base of relevant scholarship. From the standpoint of a communications researcher intent on exploring the emergence, impact and potential regulatory implications of the online medium, the discourse was found to be greatly lacking in substantive contributions. Indeed, a recurrent observation was the relative paucity of theoretically or methodologically rigorous approaches and an overabundance of purely descriptive or utilitarian scholarship. Robert McChesney agrees with this assessment of the literature and argues that it is an "academic context for critical research . . . in turmoil" (1996: 188). Moreover, it is his belief that this overall weakness in the field presents "a special role for communications scholars to play in debating and

devising . . . communications policies” (1996: 188). Michael Marien concurs and further notes that communications scholars have, to date, been “notably unhelpful, with the vast majority losing themselves in behaviorist trivia and minutia” and argues that the time has arrived for them to “get a grip . . . on the actual and potential impacts, the pros and cons of what we are doing, and alternative policies to promote the public interest” (1996: 382). On this note, this section briefly reviews key theoretical considerations stemming from past communications research that will inform this dissertation’s socio-historical exploration of the challenges facing actors and groups intent on devising new regulatory regimes for the online sphere.

Hanno Hardt contends that the positivistic influences arising from the long-standing successes of the social sciences tradition have notably impacted most communications research, making it “empirical, ahistorical and unreflective,” with an “obsession on facts and events” (1992: 5). For this reason, most theorists have tended to prioritize a pragmatic, “philosophical context for the celebration” of individuality within “a technologically driven society in which . . . historical explanations of social existence . . . [have given] way to the demands of industrial growth and technological superiority” (1992: 5). As a result, communications research has typically emphasized contemporary social or political issues at the expense of any exploration of the “historical consciousness” in society.

More recently, however, many communications theorists have rejected their social-scientific roots and reprioritized culture and cultural practices - including the requirement of historical understanding. This thematic shift, observes Hardt, runs in parallel with the

fall of grand social theories (e.g., Parsonian functionalism) and ends with the dismantling of great political powers.¹² In other words, as particular grand theories have been undermined by unforeseen societal changes, they have gradually been “replaced by a series of competing interests representing theoretical or political compromises or variations of dominant systems” (1992: 5).

The emergence of new theoretical compromises (e.g., neo-Marxist scholarship), contends Hardt, has been central in rediscovering “history” - not so much as a discipline - but as a method of inquiry. As a result, a number of academic fields, including cultural, literary and feminist studies have been directed “to a different kind of scholarship that invents, borrows and returns ideas about communication without much respect for the sanctity of a particular field of social research or for the pressures of uniformity.” In turn, this has led to the “rediscovery of the centrality of communication as a philosophical/theoretical concept within the context of thinking about the complexity of the social [world]” (1992: 8).

But why should a historical understanding of communicational practices be a central consideration for communications researchers? According to Raymond Williams, the value of communication in the study of societies “is always implicitly or explicitly, a

¹² For example, Talcott Parson’s functionalist action theory, or “Grand Theory,” for the analysis of social systems, achieved a certain level of popularity among social scientists between the 1940s and early 1960s. However, because it could not be reconciled with the changing social and political realities of the post-War/cold war era, it was widely discredited as a useful explanatory model. In response, many social theorists began to revisit Marxism given its powerful “capacity for self-criticism . . . in different historical moments” (Hardt, 1992: 6). As such, this process encouraged an alternate series of theoretical paradigms - including hermeneutics, phenomenology and structuralism - which slowly began to replace the dominant order of grand social theories.

definition of human beings in the world” (1977: 21). Therefore, a historical understanding of communicational practices can, by extension, help us better understand the disparate array of social, economic and political motivations driving human actors under particular temporal and spatial circumstances. In other words, by undertaking an informed critique of the practices of particular human actors who have laid the foundation for contemporary social and communicational circumstances, a communications scholar becomes better equipped to advance new social and political perspectives. Indeed, as Hardt aptly notes: “the ultimate goal of historical and theoretical insights into communication and society must be to help formulate a political agenda”; as such, we need a mode of communication research that can address “the definite conditions of social existence, including the need for change, and the potential contributions [for] building a better society” (1992: 9).

In light of the above factors, a pressing theoretical consideration stemming from this dissertation’s primary research question comes to the fore. That is, in what way should we theoretically frame regulatory regimes devised for past and present-day communications technologies if we are to make informed policy recommendations for the future of online communicational practices? There are two theoretical perspectives that can help us set up the question: the *objectivist* and the *constructivist*. This section briefly reviews their definitions and limitations.

1. Objectivism

Objectivists contend that understanding the essence of particular social and, by extension, communicative issues, lies in the acquisition of knowledge that is free from bias

or prejudice. This model is a variant of the functionalist paradigm. It sees particular issues as a product of conflicts between sets of human roles, practices and values; that is, as a disruption between “what is” and “what ought to be.” Similarly, the traditional Marxist position holds that particular issues should be defined objectively - by the harm that is inflicted on society due to practices that can range from exploitation to oppression. However, while the objectivist approach often fits “common-sense” notions of “what ought to be,” it has three major flaws. First, it minimizes or even dismisses the subjective nature of our social world. Second, objective conditions are limited by particular actors’ experiences. And, third, all theoretical perspectives and observations are inevitably limited to particular societal groups or contexts.

For example, as will be seen in chapters V and VI, arriving at a consensus over moral issues - such as the appropriateness or dangers of online pornography - is all but impossible. Police, government and anti-pornography authorities have frequently proclaimed that it is a pervasive phenomenon that is threatening the innocence and safety of our children. Meanwhile, online advocacy groups have argued that the call for repressive legislation for the online medium is merely a smokescreen that is being used by certain special interest groups to advance particular agendas or curtail free expression. Yet through this entire debate, little conclusive evidence that either substantiates, or refutes, the alleged widespread availability or dangers of online pornography has surfaced. This reveals the subjective nature of social issues. That is, what one actor or group presents as a problem will not necessarily be interpreted in the same manner by another.

Along a similar vein, the histories of particular communications technologies can also reveal the way subjective social judgments can, in turn, impact communications policy development. For example, as will be seen in chapter III, when radio was first introduced in the 1920s, it was seen in a utopian light as an all-empowering communications medium, with the single-handed potential to lessen hardship and conflict (Mattson & Duncomb, 1996: 3). Moreover, as a decentralized, low-cost and easily accessible technology, it was initially endorsed and actively used as a bidirectional, communicative resource, not unlike today's online context. However, with the growth of European nationalism, coupled with pre-existing regulatory regimes devised for earlier communications technologies, many government authorities wasted little time nationalizing and limiting the use of the radio spectrum, purportedly in the interests of efficient national planning, security and a scarcity of spectrum space. Moreover, following the mainstream introduction of television in early 1950s, this new communications medium - more or less by default - inherited the same basic regulatory principles that had been devised for radio. Thus, the objective conditions for broadcast regulation were hardly new; they were directly linked to shifting political agendas and past regulatory precedents. This again reveals the subjective nature of social policy formation; furthermore, it demonstrates how historical inquiry can offer useful insights into the formulation of new social and communications policies.

In short, it can be seen that objectivist definitions of communicative phenomena are easily made. Yet at the same time, it is not hard to see their limitations. For our purposes, objectivism assumes that the world is made up of social and communicative roles and actors. But while these actors' behaviours may be considered fluid and

contextually based, the world in which they are located is assumed to be objective and essentially stable. Thus, equating a particular issue with objective conditions can easily be made to fit any given actor or groups' common-sense understanding of what it is, or ought to be. However, because objectivist interpretations fail to take into consideration the fact that we cannot stand outside society - but are always bound by a multiplicity of social contexts and experiences - it remains inescapable that any analysis of a social phenomenon is subjectively defined and therefore prone to interpretations that will vary from one context to the next.

2. Constructionism

As the limitations of objectivist definitions of social phenomena have become increasingly apparent, some scholars have sought to identify an alternate, subjectivist model that would place a greater emphasis on the process by which people construct their social realities. In its most radical form, these subjectivist theories have dismissed objective reality as an unknown construct - forever in flux and contingent on definitions made by actors in particular social situations. The most well known example of this perspective is symbolic interactionism as posited by the American sociologist, George Herbert Mead, in *Mind, Self and Society* (1934). More recently, however, an even stricter variant of this position has been developed by ethnomethodologists and social phenomenologists. The most influential examples of this approach are: *The Social Construction of Reality* (1966) by Peter L. Berger and Thomas Luckmann and *Studies in Ethnomethodology* (1967) by Harold Garfinkel. In addition, the work of Erving Goffman

also shares aspects of this version of radical constructionism, though through a more moderate prism. His later work, particularly *Frame Analysis* (1974), represents a compromise, which acknowledges multiple levels of reality, without getting bogged down in an infinite array of relativistic possibilities.

At its most extreme, strict social constructivism eliminates virtually all conceptions of objectivity in the world and denies the possibility of gaining any knowledge through academic inquiry. This approach completely rejects the traditional tenets of the philosophy of scientific positivism. However, whether a complete disavowal of objective knowledge is reasonable, is hotly contested. The radical constructionist position holds that reality rests in one's mind; whatever is not there is unknowable. But while it may seem as if this approach might undermine academic inquiry, its subjectivism is still bound by several caveats. In particular, it asserts that all knowledge is socially - rather than individually - constructed. Thus, for these theorists, our understanding of society, communication, behavior and situations is central in the creation of particular versions of reality and may vary endlessly, or be altogether impossible to identify.

As noted above, strict social constructionists argue that it is not possible to determine the relationship between a given objective phenomenon and its subjective interpretations because objectivity cannot exist. Conversely, moderate, or what Best (1989) calls *contextual* constructionists take into consideration the relevance of the objective sphere. Thus, this approach rejects the objective dimension as a source of meaning, but simultaneously contends that subjective meanings can be determined independent from their objective meanings. For example, by adhering to a contextual

constructivist perspective, this dissertation's case study of the Internet pornography panic will argue that the alleged pervasive availability of online pornography is a largely subjective construct - brought about by the meaning-making practices of particular social actors and groups - which does not in fact fully translate to the realm of objective reality. By contrast, strict constructivism's complete denial of the objective dimension would have negated this interpretive process and, by extension, would have stymied the possibility of defining issues, making claims about their seriousness or making informed, prescriptive propositions.

Recent sociological explorations of social problems can also be used to illustrate how some researchers have used contextual constructivist methods. For these scholars, a social problem does not exist objectively in the same sense that a house, a car or a book might exist. Instead, they are defined, constructed and brought into being by the human mind. Thus, the objective existence of a potentially harmful phenomenon does not, by itself, represent a social problem. For example, the fact pedophiles are allegedly using the online medium to circulate child pornography and/or lure young children is not automatically a social problem. That is, if the public does not perceive or define it as a problem, then, from the contextual constructionist's point-of-view, it is not a social problem. Consequently, a given objective issue need not even exist to be considered a societal problem. For example, as will be seen in chapter V's review of moral panic theory, a lack of supportive statistics did not prevent the outbreak of a panic over adolescent drug abuse in Israel during the early 1980s (Ben-Yehuda, 1986). Similarly, as previously noted, chapter VI will show that despite a lack of substantive evidence,

particular actors and societal sectors have repeatedly pointed to the alleged pervasive presence of online pornography as reason enough to justify restrictive Internet legislation.

Goode and Ben-Yehuda aptly observe that “millions of people do not wake up one day and realize that a given condition is an [issue] that must be addressed. Members or representatives of certain categories, organizations, or groups are more likely to be moved to bring a condition to public awareness than others” (1994: 92). Thus, in the context of conducting informed communications research, a social constructionist needs to discover and understand the origins of a particular communicational issue. One might ask, for example: How did a particular communications technology arise? Who was involved? What new societal and communicational conditions did it foster? How was it introduced to - or “discovered” - by the general public? How was it received? And, how was it used?

Given the above questions, it can be seen why scholars such as Hardt (1992) and Postman (1992) prioritize history as a means whereby communications researchers might learn more about the roles, interests and agendas of key actors or groups involved in the social construction of any given phenomenon, issue or problem. Indeed, as will be seen in chapters III and IV, by looking back to the early histories of regulatory regimes devised for new communications technologies, we will be alerted to key interests and agendas that have shaped the eventual uses of particular new communications media. Similarly, through chapter VI’s socio-historical reconstruction of the Internet pornography panic of 1995, we will learn more about the extent to which various media sectors have reproduced, or rejected, the perspectives of influential and credible actors from a range of

societal sectors. Moreover, we will see how the mass media have used alarmist rhetoric to reinforce particular negative perceptions of the online medium, which not only helped fuel an international panic, but reinforced public perceptions of an apparent need for restrictive regulatory measures for the online medium.

As noted earlier, the objective basis of any communicative meaning-making process does not exist for strict constructionists. For this reason, these scholars run the risk of getting mired in solipsistic, epistemological debates. Consequently, if we are to effectively explore the socio-historical processes that have shaped particular communicational practices, technological innovations and their consequent communications policy implications, we cannot address them from the tenets of strict constructionism. Given these considerations,

This dissertation's position will be seen to more closely conform to the tenets of contextual social constructivism, rather than objectivism or strict constructivism.

As such, there is a key assumption that will guide this position. That is, the use of contextual social constructivism does not necessarily mean that the objective dimension is without merit or should be dismissed. Rather, it will be assumed that the objective dimension cannot - on its own - define particular issues, nor can it determine subjectivity. Therefore, the objective and subjective dimensions will not so much be treated as contradictory, but as independent, interpretative variables. Moreover, as particular communicative histories and issues are explored through the course of the forthcoming chapters, the objective dimension, in conjunction with subjective interpretations, interests

and agendas will be treated as discrete explanatory variables which - when weighted accordingly - will serve to enhance our understanding of the diverse meaning-making systems that have shaped interpretive discourses surrounding the advent of new communications technologies. This process will not only highlight how disparate regulatory regimes have impacted the uses of previous communications technologies, but will, by extension, guide us in our quest for innovative regulatory alternatives for the online medium.

With this dissertation's methodological and theoretical framework in place, the next chapter turns to a historical overview of the emergence, development and implementation of legal precedents and regulatory regimes that have been formulated in the wake of the mainstream introduction of the printing press, the telegraph, the telephone, radio and television. As such, it is expected that this overview will set the stage for chapter IV's subsequent review of present-day governments' efforts to regulate the online medium.

III

Regulating New Communications Technologies: A Historical Overview

It was noted in chapter II that although Pool believes that perceptions of past technologies can serve as a useful “incubus on later understanding,” he worries that such an approach could lead to an inappropriate analogy being adopted for today’s new communications technologies (1983: 7). Jonathan Wallace and Mark Mangan share this concern but contend that “key decisions determining the future of [new communications technologies] cannot be made without knowledge of the past” (1996: 194). Dan Lacy concurs and argues that by examining “various systems of communication that society has evolved, from human speech . . . to the computer” and the impacts each have had on our society, we, as scholars, will be better equipped to “help determine the pattern and evolution of our society, [since] public communications policy is our instrument to help shape our own future” (1996: xvi).

With the above factors in mind, this chapter undertakes a historical overview of the emergence, development and implementation of regulatory regimes and legal precedents that have been formulated in the wake of the mainstream introduction of earlier communications technologies. Following from Pool’s (1983) argument that the regulatory models with the greatest potential to impact present-day communications policies can be located in the print, common carrier and broadcast industries, the histories of the printing press, the telegraph, the telephone, radio and television will be reviewed. Geographically, the discussion will concentrate on the dominant and influential role of Western,

industrialized nations. The United States, however, will become the primary focal point as attention shifts toward more recent communications media. As such, it is expected that this historical overview and geographic emphasis will set the stage for chapter IV's review and critique of present-day governments' efforts to regulate the online medium.

A. The Print Medium

1. Early Print Controls in Western Europe

It was the gradual convergence of a complex set of related innovations that fostered the conditions for the rise of the Western system of print technology. The first key invention occurred early in second century China with the development of paper from textiles. A second notable innovation was movable type, first introduced in China during the eleventh century and further developed in Korea between the thirteenth and fourteenth centuries. Finally, two other indispensable innovations were the modification of the screw press, originally developed for wine and olive oil production and the creation of an ink that did not run when pressed against paper.

Although the roots of print technology lie in Asia, widespread private and mass publishing was not possible until the mid-fifteenth century. In 1452, Johannes Gutenberg, a German goldsmith, devised a press that surmounted the limitations of traditional Chinese and Korean print methods. In subsequent decades, printing establishments were founded in over 110 towns in dozens of Western European nations, including Germany, Italy, France, Switzerland and England (Lacy, 1996: 22). Moreover, by the turn of the century,

well over 230 Western European towns were operating presses, producing more than 35,000 distinct titles, totalling at least fifteen million copies (1996: 22).

During the late-fifteenth and early-sixteenth centuries, Gutenberg's print technology was slow to spread beyond Western and Central Europe. For example, Russia did not have a printing press until the mid-sixteenth century, while authorities in the Muslim Middle East were reluctant to permit mass publication methods even after the founding of a press in Constantinople in 1527. Moreover, because Chinese, Korean and Japanese languages did not use alphabets, Gutenberg's print techniques were highly impractical for Asian printers. For these reasons, argues Lacy, "Europe's priority in mastering the power of print laid the basis for its rise to political and economic dominance in succeeding centuries" (1996: 22).

At first, European church and state authorities welcomed and endorsed print as a positive innovation.¹³ However, this enthusiasm soon faded when it became clear that an unintended consequence of mass printing was the circulation of unsanctioned biblical interpretations and a concurrent rise in Protestantism.¹⁴ Consequently, between 1475 and

¹³ In the era of hand copying, religious scribes could produce no more than two books a year from a small range of pre-existing works such as the Bible and other key texts. By contrast, with the introduction of Gutenberg's print methods, printers could average a book a day, thus facilitating the production of large quantities of Bibles for individuals and families.

¹⁴ Lacy observes that aside from threatening the power of the Church, print also contributed to a "vast enlargement of society's public compendium of knowledge" and a broadening of access to such knowledge (1996: 22). For example, aside from religious texts produced for Latin-reading religious scholars, presses soon began producing books in the vernacular tongues of Europe on contemporary subjects ranging from popular histories to light entertainment. Not only did this phenomenon heighten public literacy

(continued...)

the mid-sixteenth century, the Vatican: retracted its endorsement of printing; ordered censorship measures over printers, publishers, authors and readers of “pernicious” books (Wallace & Mangan, 1996: 196); issued *Inter Multiplices*, a bull banning the publication of books in Germany without ecclesiastical authorization; and released the *Index Expurgatorius*, a list of banned books and publications.

French authorities were also waging a battle with publishers during the sixteenth century. For example, in 1531, France’s High Court of Parliament dispatched inspectors to examine and seize any books containing “false doctrine” (1996: 197). In subsequent years, French authorities banned the publication of new books, burned printers and booksellers at the stake, threatened to hang individuals who dared produce new works and targeted specific authors, forcing most to flee France to avoid prosecution. Then, in 1563, all of these actions came to a head when Charles IX decreed that all books be licensed in advance of publication.¹⁵

Meanwhile, in England, an equally heated battle between publishers and censors was also underway. For example, in 1557, the Crown restricted printing rights to two universities and a handful of London-based press shops in an effort to curtail “seditious and heretical books” (Pool, 1983: 15). Then, in 1643, Parliament issued an order

¹⁴(...continued)

levels, but it simultaneously fed back on the print industry, thus increasing the range, availability and demand for texts aimed at a general as well as academic audiences.

¹⁵ Wallace and Mangan note that the end result of restrictive censorship was largely counterproductive given that it fuelled “a thriving underground book publishing business outside of France’s borders, which smuggled its products, a few copies at a time, to an avid readership” (1996: 197).

requiring licenses for printers and books.¹⁶ However, with the Restoration of Charles II and the overthrow of the Commonwealth and Protectorate in 1660, England's system of print controls was restored to its pre-1643 status. Thereafter, licensing restrictions over print shops were still enforced, but as increasing numbers of unsanctioned publications became commonplace, the entire system of licensing and censorship by prior restraint came to an abrupt end in 1689 when Parliament passed a Bill of Rights, establishing the preeminence of Parliament and the rights of the subject.

With the end of licencing in Britain, taxation and legal prosecutions were the next strategies used to restrict the growth and uses of print. The first method, taxation, began in 1712 and continued well into the twentieth century. At first, taxes were imposed on newsprint, ads and newspapers; then, with the passage of the Stamp Act in 1765, revenue stamps were required for all publications, making it harder "for small or poorly financed publishers - who were more likely to be the radical ones - to continue to issue newspapers" (Lacy, 1996: 44). The second press control, prosecution for acts of seditious libel against the state, was aimed at authors, publishers and printers. However, as public opinion shifted in favour of open public debate, the punishment of offending authors, publishers and printers became a rare occurrence by the closing decades of the eighteenth century.

¹⁶ In protest, John Milton issued *The Areopagitica*, a pamphlet Pool labels the "classic defense of free speech" (1983: 15). From Milton's perspective, it was "as evil to kill a book as a man." He stated: "Who kills a man kills a reasonable creature, God's image; but he who destroys a good book, kills reason itself." To this end, he maintained that one should be allowed to "Read any books whatever come to thy hands . . . for . . . bad books . . . to a discreet and judicious reader serve in many respects to discover, to confute, to forewarn, and to illustrate" (Wallace and Mangan, 1996: 198).

2. **Print Spreads to the American Colonies**

While seventeenth and eighteenth century European nations were struggling with press control methods such as licensing, taxation and criminal prosecutions, a new country, the United States, was slowly taking shape. At first, the print medium was slow to develop in the American colonies, with just one operational press in Cambridge, Massachusetts; however, with the rise of the Revolutionary controversy in the early decades of the eighteenth century, the need to disseminate information across large distances became a matter of great urgency. Consequently, by 1755, there were at least two dozen presses in the ten American colonies and small, but competitive, print industries in Boston, New York and Philadelphia.

Although the slow growth of printing in the colonies to some extent mirrored the initial emergence of print in Western Europe, there were several other factors unique to the American context. First, structural constraints limited the size and growth of the industry given that all necessary equipment was imported from Europe. Second, printers were heavily dependent upon the import of most type and ink materials, thus limiting their capacity to print large quantities. Third, and perhaps most significantly, the size and dispersal of the American market made the circulation of printed materials between colonies extremely difficult. This restraint, coupled with the first two, notes Lacy, made “the primary market for each colony’s press . . . necessarily local” (1996: 47).

Newspapers in the American colonies had relatively small circulations during the eighteenth century, but rose considerably during periods of political conflict or controversy with England. For example, widespread opposition to the implementation of

Britain's Stamp Act of 1765 more than doubled newspaper circulations, from an average of five or six hundred, to well over 1,500 (1996: 48-49). Then, at the height of the debate over the wording of the Constitution in the months leading up to the Declaration of Independence in 1776, circulations reached averages of nearly 2,500 per issue, with overall distribution rates of roughly 125,000 (1996: 49).

3. Print Becomes a Mode of Mass Communication

Pool argues that the "seeds of today's mass media were planted by Gutenberg and fertilized by constitutional concerns, but no mass media in a modern sense existed" until the industrial revolution of the 1830s (1983: 18). He explains that with the advent of a wide array of technological innovations for the low-cost mass production of goods, new production and distribution techniques for printed works also became possible. For example, printers who hand-produced one page at a time for a few thousand sheets per day were displaced by the power press in 1814, the rotary press in 1869 and, following a series of other technical innovations, today's power-driven printing plants. Thus, innovations in print techniques not only facilitated the production of newspapers, but made possible large increases in circulation, from a few thousand in the early 1830s, to several tens of thousands by 1836.

The expansion of the printing press' status as a mass medium during the eighteenth century was a prelude to an even more dominant role once the railroads reached the United States' west coast during the last quarter of the nineteenth century. During this period, the number of miles of railroad tracks more than doubled from 95,000 to 193,000

(Lacy, 1996: 62). This notable increase in the railroad's scope not only impacted countless industries by facilitating the distribution of raw materials and finished goods on a national scale, but simultaneously prompted the growth of large urban populations in major centres such as New York, Philadelphia, Boston and St. Louis. As such, with so many structural and population-based shifts taking place concurrently, an expansion of print production, which at that time was the only viable medium for reaching mass audiences, was all but inevitable.

During the early years of the nineteenth century, there were just a few dozen daily newspapers in the United States, with a total circulation of no more than 50,000. By 1880, there were almost 1,000 daily newspapers, with a circulation of roughly 3.5 million (1996: 65). In addition, during this same period, the quantity and range of magazines and books began to proliferate dramatically. Whereas in the early nineteenth century, there had been no more than forty periodicals, with a total circulation of just a few thousand, there were at least 5,500 in 1900, with millions of readers nationwide (1996: 66). Similarly, while there had been only a handful of books published every year at the outset of the century, annual rates increased from 2,000 in 1880, to 6,400 in 1900 (1996: 66).

As American newspapers and magazines continued to increase in size and circulation during the closing years of the nineteenth century, prices dropped dramatically, due in part to innovations in print technology, but also because of the income generated from advertising revenues which, by 1914, represented \$250 million U.S. per year (1996: 70). Lacy observes that "the growth in advertising reflected not only the growing prosperity of the country but also the increased effectiveness of newspapers as a mass

advertising medium” (1996: 70). At the same time, the advent of advertising was serving to heighten competition between the various news and information providers. Therefore, because advertisers naturally tended to seek out sources with the largest possible readership, there was a notable value attached to having the largest newspaper or magazine circulation in any one city or region.

In the wake of the competition that arose between publishers, those who were most successful began to form newspaper chains through the acquisition of papers in other cities. Therefore, by the beginning of the twentieth century, not only was the American publishing industry highly industrialized, but it was largely controlled by wealthy, profit-seeking businesspeople and companies. As a result, concludes Lacy, although “There were no gatekeepers with monopolistic power to deny writers and viewpoints . . . the great magazine, newspaper, and book publishers controlled the only *mass* channels to the public,” thus granting considerable influence and power to a very small group of corporate players (1996: 71).

4. Print Regulation in the United States

Aside from an array of potential censorship strategies implicit with the increasing concentration of the American print media’s ownership into the hands of a select few, the widespread influence of Victorian puritanism prompted frequent calls for censorship on moral grounds during the closing decades of the nineteenth century. Indeed, because mass printing had for the first time made the publication of salacious materials quite lucrative, the sudden availability of print to the young and working classes was eliciting extensive

concern in some circles (Lacy, 1996: 72). The most renowned illustration of this moral censorship movement was the Postal Obscenity Law, passed by Congress in 1873.

Euphemistically referred to as the Comstock Law, the Postal Obscenity Law was spearheaded by Anthony Comstock, the founder of the New York Society for the Suppression of Vice. In essence, this law made it illegal to send “obscene” publications through the United States’ Postal Service. Following its passage into law, the Postal Service appointed Comstock as an unpaid special inspector and granted him the right to enter any postal outlet in the United States to search for, and seize, “illegal” printed materials. Over the course of its enactment, Comstock enforced the law by relentlessly pursuing pornographers, sex educators and novelists whose work, in his view, was indecent. Moreover, explains Lacy, Comstock’s actions were tacitly endorsed by a print industry “whose conservative managements shared a disdain for works of taste or morals questionable under the standards of the time” (1996: 72).

The nature of the American print industry during the late nineteenth and early twentieth centuries was also extensively impacted by the far-reaching implications of the United States’ Constitution’s First Amendment, which at its outset makes the following statement: “Congress shall make no law . . . abridging freedom of speech or the press” (Pool, 1983: 16). The founding colonists’ appreciation for the power of print, coupled with their contempt for Britain’s state controls over the press, made this principle possible. As such, over the two centuries since it was enacted, considerable debate over its force, scope and meaning has taken place in legislative and legal circles. During the late 1700s, most states continued to deal with print in whatever ways were permitted by their own

state laws; as a result, despite the fact many state constitutions echoed similar First Amendment-style press freedoms, seditious libel prosecutions remained commonplace. However, by the early 1800s, meaningful arguments to protect authors from prior restraint, or subsequent prosecution for what had gone to press, began to take shape.

A key turning point was an effort undertaken by the Republican minority committee of the House of Representatives to overturn the Sedition Act of 1798, which allowed the federal government to pursue prosecutions against individuals or publishers believed to have committed seditious libel with criminal intent. In their report, the committee argued that the “Government makes a diffusion of knowledge of public affairs necessary and proper, and that the people have no mode of obtaining it but through the press,” therefore, the First Amendment’s freedom of the press provisions must be absolute; otherwise, Congress could “define as ‘licentious’ any expression to which it object[s]” (Lacy, 1996: 53).¹⁷

Aside from federal legislation and initiatives, a series of court rulings have also served to define and clarify the parameters of constitutionally protected speech under the First Amendment. For example, in *Schenck v. United States* in 1918, the formulation of a ‘clear and present’ danger doctrine was outlined by Justice Oliver Wendell Holmes. Although Schenck was found guilty for circulating pamphlets against the draft, Holmes laid out a precedent-setting argument that the character of each speech act depends entirely upon its context. He stated: “The question in every case is whether the words

¹⁷ The Republican Party ultimately gained control of Congress and the Sedition Act expired under its own terms in 1801.

used are used in such circumstances and are of such a nature as to create a clear and present danger” (Pool, 1983: 59). Thus, because Schenck’s wartime opposition to the draft was deemed a significant threat to national security, it fell against his test.¹⁸

Another strategy used by the American courts to justify government controls over speech has been to distinguish between forms of speech for which the First Amendment was intended and those for which it was not. For example, in 1957, Justice Brennan ruled that obscenity is emotive and not protected speech since it was his belief that its applicability did not extend beyond the free discussion of matters of public concern. (1983: 66). He stated: “All ideas having even the slightest redeeming social importance - unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion - have the full protection of the guarantees. . . . But implicit in the history of the First Amendment is the rejection of obscenity as utterly without redeeming social importance” (1983: 66-67).¹⁹ In other words, explains Pool, views on politics were perceived as meriting protection, whereas “other uses of speech such as artistic expression, interpersonal relations, commerce, or just plain fun” were judged to require limited or no protection whatsoever (1983: 67-68).²⁰

¹⁸ Depending on the dominant political climate, the United States’ courts have fluctuated considerably in their definitions of speech which might be construed as a clear and present danger. As such, this doctrine has at times served the interests of the most conservative opponents, while at others times has advanced the arguments of the most staunch absolutists (Pool, 1983: 60).

¹⁹ Similar rulings from this era upheld Brennan’s decision and further argued that the primary application of the First Amendment was to discussions of public policy.

²⁰ Ironically, Justice Brennan’s ruling against the protected status of obscenity did
(continued...)

An additional strategy used by American courts to sustain government controls over printed speech has been when it has been seen as “an integral part of acts of a kind that the government may properly regulate” (1983: 73). On this point, the most staunchly conservative Justices, to the most determined free speech absolutists have always agreed that this line between speech and action is the only legitimate argument for bypassing the First Amendment. As such, this distinction has been successfully applied to prevent fraudulent or misleading commercial transactions, labour negotiations or stock sales and has empowered the United States government to enact legislation to prevent espionage, revolution, the obstruction of justice or the violation of existing criminal statutes.

In more recent years, the United States Supreme Court has on several occasions ruled or suggested that works of text cannot be judged obscene or outlawed because of the ideas they contain; nevertheless, efforts to censor certain forms of printed matter, which began in earnest with Anthony Comstock’s one man crusade in the 1870s, have continued unabated in many contexts (Wallace & Mangan, 1996: 202). For example, via Congressional hearings in the 1950s, child psychologist Frederic Wertham launched a determined campaign to outlaw horror and crime comic books, with far-reaching impacts on the industry, including the implementation of the Comics Code of 1954, a repressive set of regulations designed to delineate acceptable content. Moreover, at various times, works by prominent authors such as Ernest Hemingway, J.D. Salinger, John Steinbeck, Norman Mailer, Sigmund Freud, Margaret Mead and many others have been removed

²⁰(...continued)

little to curb pornography; instead, it prompted them “to embed smut in messages with some ‘redeeming social importance’” (Pool, 1983: 67).

from libraries, bookstores or seized by the U.S. Postal Service or Customs. Similarly, there have been many instances of school boards banning books containing representations or content ranging from homosexual parenting to divorce or racism (Wallace & Mangan, 1996: 13). Overall, however, despite countless instances of print matter censorship in the United States and many other nations throughout the world, publishing has gradually evolved from a medium accessible and controlled by a small ruling élite, into a commonplace mode of mass communication, largely free from, or with the capacity to circumvent, oppressive regulations and controls.

Thus, at first glance, print-based regulatory regimes seem to present a useful model for this dissertation's primary research consideration; that is, the design of new communications policies for the online sphere. However, as we will see in chapter IV, the drawbacks of this model, do, to some extent, temper its overall usefulness. Indeed, because print-based regulatory analogies cannot take into account communicative considerations unique to the online medium (e.g., it presents minimal barriers to entry; these barriers are the same for senders and receivers; they create a relative parity among speakers), it would be remiss to apply them without a careful consideration of how such models would, by extension, impede such innovative communicational possibilities.

B. Common Carriage

1. The Telegraph

Between the mid-fifteenth and late-eighteenth centuries, the print medium was the primary means whereby information was recorded, preserved or transmitted. The

development of optical telegraphy in France by Ignace and Claude Chappe in 1792, however, marked the dawn of a new era in technologically mediated communication across space and time. Early telegraphic communication in France involved an extensive network of towers, which via moving panels and human operators, could transmit messages across relatively large distances. This system was only moderately successful, due in part to reluctant support from the French government, a government ban on private communications networks, a public perception that the telegraph was a subversive instrument intended to communicate information to the enemy, as well as the limited range across which optical towers could be constructed. Nevertheless, in spite of these practical and perceived drawbacks, concurrent developments in electrical technologies set the stage for the creation of the telegraph's electrical cousin by the early years of the nineteenth century.

In the United States, Samuel Morse and Alfred Vail spearheaded the development of the first American electrical telegraph network in the late 1830s. At first, they encountered some resistance from Congress and were unable to secure funding, but by 1844 they were able to demonstrate the value of their pursuits when a working electrical telegraph line was built between Washington and Baltimore. Following the creation of this link, a national telegraph network was extended across the United States through the construction of lines along the railway's right-of-way. Shortly thereafter, newspapers were taking advantage of the telegraph's potential to print local and national stories, businesses were obtaining stock exchange quotes and conducting commercial transactions, citizens were sending private messages, while railways were more efficiently controlling

the movement and scheduling of trains. Then, in 1866, telegraphy became a truly international medium - at least among Western nations - when North American and European telegraph networks were successfully interconnected by a transatlantic cable.

Not surprisingly, though, the technological and structural requirements underlying the development of electrical telegraphy also contributed to a struggle between telegraph companies and press interests over who should control and provide access to news and information. The principal issue was whether the telegraph companies were information distributors, like today's radio and television networks, or passive carriers, like today's telephone systems. At first, telegraph companies attempted to offer news services since it was their belief that their networks were a natural medium for publishing. However, both in Europe and the United States, the press vehemently opposed such efforts and fought fiercely to establish exclusive control over the dissemination of news and information.

In Europe, where three independent press agencies - *Havas*, in Paris; *Wolff's* in Berlin; and *Reuters* in London - quickly established a lead role in the dissemination of news and information to national and regional newspapers, the battles between the telegraphers and newspapers were hotly contested. Ultimately, however, these conflicts were not resolved until governments were drawn in by press industry lobbyists seeking an end to the near-monopolistic control over news and information that was being exerted by partnerships between the telegraph companies and press agencies. In response, most

European nations nationalized their telegraph industries and folded them under the administrative control of their post offices.^{21 22}

By contrast, the United States' telegraphy industry was never assimilated by the postal authorities, but instead evolved in parallel. Initial press uses of the telegraph began in July 1846 when the *New York Tribune* launched a column of telegraphic news bulletins. Before long, editors of other newspapers became interested in offering similar features, but found the cost of telegraphic transmissions - even after obtaining discounts from the telegraph companies - to be prohibitive. In response, a press-sponsored wire service, the Associated Press (AP), was formed in 1848 as a vehicle to share stories between newspapers.

Prior to AP's creation, telegraph companies had been gathering and selling news stories by asking their network of young telegraphers to double as reporters. As a result, many telegraph companies were openly hostile toward their new competitor. For

²¹ For example, in Britain, the battle was ended abruptly in 1869 when Parliament nationalized the domestic telegraph system, placed it under the control of the post office and forbade it from collecting or playing a role in reporting the news. This prompted massive increases in press and private citizen use of the telegraph, led to large decreases in average transmission costs and triggered the sudden growth of the half-penny evening newspaper industry from two newspapers in 1870, to seventy in 1893 (Pool, 1983: 94).

²² With the near simultaneous emergence of the telegraph and independent press agencies, publishers of large circulation European newspapers felt a double threat. First, they "did not welcome an equalizing device that served all papers" and, second, they did not appreciate the existence of consortiums that made news or information more widely accessible (Pool, 1983: 93). Consequently, many large newspapers resisted using news obtained from telegraphic news sources on the "ground[s] that it was the paper's duty 'to obtain authentic intelligence from every quarter of the globe' because there was no 'substitute for the individual responsibility of a gentleman specially retained to serve a particular journal'" (1983: 94).

example, the Portland (Maine) to New York telegraph company tried to maintain control of the international news market by denying overseas telegraph services to AP.

Undaunted, AP fought back and prevailed by piecing out their own New York to Portland telegraph line through contractual arrangements with other telegraph companies.

Given that there were approximately fifty competing telegraph companies in the United States by the early 1850s, the struggle over who would control the distribution of news and information continued unabated for several years (Pool, 1983: 95). However, as monopolistic forces began to slowly reshape the nature of American telegraphy, an arrangement between AP and the telegraph industry eventually emerged in the early 1860s when AP (and several other smaller news services) struck an exclusive contract with Western Union at the expense of other telegraph companies. In the wake of this deal, press use of the telegraph increased substantially and most of the remaining smaller telegraph companies were bought out by their biggest competitors, Western Union or American Telegraph. Then, in 1866, all telegraph competition was brought to an abrupt end when these two remaining companies amalgamated to form a single enterprise: The Western Union. Therefore, by the close of the 1860s, not only did Western Union span the United States, but held a monopolistic grip over all telegraphic communication and had forged a cooperative relationship with the press-owned news services.

Pool notes that by remaining in the hands of private enterprise and allowing market forces to direct the telegraphy industry in its formative years, common carrier laws that governed the railroads ultimately had the greatest influence over the regulations that were imposed over telegraphic communication by the United States' Congress. Common

carrier principles hold that in return for a monopoly over a form of commerce for a particular geographic region or route, a company does not have the right to refuse carriage (Wallace & Mangan, 1996: 207). Consequently, given the manner in which Western Union had achieved a near monopolistic stranglehold over telegraphic communication in the United States by 1866, the railroad-inspired common carrier analogy was perceived by Congress to be the most appropriate regulatory model for the telegraph industry. Thus, when Congress passed the Post Roads Act in 1866, it stipulated that as long as telegraph companies provided services to all comers, without discrimination, they could freely run their lines along post roads and across public lands.

Pool further contends that a direct consequence of telegraphy's regulatory relationship with railroad law is that the First Amendment, which played a key role in shaping the boundaries of speech for the print medium, is all but undetectable in cases concerning telegraphy. He notes: "It might seem odd that when a new technology of communication came into existence, the courts did not perceive it as an extension of the printed word . . . The reason for this dim perception . . . was that the early telegraph carried so few words at such a high cost that people thought of it not as a medium of expression but rather as a business machine" (1983: 91). Furthermore, explains Pool, early court rulings supported and perpetuated this misperception by concluding that the federal government had the right to regulate telegrams as objects of commerce, meaning that "in the eyes of the courts [they were] more analogous to packages than to newspapers" (1983: 92).

Through the closing decades of the nineteenth and early years of the twentieth century, there were frequent calls to either nationalize the United States' telegraph industry, as it had been in Europe, or establish a competing postal telegraph network. The post office was a strong advocate of nationalization, mostly out of fear that the telegraph's capacity to offer quicker service for long-distance correspondence at reasonable rates would negatively impact its own service and rates. In 1872, Postmaster General John Wanamaker, concerned by the competition from Western Union, argued that nationalization of the telegraph was essential since the "natural policy of private companies is to extend facilities slowly and only to profitable points . . . and to reap large profits . . . while a Government system . . . pursues exactly the opposite course" (1983: 96). Ultimately, however, arguments such as Wanamaker's were ignored by Congress, where an ongoing stress was instead placed on the principle of nondiscrimination in the provision of service as being the most important characteristic of electronically-mediated, common carrier communication.

2. The Telephone

Ironically, it was the telephone, an electronic communications technology invented by Alexander Graham Bell four years after Wanamaker's calls to nationalize American telegraphy, that eventually emerged as the real threat to the post office (and, ultimately, the telegraph). The telephone is an electronic device that converts sound into electrical waves so that it may be transmitted from one point to another via wire or cable. Not only does it bypass the transitional phases of encoding, decoding and delivery required by

telegraphic communication, but it offers a means whereby two or more individuals may engage in real-time, voice communication.

As noted in chapters I and II, Pool has argued that a recurrent trend with legislators and courts is to treat a new communications phenomenon by analogy to those that came before. Consequently, when the telephone was first introduced, the most pressing question in legal and regulatory circles was whether it was an extension of the telegraph, or something new. As Pool explains, "If the phone was a telegraph, a body of telegraph law already existed that applied" (1983: 100). In Europe, this question was promptly answered by court rulings or government legislation which consistently positioned the telephone as a new kind of telegraph. As a result, from its earliest days, telephone service in European nations was typically nationalized as part of each country's postal and telegraph service.

By contrast, the arrival of telephonic communication unfolded quite differently in the United States. In 1876, following the first demonstration of the telephone in Boston, Western Union, unimpressed by the technology's potential, opted against purchasing Alexander Graham Bell's patent for \$100,000 U.S..²³ As a result, explains Brenner, "early efforts to popularize the telephone met with disappointment. Though people paid to hear Bell lecture on 'the miracle discovery of the age,' for a brief time they seemed unaware of its possibilities" (1992: 1). Bell, however, was not discouraged. In 1877, he founded the Bell Telephone Company and - by virtue of his 18 year patent over telephone technology -

²³ Ironically, Bell's telephone company later bought Western Union in 1910 for \$30 million U.S. (Wallace & Mangan, 1996: 208).

quickly established monopolistic control over local telephone networks in towns and cities across the United States.

By the end of 1880 there were nearly 48,000 telephones in the United States (Brenner, 1992: 1). In the years that followed, these figures grew geometrically as local, intercity and interstate telephone lines were installed across many regions of the country. However, when Bell's telephone patent entered the public domain in 1894, his company's monopolistic hold over telephony ended abruptly. Thereafter, as other companies began to compete for the provision of telephone service, the Bell Telephone Company very quickly lost a sizeable portion of its market share.

In 1899, the Bell Telephone Company was restructured and absorbed by the American Telephone and Telegraph Company (AT&T), a Bell subsidiary founded in 1885 to provide intercity and interstate telephone traffic. Around this time, competition within the telephone industry had become so intense that there were nearly 10,000 companies operating in the United States (Carpentier, Farnoux-Toporkoff & Garric, 1992: 3). As a result, many larger urban centres had several competing, incompatible and, at times, redundant, telephone systems, forcing many subscribers to install two or three telephones.²⁴ Therefore, in an ambitious bid to restore its lost market share and standardize the industry, AT&T launched an advertising campaign in 1907, in which it promised: "one policy, one system, one universal service" (1992: 2).

²⁴ For example, subscribers in Philadelphia required three telephones to reach the police, fire station and hospitals (Carpentier, Farnoux-Toporkoff & Garric, 1992: 3).

AT&T's campaign slogan echoed a concern held by many observers of American telephony. The industry was in disarray and many city, state and federal officials were becoming increasingly concerned by its fractured and chaotic structure. Private or state controlled-monopolies had emerged as the most efficient service providers in smaller American communities, across Europe and in Canada, however, as Pool notes, "this conclusion was not immediately obvious in the United States . . . [where] Ideology and the legal tradition were against monopoly" and government control (1983: 102). For these reasons, initial American efforts to curtail the proliferation of telephone competition were more indirectly imposed; at first, through the implementation of strict licensing regulations and later through the passage of legislation such as the Mann-Elkins Act of 1910 (which gave the federally-administered Interstate Commerce Commission (ICC) control over the rates charged by the telegraph and telephone companies), the Public Transportation Act of 1920 (which confirmed the authority of the ICC over electrical communication), the Willis Graham Act of 1921 (which gave the ICC the power to approve telephone company mergers) and the Communication Act of 1934 (which established the specific rights and duties of telecommunications networks, common carriers and the Federal Communications Commission (FCC)).

Court decisions which reaffirmed and reinforced the common carrier characteristics of American telephony also had a notable impact on the industry's growth and structure.²⁵ For example, in 1921, the Supreme Court of Ohio sustained the Public

²⁵ An exception to court rulings that reinforced traditional common carrier tenets regarding the status of telephony is an 1899 United States Supreme Court decision. In

(continued...)

Utilities Commission's denial of a license for a competing telephone company in the community of Mendon on the grounds that it was not in the public interest to have two companies. In making its decision, the court ruled entirely on the basis of common carrier law, making no reference to free speech rights or the First Amendment. It reasoned that the Commission had "the authority to deny the right [of license], and this authority is dependent upon and turns upon public convenience and welfare" (Pool, 1983: 103). Similarly, a 1952 Supreme Court decision denied the FCC's right to issue licenses "whenever any useful purposes was served" on the grounds that it was required "to test every license against some finding as to why the issue of the license was positively desirable" (1983: 104). Finally, a 1974 ruling reinforced this precedent for telephony when the District of Columbia Court of Appeals overturned a license granted by the FCC to RCA on the grounds that it had "not conformed to the requirement that it find [that] public convenience and necessity dictate the new service" (1983: 105).

Pool argues that American court rulings over telephony could never have been made for the printing press. He asks: "Deciding whether there should be one press or more, and who should run them, is clearly excluded from political control. Why not telephone systems? Are they not equally obviously instruments of speech?" (1983: 103).

²⁵(...continued)

this instance, the court denied right-of-way privileges over public lands that had previously been conveyed upon telegraphy for two reasons: first, because it believed that the government had a vested interest in the use of the telegraph network that they had funded and, second, because "governmental communications to all distant points are almost all, if not all, in writing . . . [therefore, the] useful Government privileges which formed an important element in the [telegraph's] legislation would be entirely inapplicable to telephone lines, by which oral communications only are transmitted" (Pool, 1983: 100).

He further notes that “Even under the most eviscerated interpretation of the First Amendment, the presumption is made that anyone can engage in communicative activities freely, unless there are overbalancing considerations” (1983: 104). Why, then, wonders Pool, were the precedents of First Amendment law consistently overlooked in court decisions on telephony?

Pool’s concerns over the contradictory and monopolistic nature of American telephony were written on the eve of its deregulation. In 1983, AT&T was the largest company in the world with nearly one million employees and over 150 billion dollars in assets (Carpentier, Farnoux-Toporkoff & Garric, 1992: 7). It was subdivided into twenty-two local subsidiaries, or Bell Operating Companies (BOCs), each of which held a geographic monopoly. Moreover, because AT&T was protected largely by the FCC, it controlled 80% of all local and 96% of all intercity traffic.²⁶ Furthermore, its subsidiary, Western Electric, manufactured nearly all telecommunications equipment used within the network, while its research division, Bell Telephone Laboratories, was the largest privately operated research organization in the world (Carpentier, Farnoux-Toporkoff & Garric, 1992: 7).

In 1966, the FCC launched hearings to examine the issue of the emergent overlap in competition in services between the quasi-monopolistic telecommunications industry and the nascent, unregulated computer communications domain. In 1971, in a decision entitled *Computer Inquiry I*, it identified four distinct telecommunications categories based

²⁶ AT&T’s competition was limited to three large firms (General Telephone and Electronics, United Telecommunications and Continental Telecom) and 1459 independent companies (Carpentier, Farnoux-Toporkoff & Garric, 1992: 12).

on whether a service could be construed as predominantly communications- or computing-based; however, due to a lack of precision in the terms used to define these modes of service, a second set of hearings were convened in 1976. In 1980, the FCC released the findings of *Computer Inquiry II*. This time, it recommended that “basic” services (primarily speech and data) be regulated as traditional common carrier services, while “enhanced” services (value added, user controlled services) be excluded from regulation (Brenner, 1992: 220). Moreover, in order to create conditions whereby this newly proposed deregulated, telecommunications-computing environment could take place, it was recommended that AT&T’s near monopolistic empire be dismantled.

The breakup of AT&T was negotiated with the Department of Justice in 1982. Labelled the Modified Final Judgement (MFJ), this anti-trust action obliged AT&T to relinquish all of its local telephone holdings on January 1, 1984. Thereafter, AT&T’s 22 BOCs were realigned into seven independent regional holding companies (RHCs or RBOCs) of similar financial worth and granted monopolistic control over local telecommunications services within their respective territories.²⁷ Under the MFJ, the RBOCs were permitted to conduct service within predefined Local Access and Transport Areas (LATAs), while between-LATA communication could be provided by long distance companies such as AT&T, or any other company wishing to offer service. Therefore, telephone users, as in the past, were still unable to choose their local service provider, but

²⁷ The roughly 1400 independent telephone companies to whom licences for specific areas of monopoly service had been granted prior to AT&T’s breakup were permitted to continue their operations.

could now select a carrier for their inter-LATA, interstate and international communication.

By the early 1990s, more than five-hundred companies were offering long-distance services in the United States (Carpentier, Farnoux-Toporkoff & Garric, 1992: 27). Since that time, *Computer Inquiry III* and the Telecommunications Act of 1996 have led to further deregulation of the telecommunications industry. Concurrently, many European nations and Canada have opted to privatize their state-controlled or regulated telephone systems. Carpentier, Farnoux-Toporkoff and Garric argue that deregulation and privatization has made the telecommunications market “increasingly competitive and responsive to the needs of users” (1992: 31). Brenner concurs and adds that these actions have forced “regulators to rethink whether the system of pricing adopted under a monopoly environment” make sense in an era of increasingly open competition (1992: 10).

At the same time, even with the extensive changes that have occurred within the North American and European telephone industries, local or full-scale monopolies have been maintained in most jurisdictions. Moreover, in the United States, legislators and courts have continued to overlook the potential implications and impacts of common carriage legislation upon free expression. The importance of these oversights, however, is arguable and perhaps misplaced. Indeed, Pool has previously noted that common carrier legislation has circuitously protected civil liberties given that it has consistently prioritized the notion that all citizens are entitled to equal and universal access to the means of communication, even if it is via a single monopolistic network (Pool, 1983: 106).

Therefore, although explicit references to free speech protection have been conspicuously

absent from common carrier legislation since its earliest days, it nevertheless has been indirectly embedded as a central tenet of all American efforts to regulate telephony.

Overall, then, like print, common carrier regulatory regimes also offer an intriguing alternative for present-day regulatory initiatives for the online medium. Indeed, because such a model would enable the online sphere to be a conduit for the distribution of electronic transmissions Leslie Shade believes that it is probably the most appropriate controlling metaphor for computer-mediated communication (1996: 27). However, as we will see in chapter IV, while the common carrier metaphor seem, on the surface, to be superior to traditional print-based metaphors, Pool warns that many courts have had a tendency to treat common carriers “simply as instruments of commerce subject to any regulation the government choses to impose” (1983: 106). Furthermore, the United States’ “Supreme Court, which has deemed special taxes on newspapers to be unconstitutional, has [had] no such problems with taxes on phone bills” (1983: 106). And, finally, as we have seen through the course of this section, common carriers have, until recently, been largely controlled by corporate monopolies, or oligopolies. As such, the common carrier model also seems to hold the potential to notably impede some of the new communicational possibilities afforded by today’s new technological innovations.

C. The Broadcast Media

1. Radio

When radio was first developed in the late-nineteenth and early twentieth centuries, it was mostly used as a form of wireless telegraphy for the transmission of

encoded messages. However, when advances in technology made possible the transmission of sound, its potential uses expanded considerably. Some of the first uses of radio were by British and American navies for point-to-point communication between ships at sea. In addition, by the early 1920s, countless thousands of radio amateurs across Europe and North America were operating as one- and two-way broadcasters, offering content of interest to themselves, playing music or waiting to be contacted by other enthusiasts so that they could measure the distances across which they could be heard. Since every receiver during this era was also a transmitter, radio was a truly interactive medium. As a result, early radio audiences were not just passive listeners, but active players in the construction of a unique virtual culture, not unlike today's online communities.

As a decentralized, low-cost and easily accessible technology, radio broadcasting in its earliest years was often romantically hailed as a great equalizer.²⁸ However, as with

²⁸ William S. Dutton's 1929 article, "Minutemen of the Air," captures this utopian spirit. In his account of what amateurs in radio were doing during this era, he states:

It was of the [International Amateur Radio Union] that we talked . . . And as he talked and I listened, I found myself possessed, first, by a thrill of wonder and then sheer amazement. He told me of the existence in this world of ours of an adventurous band of brothers, 30,000 strong and scattered over five continents, who hold communion almost at will in the empyrean spaces. He told me of men and boys, who at the touch of a key, can leap around the world who have wiped out for all time the age-old barriers of race and language and distance; who have even dared . . . to shoot messages into the void of the infinite and to challenge answers of the stars themselves. (Mattson & Duncomb, 1996: 3)

Thus, not only was radio seen by some as a medium that could connect people across great distances, but it was regarded as a unifying and democratizing force, with the single-
(continued...)

print and common carrier-based communications technologies that preceded it, the medium did not escape regulation for very long. For example, given the social democratic forces of European nationalism that were unleashed by the Versailles Treaty in the 1920s (that, for example, prompted the break-up of the Austro-Hungarian Empire), coupled with the influence and power of pre-existing postal, telegraph and telephone authorities, there was a widespread belief that in the interests of efficient national planning and security, radio broadcasting should be nationalized. Consequently, taken together, these factors either led to the direct national management of radio broadcasting (e.g., by the Post and Telegraph Administration (PTT) in France), or the creation of arms-length, state-supported broadcasting authorities (e.g., the British Broadcasting Company (BBC) in Great Britain) by the early 1930s.

In the United States, however, the political climate that led to the nationalization of European radio broadcasting was never a major factor. Telegraphy and telephony had evolved as private enterprises, the post office was not involved in any electronically-mediated communication and there was a generalized sentiment against heavy-handed government control over any form of communication. As a result, the American broadcast industry experienced explosive growth and support for the European model of radio broadcasting was mostly limited to a few unsuccessful efforts by the U.S. Navy to obtain congressional support for full control of the airwaves.

²⁸(...continued)
handed potential to lessen hardship and conflict.

In 1919, there were roughly 4,000 amateur radio stations and approximately 1,000 commercial and military broadcasters in the United States (Pool, 1983: 112). Not only was the medium being used heavily by hobbyists, but a wide range of commercial broadcasters were airing music, news, weather, sports, entertainment and live events, or promoting businesses interests, such as department stores or newspapers. In addition, non-profit groups, ranging from churches to unions, were offering news, entertainment and information geared to promote their special interests. Anyone could operate a radio transmitter and, aside from the Radio Act of 1912, which empowered the Secretary of Commerce to assign frequency licenses to hobbyists and broadcasters that did not interfere with navy communications, regulations restricting content or access to the airwaves did not exist.

By the mid-1920s, however, the availability of radio frequencies was being stretched to its limit by the many thousands of amateurs who were clogging the broadcast spectrum. Indeed, because the technology of this era restricted broadcasters to eighty-nine usable channels, signal interference in more populated centres had become all but unavoidable.²⁹ Consequently, even though the Secretary of Commerce, Herbert Hoover, was mandated to grant licenses without discrimination to all comers, selective licensing was becoming increasingly commonplace. As such, commercial broadcasters were being

²⁹ Although there was an awareness among radio engineers that spectrum scarcity was a transient phenomenon, this factor was ignored by political decision makers. As a result, in the absence of immediate alternatives, there was, in essence, a misinformed "consensus on the immediate necessity of licensing" (Pool, 1983: 116).

granted the best frequencies, while special interest groups such as churches or labour organizations were being assigned limited hours of operation on weaker frequencies.

Not only did selective licensing serve to completely displace decentralized, point-to-point radio users in favour of centralized, commercial and non-commercial broadcasters, but it ultimately led to the collapse of the Commerce department's licensing authority when a court ruled in 1926 that it did not have the legal authority to punish the Zenith Radio Corporation for using an unlicensed frequency. Shortly thereafter, broadcasters across the United States began relocating to more desirable frequencies, causing widespread signal interference. But this chaotic situation did not pass unnoticed in Congress. Indeed, on February 23, 1927 a new Radio Act was passed, establishing the Federal Radio Commission (FRC), the precursor to the FCC, as the licensing and regulatory authority of the American airwaves.

Pool notes that the Radio Act of 1927 was not well received by many industry observers given its ambiguous and, at times, contradictory treatment of censorship and content control (1983: 118). For example, Section 11 paved the way for several decades of court challenges and disputes with its vaguely defined stipulation that the FRC was empowered to issue licenses only if it determined that the "public convenience, interest, or necessity would be served" (1983: 119). Similarly, although Sections 18 and 29 both contained provisions which denied stations any right to censor radio communications which might interfere with free speech, the latter simultaneously contradicted itself by stating that: "No person within the jurisdiction of the United States shall utter any obscene, indecent, or profane language by means of radio communication" (1983: 119).

While the passage of the Radio Act of 1927 did not officially sanction censorship, it nevertheless legitimated a general sentiment that the censorship of speakers under certain circumstances could be justified. Indeed, even prior to the act's passage, radio stations had regularly engaged in self-censorship through the use of time-delay switches that allowed engineers to cut off speakers who had uttered language considered offensive. In addition, in order to cater to the wishes of advertisers and audiences, it was not uncommon for stations to avoid "topics that might arouse community ire" (1983: 119). For example, when H.V. Kaltenborn, a popular radio personality criticized the United States' foreign policy regarding the recognition of the Soviet Union in 1924, his contract with WEAJ in New York was terminated. Similarly, speakers at stations across the United States were regularly denied air time if they expressed an intent to address such topics as left wing politics, prostitution, birth control, cigarettes, or opposition to prohibition, chain stores or the government.

When printing presses were first licensed in seventeenth century England, it was with the explicit intent to stifle or censor communication. In the United States, by contrast, the initial justification for licensing restrictions over radio was to facilitate the industry's expansion in the wake of the chaos brought about by spectrum shortage. However, not long after the passage of the Radio Act of 1927, Radio Commissioner Henry A. Bellows acknowledged that having the power to license was in itself a form of "inherent censorship" (1983: 122). That is, because the Commission was required to abide by the standard of "public convenience and necessity" to assign licenses to a medium

with limited space, these constraints necessitated what was “in effect, a censorship of the most extraordinary kind” (1983: 122-123).

In the years immediately following the passage of the Radio Act, policy debates were set aside and licenses and renewals were readily granted to diverse interests, ranging from union movements to relatively obscure socialist groups. In instances where licenses were refused or made probationary, it was because their sole purpose was to broadcast personal attacks or disputes. However, despite the FRC’s official position against censorship, its willingness to grant licenses to all comers was short-lived.

Beginning in the 1930s, labour unions, religious groups, socialists, leftists and even political conservatives were frequently denied licenses by the FRC on the grounds that they did not serve the public interest.³⁰ Moreover, in most instances, the courts concurred. For example, in a 1932 ruling against Trinity Methodist Church, the federal appeals court upheld the Commission’s refusal to renew a license on the grounds that although the First Amendment prohibited prior restraint, the airwaves could not be used “to obstruct the administration of justice, offend the religious susceptibilities of thousands, [or] inspire political distrust and civic discord” (Pool, 1983: 126). Similarly, in a decision against a Milford, Kansas broadcaster, a circuit court declared that “In considering the question whether the public interest, convenience or necessity will be served by a renewal of appellant’s license, the Commission has merely exercised its undoubted right to take note of . . . past conduct, which is not censorship” (Pool, 1983: 125).

³⁰ Pool adds that The United States’ economic depression, coupled with the isolationist philosophy of President Franklin Roosevelt’s New Deal initiatives, likely heightened and legitimated censorial attitudes toward radio during the 1930s (1983: 127).

In 1934, a new Communications Act devised to unify common carrier and broadcast activities under the newly created Federal Communications Commission was passed by the United States' Congress. In the process, the Radio Act of 1927 was appended with few substantive alterations, thus legitimating and perpetuating an extraordinarily restrictive regulatory model for radio broadcasting. Since that time, court arguments regarding broadcast legislation have fluctuated considerably, but have never diverged to any great extent from the original parameters of the Act. For example, in 1940, Justice Frankfurter ruled that restrictive licensing over radio was justified given "that in the absence of governmental control, the public interest might be subordinated to monopolistic domination" (1983: 129). Furthermore, given that spectrum scarcity precludes equal access for all, this "unique characteristic . . . unlike other modes of expression" necessitates government regulation (1983: 130).

In the years following the passage of the Communications Act of 1934, the FCC and the courts have been regularly called upon to intervene in instances where spectrum scarcity has seemingly silenced interest groups or individuals. For example, in a notable 1969 case, *Red Lion Broadcasting Company v. FCC*, the Supreme Court ruled that journalist Fred Cook had the right to airtime to respond to attacks from, Billy Hargis, a fundamentalist radio preacher on the grounds that in the interests of fair coverage, persons under attack should be given an opportunity to defend themselves. However, despite upholding an individual's right to be heard over the airwaves, the Court went on to proclaim that since the broadcast spectrum constitutes "a scarce resource . . . where there are substantially more individuals who want to broadcast than there are frequencies to

allocate, it is idle to posit an unbridgeable . . . right to broadcast comparable to the right of every individual to speak, write, or publish” (1983: 131).

Since the Red Lion decision, the FCC has been frequently called upon, or aggressively lobbied, by individuals or groups seeking equal coverage on subjects ranging from anti-smoking and drinking messages, to opposition to the Vietnam War (Wallace & Mangan, 1996: 213). In most instances, however, these efforts have failed before the FCC or the courts on the grounds that the doctrine of fair coverage is inapplicable to commercial advertisements. By contrast, programming content, ranging from indecent or obscene speech, to representations of sex, violence and consumerism have at times been more strictly restricted or controlled, either on the initiative of the FCC, or due to the persistent efforts of parent, religious or other special interest groups (Pool, 1983: 134).³¹

2. Television

The roots of television reach back to the mid- to late-nineteenth century efforts by European and American scientists to electronically transmit symbols via wire or airwaves.

³¹ A precedent-setting illustration of radio content control is *FCC v. Pacifica Foundation*, a case prompted by an afternoon broadcast aired by Pacifica Radio in 1977. In this instance, the FCC attempted to impose a crude form of prior restraint by warning Pacifica Radio against airing a taped segment from comedian George Carlin’s monologue about the “seven dirty words ‘you definitely couldn’t say on the air, ever’” (Wallace & Mangan, 1996: 215). For disregarding its warning, the FCC fined Pacifica, citing four reasons: “(1.) Children are at home alone and have access to the radio; (2.) Privacy of the home is entitled to extra deference; (3.) Adults not consenting to hear indecent speech may tune in unsuspectingly . . . and (4.) Broadcast scarcity” (1996: 215). The most notable aspect of this decision, which was later sustained by the Supreme Court in 1978, is its use of three pervasiveness arguments, coupled with the more traditional spectrum scarcity argument. This approach, argues Pool, “is a legal time bomb . . . [that] . . . could be used to justify quite radical censorship” (1983: 134).

Although of limited use and range, these early devices, sometimes called telephonoscopes, telephots or teletscopes, helped prove that the transmission of images by converting light to energy and back to light was possible. However, it was not until Karl Ferdinand Braun's invention of the cathode ray tube in 1897 that the development of the first functional and practical television systems began in earnest.

World War I slowed advances in television technology, but concurrent developments in communications via wire and radio, coupled with the rapid rise and popular appeal of radio broadcasting in Europe and North America, prompted a renewed interest in television in the early 1920s. In Europe, the first crude television broadcasts were demonstrated in the mid- to late-1920s, culminating with a regular, albeit limited, schedule of television programming in Germany and Great Britain between the mid-1930s and the outbreak of World War II in 1939. In the United States, experiments with television technology continued throughout the 1930s, with the first stations going on the air in July 1941. These stations, however, were shut down in December 1941 upon the United States' entry into the war.

During World War II, television technology was extensively refined and exploited as a tool for guided missiles, long-range surveillance and reconnaissance. Consequently, at war's end in 1945, superior broadcast standards had been developed, notably enhancing the medium's practicality for mass communication and consumption. In Europe, television was somewhat slow to reemerge but, in general, state-controlled networks, mirroring the pre-existing organizational make-up of radio broadcasting, were the norm. For example, in France, all private television stations were outlawed in 1947 upon the

creation of the state-operated broadcast authority, Radiodiffusion Télévision (RTF). Similarly, in Great Britain, the BBC, already a highly regarded fixture in radio broadcasting, was granted a monopoly over television, which lasted until the arrival of a limited network of independent commercial stations in the mid-1950s.

In the United States, the early years of post-war television were shaped primarily by a pre-established network of economic players, programming formats, regulatory policies, controls and legal precedents that had been reinforced and perpetuated over the preceding quarter century of federally-licensed commercial radio. As a result, the American television industry inherited, by default, the operational principle that a federal broadcasting license confers a privilege, not a right, to operate in the public interest. Unlike radio, however, television was allocated a proportionally limited segment of the electromagnetic spectrum by the FCC, leaving room for twelve useable channels nationwide and no more than three or four functional channels in larger communities. Consequently, by the late 1940s, television was under the control of a very small group of powerful and profitable networks.³²

As illustrated by the following statement made by an industry executive in 1945, the imagined and feared social impacts of television held chilling implications for free expression from its earliest days as a mode of mass communication:

Television comes directly into the home. All the precautions that have been thrown around sound broadcasting to render it domestically acceptable may be automatically assumed for television. Furthermore, because the

³² The National Broadcasting Company (NBC), the Columbia Broadcasting System (CBS) and two smaller players, the American Broadcasting Company (ABC) and DuMont Television.

visual impression is apt to be more vivid and detailed and because to be understood it requires less imaginative response on the part of the observer . . . television must be much more carefully supervised if it is to avoid giving offense. This means that vulgarity, profanity, the sacrilegious in every form, and immorality of every kind will have no place in television. All programs must be in good taste, unprejudiced, and impartial. (Smith, 1995: 45)

Moreover, because this sentiment was widely shared by other industry players and special interest groups, television broadcasters were soon being urged by the FCC and Congress to establish an industry-wide code for self-regulation.

In 1951, following complaints about New York-produced network programming which at times featured comic sketches, revealing costumes or suspense or horror material deemed inappropriate for national audiences, the National Association of Radio and Television Broadcasters (NAB) devised and enacted a Television Code (Smith, 1995: 45). Borrowing from and expanding upon the public interest stipulations laid out in the Communications Act of 1934, the Television Code of the NAB outlined a detailed set of self-regulatory criteria to: protect the special needs of children; encourage community responsibility; advance education and culture; ensure the acceptability of the program materials chosen; and maintain decency and decorum in production and propriety in advertising (Chester, Garrison & Willis, 1963: 138-139). For example, on the issue of acceptable programming material, “divorce . . . illicit sex relations . . . drunkenness and narcotic addiction [were] never to be presented as desirable or prevalent,” while “profanity, obscenity, smut and vulgarity [were] forbidden, even when likely to be understood only by part of the audience” (1963: 140). Similarly, to protect the educational interests and needs of children, subjects such as violence, sex and crime were

discouraged, unless required for plot or character development. Furthermore, on the matter of decency and decorum, the costumes of all performers were to “be within the bounds of propriety and . . . avoid such exposure or such emphasis on anatomical detail as would embarrass or offend home viewers” (1963: 142).

Aside from moral concerns, political and ideological pressures also had a notable impact on the content of American television programming from its earliest days. For example, in 1950, at the height of Senator Joseph McCarthy’s anti-communist movement, the publication “Red Channels: The Report on the Communist Influence in Radio and Television” identified 150 actors and production personnel thought to have left-wing affiliations. Despite persistent denials of any Communist leanings, this list prompted the firing of several popular actors from network television series. Moreover, given the manner in which these cold war sentiments were occurring in parallel with an overall rise in American prosperity, the pervasive ideological conservatism already shaping American television programming was only further reinforced, with far-reaching and long-lasting impacts.

Since the 1950s, self-imposed and/or state-sanctioned limitations over the scope and content of television programming have been slowly relaxed in most Western nations. The roots of these changes can be traced to widespread shifts in societal attitudes, behaviours and norms of the late 1960s that gradually worked their way into the popular consciousness through the course of the 1970s. In addition, the laissez-faire policies of many governments during the 1980s, coupled with ongoing technological innovations, have eliminated traditional scarce spectrum justifications for programming policies and

regulations. As a result, in many European nations, cable television or satellite broadcasting, have largely displaced the broadcasting monopolies or oligopolies of the past. Similarly, in the United States, innovations such as cable, satellite and digital television have led to geometric increases in the number of television services, prompting a gradual decline in the popularity and influence of the major broadcasters. Moreover, the FCC has abandoned most of its traditional programming restrictions and the courts have ruled that the NAB does not have the power to establish or enforce regulations.

However, even though the entire structure of regulatory policies governing the United States' broadcast media has been extensively dismantled, licensing and a complex array of regulatory expectations are still in place. Furthermore, countless pressure groups opposed to representations ranging from homosexual lifestyles to acts of violence continue to wage an endless battle for new broadcast regulations and controls. In response, the major television networks have attempted to self-regulate with an on screen rating system, while Congress has opted for technological self-regulation via legislation requiring new televisions to be equipped with a "V-Chip" to allow viewers to selectively block "objectionable" programming from entering their homes.

While it is too early to assess the impact of present-day efforts to self-regulate television content, it is clear that many of today's broadcasters remain conscious of the necessity to pay heed to the broad range of community expectations and standards. After all, given that licenses remain an ongoing requirement, the possibility that legislators or an FCC with new membership could be lobbied to reinstate strict controls is not misplaced. Nevertheless, given the gradual lifting of federal and self-imposed constraints, coupled

with the near-complete dissolution of spectrum scarcity, present-day trends in American broadcasting suggest that the medium holds the potential to be as substantially free from controls as print. However, as we will see in chapter IV, given its history as a medium driven by a narrow range of dominant ideals, morals and values, its overall usefulness as a regulatory metaphor for the online realm seems questionable, at best.

With an emphasis on Western Europe and the dominant influence of the United States, this chapter has reviewed the rise of print, common carrier and broadcast-based modes of communication, as well as subsequent efforts to implement new regulatory regimes over each industry. From the invention of the printing press, to the widespread availability of television, it was seen that the arrival of each new communications platform was impacted and shaped by a complex intertwining of political, economic, judicial and, at times, moral considerations. Moreover, within each new communications context, it was found that - depending upon its primary mode of delivery - free expression was afforded differing levels of protection.

Throughout the course of this chapter, the positive and negative influences of past regulatory structures upon subsequent legislative efforts devised to contain new communications platforms were a recurrent theme. For example, we saw how the early American colonists' disdain for press licensing restrictions in England prompted the entrenchment of free speech and press protections in the United States' Constitution, with far-reaching and long-lasting implications for all subsequent innovations in technologically mediated communication. In addition, we demonstrated how the monopolistic structure

of telephony was extensively facilitated by preexisting legislative tenets governing telegraphy, which, in turn, was influenced and shaped by common carrier principles devised for the railroads. And, finally, we showed how highly restrictive measures conceived to deal with radio's purported spectrum scarcity were adopted by the post-war television industry, with little, if any, consideration for their relevance or applicability.

Over the past century, ongoing innovations in new communications technologies have extensively blurred the lines between print, common carrier and broadcast-based modes of communication. Moreover, as noted in chapter I, Rowland (1997) believes that the sudden advent of computer-mediated communications contexts is accelerating this technological convergence and is, by extension, prompting the rise of a new *metamedium*. As such, it is becoming increasingly apparent that homes of the twenty-first century - at least in the Western hemisphere and parts of Asia - will be serviced by a single physical line, which will offer a range of communicational resources which were previously provided by separate service providers. Moreover, as we have seen through the course of this discussion, past legislators have all too often overlooked the unique characteristics of new communications media, thus prompting the implementation of inappropriate and, at times, repressive, new regulatory measures.

With the above considerations in mind, the next chapter seeks to delineate some of the regulatory challenges facing online communications contexts in the wake of their popular appeal. To this end, it will assess the extent to which metaphors derived from the past communications technologies have been driving present-day efforts to regulate online communication in the United States and other jurisdictions around the world. In addition,

it will consider whether the online sphere should be treated as a unique medium in need of a broadly-defined set of regulatory criteria, or as a collective of all known communications media, governed by pre-existing sets of legislative and judicial precedents. And, finally, given the way in which the online realm is slowly converging with preexisting communications media, the relevance of, and need for, a controlling metaphor that effectively defines and situates this new communicational context will be explored.

IV

Government-Sponsored Efforts to Regulate the Online Medium

While the identification of a single flashpoint that triggered interest in government-sponsored regulatory initiatives for the online sphere is not possible, the most influential actor, to date, has been the United States. This is most clearly evidenced by ongoing American efforts to enact legislation, such as the Communications Decency Act of 1996, designed to control the dissemination of so-called "indecent" online materials. In parallel, though, many other jurisdictions around the world have also been assessing the merits and drawbacks of legislation conceived to regulate online communications contexts. However, because a consensus over the most appropriate regulatory measure has not been forthcoming, this debate has garnered extensive attention - with the mainstream media and among actors and groups with a vested interest - both on the North American and international stage. Thus, with these factors in mind, the intent of the following chapter is to review and discuss some of the key issues that have been driving recent debates over the design and implementation of new regulatory regimes for computer-mediated communication spaces.

To begin, the rise of the Communications Decency Act will be reviewed. To illuminate the range of political and ideological interests that have shaped and influenced this debate, its genesis, some of the key actors involved and the aftermath of its passage into law will be discussed. Thereafter, the focus will turn to other countries where efforts to regulate the online medium have taken place. Jurisdictions to be considered include

Canada, the United Kingdom, France, Germany, China, Singapore and Australia. And, finally, to address the online realm's gradual convergence with preexisting communications media, the relevance of a controlling metaphor that effectively defines and situates this new communicative context will be explored.

A. Online Regulation in the United States

Although obtaining an accurate estimate of the online user population is an issue laden with definitional and methodological challenges,³³ recent studies have consistently generated figures ranging between thirty and fifty million users worldwide (CyberAtlas, 1996). With respect to the United States, online user population estimates have generally ranged between ten and thirty-five million users (CyberAtlas, 1996). Moreover, of the 6.5 million computers that were connected to the Internet in July 1995, it was estimated that roughly two-thirds were physically located in the United States (Rickard, 1995: 9). Thus, despite an absence of precise figures, it is clear that the United States has by far the highest number of online users in the world.

This section begins with a selective chronology and analysis of the circumstances that led to the Communications Decency Act's introduction and passage into law in the United States. The discussion will focus on the diverse political and ideological interests that have shaped this debate and will highlight the influential role particular activists and public interest groups have played. In addition, in an effort to highlight the influential role

³³ See Rickard (1995), for a useful overview of methodologies used to calculate online population estimates.

the United States may well play in other jurisdictions, the judicial aftermath of the CDA's passage into law will be reviewed.

1. The Genesis of the Communications Decency Act

In July 1994, NBC's *Dateline* aired a story about pedophiles stalking children via online computer services. Senator James Exon, a Democrat from Nebraska, saw this telecast and was horrified by its implications (Corcoran, 1996). In response, he drafted and introduced the Communications Decency Act as a rider to the Senate's proposed Telecommunications Reform bill. However, when the United States Congress adjourned for 1994 without voting on the bill, Exon's initial effort to regulate the online communications context was thwarted.

On February 1, 1995, Senator Exon reintroduced the CDA in a bipartisan effort with Senator Slade Gorton, a Republican from Washington, as an amendment to the Senate's ambitious telecommunications deregulation reform bill intended to amend Section 47 U.S.C. 223 of the Communications Act of 1934. The Act's initial draft included the following stipulation: "Whoever . . . makes transmits, or otherwise makes available any comment, request, suggestion, proposal, image, or other communication which is obscene, lewd, lascivious, filthy, or indecent; . . . shall be fined not more than \$100,000 or imprisoned not more than two years, or both" (Weitner & Seiger, 1995).

Not surprisingly, however, opposition to the CDA's vague and repressive language was vehement, swift and widespread.³⁴ According to Wallace and Mangan, the amendment represented "a radical attack on the . . . protection of free speech and the Supreme Court's settled and rather simple rules interpreting the First Amendment" (1996: 174). Furthermore, analysts with the Center for Democracy and Technology (CDT), a non-profit public policy organization, claimed that if the CDA became law, its inadequate definition of "indecentcy" would oblige online service providers "to restrict access to any content that could be possibly construed as indecent or obscene" under terms previously established for the broadcast industries (Weitner & Seiger, 1995).

In response to these complaints, a revised CDA was introduced by Senator Gorton on March 23, 1995. While this new version now included several exemptions to limit criminal liability for online service providers, most opponents were unimpressed. Indeed, for the CDT, the modified CDA was still "an unconstitutional intrusion of free speech and privacy rights of Internet users and all content providers in interactive media" (Berman & Weitzner, 1995). Moreover, as a *New York Times* editorial noted, Gorton's CDA would still do very "little to curb people intent on abusing children or purposefully exposing them to pornography in cyberspace," yet - given its application of the most conservative

³⁴ For example, following the introduction of the CDA, a coalition of activist groups that included the Center for Democracy and Technology (CDT), the Electronic Frontier Foundation (EFF), People for the American Way, the Electronic Privacy and Information Center (EPIC) and the American Civil Liberties Union (ACLU) formed an alliance with the Voters Telecommunications Watch (VTW) to mobilize a grassroots protest against the CDA.

American notions of indecency and obscenity - would seriously impact online communication, both on the national and international stage (Benneham, 1995: A15).

The first elected official to take action against the CDA was Senator Patrick Leahy, a Democrat from Vermont. On April 7, 1995, Leahy introduced "The Child Protection, User Empowerment and Free Expression in Interactive Media Study Bill" (S.714). This bill proposed a short-term study of the online medium to determine whether CDA-styled regulatory measures were necessary. Moreover, since it was Leahy's view that "Instead of rushing to regulate the content of information services, we should encourage the development of technology that gives parents and other consumers the ability to control the information that can be accessed over a modem," his bill was also designed to "address the legal and technical issues for empowering users to control the information they receive over electronic interactive services."

In the weeks leading up to a Senate vote to determine whether Leahy's CDA alternative would replace the Exon/Gorton CDA, numerous civil rights activists, lobbyists, journalists and concerned online users began jostling to make their voices heard. For example, over 35,000 petitions against the CDA were collected via the Internet by the CDT (Wallace & Mangan, 1996: 180). In addition, the American Civil Liberties Union (ACLU), a national civil liberties organization, began urging people to contact their Congressional representatives to protest the manner in which the CDA would "severely restrict the flow of online information by requiring service providers to act as private censors" (ACLU, 1995). Meanwhile, the Electronic Frontier Foundation (EFF), a non-profit public interest group working to protect individual rights in the information age,

was arguing that the CDA “would chill First Amendment-protected speech” and would, by extension, “restrict adults in the public forums of computer networks to writing and reading only such content that is suitable for children” (Godwin & Steele, 1995).

Surprisingly, even some right-wing groups whose agendas seemed to converge with the conservative slant of the CDA were upset. For example, following its March 23 Senate modification, the Christian Coalition suddenly denounced the CDA when it became apparent that it would no longer carry the same force as it did under its initial wording. Similarly, the broadcast media watchdog group, Morality in Media, lamented that the CDA would inhibit full enforcement of “non-commercial computer obscenity,” and would, by extension, provide computer networks “with protections which should only be available . . . to common carriers.” “The Christian Right want a hammer to swing at online services,” explained one online journalist, but the “Exon amendment doesn’t give them that hammer” (Meeks, 1995).

On June 14, 1995, the U.S. Senate voted 84-16 in favour of attaching the CDA (now sponsored by Senator Exon and Senator Dan Coats, a Republican from Indiana) as Title IV to the Telecommunications Competition and Deregulation Act of 1995 (S.652). However, since the House of Representatives was also working on a telecommunications reform bill, Senate support for the CDA did not mark the immediate demise of the Leahy alternative. In fact, due to the backing of Representative Ron Klink, a Democrat from Pennsylvania, the House Telecommunications Reform Bill (HR1555) that was amended in late May *included* Leahy’s Study Bill and *did not* incorporate the Exon/Coats CDA.

Thus, given its exclusion from HR1555, it was beginning to look as if the CDA's Senate counterpart (S.652) might also be in jeopardy.

Meanwhile, the CDA was facing new challenges on other fronts. First, the Republican speaker of the House of Representatives, Newt Gingrich, publicly stated that the CDA was a clear violation of free speech and probably illegal under the terms of the United States Constitution.³⁵ Then, on June 30, 1995, Representatives Chris Cox, a Republican from California, and Representative Ron Wyden, a Democrat from Oregon, introduced, the "Internet Freedom and Family Empowerment Act"(HR1978) as a CDA alternative. This bipartisan legislation was designed to allow each citizen, rather than the government, to decide how online information was to be screened or limited. Moreover, unlike the Exon/Coats CDA, this amendment did not empower the FCC to regulate online communication or the contexts in which it takes place.

On August 4, 1996 the House of Representatives voted 420-4 in favour of the Cox/Wyden and Klink/Leahy study amendments, making both bills part of the House Telecommunications Reform bill (HR1555). For CDA opponents, this outcome was hailed as a "major victory" for online expression (CDT, 1996b). At the same time, though, a major hurdle was still looming. Indeed, a conference committee formed to reconcile the House and Senate's disparate versions of the bill had yet to decide which of the two was most suitable.

³⁵ Gingrich made these comments during the PBS television program, "Interview with David Frost" on May 31, 1995.

Fearing that ratification of the Senate's Exon/Coats CDA might be imminent, a compromise proposal drafted by Representative Rick White, a Republican representing Washington D.C., was tabled to the conference committee on December 1, 1995. This proposal was based in part on the Cox/Wyden amendment and in part on some aspects of the criminal sanction components of the Exon/Coats CDA. In brief, it ruled out FCC (i.e., broadcast) control of online communication and advanced four main objectives: (1) prison sentences and fines for sending or displaying material deemed harmful to minors; (2) promotion of the development of technological alternatives to screen out harmful material; (3) promotion of responsible action on the part of employers and the telecommunications industry to screen undesirable materials; and (4) to allow the online context to grow at its own rate without federal government intervention that might stifle innovation for educators or commercial interests (White, 1995).

The most notable aspect of Representative White's effort was support for a controlling metaphor that would position the online medium more closely with the less regulated print media and outside the control of the FCC and the rules that have traditionally governed the United States' broadcast industry. Of further interest was his elimination of a CDA clause that would have made online service providers criminally responsible for materials posted by their users. And, finally, he was calling for the substitution of the definitionally ambiguous term "indecentcy" with the more straightforward "harmful to minors" standard that 48 of the 50 American State governments use to deal with material considered so blatantly offensive that it does not warrant First Amendment protection (Copilevitz, 1995).

On December 6, 1995, the Congressional Conference Committee's members voted 20-13 in favour Representative White's compromise proposal. However, in a move Cate Corcoran (1996) terms "the old switcheroo," Representatives Henry Hyde, a Republican from Illinois, and Bob Gouladette, a Republican from Virginia, immediately tabled a motion to substitute White's "material harmful to minors" with the Exon/Coats "indecent" wording. Upon a subsequent vote, the reworded White amendment passed by a margin of 17-16. According to a CDT public policy analysis, this seemingly minor rewording reinstated a major provision of the original Exon amendment and opened the floodgates for the censorship of constitutionally protected speech, thus making "the Internet and interactive media the most heavily regulated communications medium" ever witnessed in the United States (CDT, 1995a).

On January 31, 1996, final versions of the Telecommunications Act of 1996 were presented in both houses of Congress. Less than twenty-four hours later and exactly one year after Senators Exon and Gorton introduced the CDA, this controversial regulatory legislation - ironically appended to a massive and far-reaching bill designed to *deregulate* telecommunications carriers - was overwhelmingly adopted by a vote of 441-6 in the House of Representatives and 91-5 in the Senate. One week later, on February 8, 1996, just six days shy of the fiftieth anniversary of the launching of the first electronic computer (Martin, 1995-96: 3), U.S. President Bill Clinton signed the telecommunications bill into law. In the process, the Communications Decency Act of 1996 became law. The final version of the CDA was to levy a fine of \$250,000 U.S. and/or two years in prison to any

person who used a computer-mediated communications service in state, interstate or foreign communications to:

initiate the transmission of any comment, request, suggestion, proposal, image, or other communication which is obscene, or indecent knowing that the recipient of such communication is under the age of 18 . . . [or to display to any individual] . . . 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. (CDT, 1995c)

2. The Communications Decency Act Becomes Law

On the same day U.S. President Clinton signed the Telecommunications Reform Act of 1996 into law, the Electronic Frontier Foundation launched the "Free Speech Online - Blue Ribbon Protest Campaign" to raise public awareness and protest the CDA's repressive communicational implications.³⁶ Around the same time, more than 1,500 World Wide Web operators around the world changed their page backgrounds to black. And, most significantly, the American Civil Liberties Union - along with organizations such as the AIDS Education Global Information System, the Computer Professionals for Social Responsibility (CPSR), the Electronic Privacy Information Center, the Planned Parenthood Federation of America and fifteen other plaintiffs - filed a lawsuit (ACLU v. Reno) in the Philadelphia Federal District Court of Appeals to obtain a temporary restraining order against the CDA's indecency provisions.³⁷

³⁶ See [<http://www.eff.org/blueribbon/activism.html>] for more information on the Blue Ribbon Campaign.

³⁷ See ACLU (1996b) for the full list of plaintiffs.

According to the ACLU-led lawsuit, enforcement of the CDA would cause irreparable harm, was unconstitutional and - given the vague language used by the Act - make it impossible to “even know what speech or other actions might subject [online users] to prosecution.” They also alleged that to avoid criminal prosecution, many online service providers would “likely ban ... potentially ‘indecent’ or ‘patently offensive’” materials, thus denying many online users the right to discuss a range of important issues (ACLU, 1996b). In response, Judge Ronald Buckwalter issued a ruling prohibiting enforcement of the CDA’s indecency provision and granted the plaintiffs’ request for a three-judge panel to hear their case. Then, on February 23, 1996, the U.S. government announced that it would not proceed with any investigations or prosecutions under the “indecency” or “patently offensive” provisions of the CDA until the three-judge panel had heard the ACLU v. [Janet] Reno³⁸ case.

The judges selected for the ACLU vs. Reno case were Dolores Sloviter, Stewart Dalzell and Ronald Buckwalter. Arguments for the ACLU-led coalition were made on March 21, 22 and April 1, 1996.³⁹ Witnesses who took the stand for the plaintiffs included: a senior technical consultant from Harvard University; a representative of a company that sells Internet screening software; an online activist who disseminates safe sex and AIDS treatment information; a novelist and gay activist; a Presbyterian minister who teaches sex education; a leading authority on the commercialization of the Internet;

³⁸ The United States’ Attorney General.

³⁹ See Wallace (1996a, 1996b) and Mangan (1996a, 1996c, 1996d) for day-by-day summaries of the trial proceedings.

and a librarian. With the presentation of these witnesses, the plaintiffs were aiming to demonstrate how online communication would be severely constrained by CDA's overly-restrictive and vague language. In addition, they were attempting to show that there were reasonable technological alternatives that could as effectively rate and screen online content. Finally, the plaintiffs were aiming to demonstrate that it was inappropriate to treat the online context as if it were simply an extension of the broadcast medium.

Arguments for the Department of Justice were made on April 12 and 15, 1996. To counter the plaintiffs' arguments, government lawyers presented as witnesses: a forensics expert on "computer smut" and a pair of experts involved in the development of online rating systems. Their strategy was two-pronged: (1) to show how easy it is for children to find sexually explicit material online and (2) to debunk the logistical feasibility of technologically driven, online rating or screening systems.⁴⁰

Upon the trial's conclusion on May 11, 1996, CDA opponents were optimistic. Government lawyers had been forced to admit that the CDA "criminalizes 'speech of value,' such as artistic, literary, or medical information, and not just pornography or other prurient words or images that aren't covered under existing obscenity laws (Pietrucha, 1996). Furthermore, they had failed to offer a persuasive explanation as to "what kind of

⁴⁰ The government lawyers second strategy, however, backfired when one of their expert witnesses remarked that the Platform for Internet Content Selection (PICS) - a rating framework endorsed by the plaintiffs - was a viable option for rating and screening online information. (PICS purportedly facilitates the development of technologies to let parents and teachers control what children can access online. See [<http://www.w3.org/pub/WWW/PICS>] for more information.) (Mangan, 1996b). Chapter VII will discuss the merits and drawbacks of PICS in greater detail.

online words and images [would] be considered indecent or patently offensive” (Pietrucha, 1996).

On June 12, 1996, in a unanimous 219 page decision, the Communications Decency Act of 1996 was declared unconstitutional by the three-judge panel of the Federal District Court of Appeals in Philadelphia. Reaction to this outcome was swift. For the Citizen’s Internet Empowerment Coalition, the decision was hailed “as a major victory for Netizens!” According to the Canadian Press (1996b), within 30 minutes of the ruling, 4,000 World Wide Web pages connected to a site run by the Voters Telecommunications Watch were celebrating by displaying an animated fireworks graphic. In his written decision, U.S. District Judge Dalzell had concluded that since the Internet “may fairly be regarded as a never-ending worldwide conversation [it therefore] deserves the highest protection from government intrusion” (Beltrame, 1996).

CDA supporters, however, were not discouraged. For Mike Russell of the Christian Coalition, “This wasn’t unanticipated with the direction and liberal leanings of these judges. . . . We fully anticipate it going to the Supreme Court level and ultimately we believe we will be victorious” (Beltrame, 1996). Similarly, Bruce Taylor of the National Law Center for Children and Families argued that the court had been overwhelmed by the technology and that the plaintiffs in the case didn’t have a chance of getting the ruling upheld on appeal (*The Washington Post*, 1996). Nevertheless, despite this posturing, the first precedent-setting decision associated with the regulation of online communication spaces was in the books.

On July 1, 1996, the Justice Department filed an official notice to appeal the decision of the three-judge panel in Philadelphia. Then, on July 29, the Justice Department was dealt a further blow when a panel of three judges in Manhattan, New York ruled in favour of a second CDA challenge, filed by Joe Shea, editor of the American Reporter, an online newspaper. Two weeks later, a similar notice to appeal the Shea decision was filed by the Justice Department. Since that time, both of these cases have wound their way through the United States' court system and have ruled in favor of the plaintiffs. Moreover, on June 26, 1997, a Supreme Court decision in *Reno v. American Civil Liberties Union* (i.e., the appeal to the Philadelphia District Court decision) rejected the CDA because the judges were:

persuaded that the C.D.A. lacks the precision that the First Amendment requires when a statute regulates the content of speech. In order to deny minors access to potentially harmful speech, the C.D.A. effectively suppresses a large amount of speech that adults have a constitutional right to receive and to address to one another (*Stevens*, A20: 1997).

As such, the Communications Decency Act of 1996 is no longer applicable and cannot be enforced.

At the same time, though, it is clear that the American debate over online regulation is far from over. Indeed, several dozen states have passed, or are considering, legislation similar to the CDA.⁴¹ Moreover, in early December 1997, Senator Dan Coats (a Republican from Indiana and co-sponsor of the failed CDA) introduced the CDA II (S. 1482), legislation which seeks to prohibit commercial Internet sites from distributing material considered "harmful to minors" under 17 years old and purportedly takes into

⁴¹ See ACLU (1996c) for more information on State censorship bills.

consideration the Supreme Court's reservations with the original version of the CDA. To date, however, this new version of the CDA has yet to be passed; therefore, whether it makes its way through both houses of Congress remains to be seen.

B. Online Regulation in Other Jurisdictions

Near the end of 1995, it was estimated that more than 160 countries had some form of direct or indirect connection to online services and that substantive online user populations could be found in regions such as Asia, Australia, Canada, Europe and New Zealand (Sorensen, 1996). In addition, countries in the Middle East and Latin America were also reported to be going online in increasingly large numbers (Sorensen, 1996). By contrast, in Africa, where poverty, "access, technology and training are huge hurdles to cross," only a handful of countries were reportedly equipped to provide any form of online services to their citizens (Sorensen, 1996).

While the United States has been a dominant force in the online regulation debate, many governments in other jurisdictions have also been considering regulatory legislation for this new communications domain. This section reviews four contexts in which substantive efforts have been undertaken by government legislators or policy-makers to devise regulatory regimes for new communications contexts. The focus of this discussion will be on factors that have triggered calls for legislation. In addition, the controlling

metaphors that have shaped these debates will be identified. Jurisdictions to be considered include: Canada, Europe, Asia and Australia.⁴²

1. **Canada**

Following the three-panel ruling against the CDA by the judges of the Philadelphia Court of Appeals, Rick Broadhurt, author of the *Canadian Internet Handbook* and Professor of Management at York University in Toronto, noted that "this ruling does set a precedent [and] legal circles in Canada are going to be watching very, very closely" (Canadian Press, 1996b). Similarly, David Jones, a Hamilton university professor and president of Electronic Frontier Canada, observed that Canadian officials are likely following the American court decisions with considerable interest, "and if the U.S. government finds (the act) is constitutional, I think we can expect something similar north of the border" (Galloway, 1996).

Broadhurt and Jones' reactions are telling for two reasons. First, they bluntly illustrate the lead role American legislation and court rulings are playing in the regulation of computer-mediated communication in other jurisdictions and, second, they allude to the complete absence of a firm Canadian policy in this increasingly contentious debate. Indeed, although Canadian policy makers have invested extensive resources into understanding the long-term potential of the "Information Highway," little more than lip-

⁴² These jurisdictions were selected due to the extensive nature of the debates that have taken place in these contexts. Online regulation efforts have also occurred in the Middle East (e.g., Iran and Saudi Arabia), New Zealand and Africa (e.g., Zambia). See Sorensen (1996) for a more detailed review of these, and other, jurisdictions.

service has been paid to the issue of regulating a medium that reached over 1.5 million Canadians households in 1997 (Beauchesne, 1997).⁴³

For example, *The Challenge of the Information Highway*, released in September 1995 by Industry Canada's Information Highway Advisory Council (IHAC), makes over 300 recommendations that purportedly address the challenge of "creating a Canadian Information Highway that [would] both serve and renew" Canada (1995: iii). With respect to online communication, the Council acknowledges the need to distinguish between broadcasting and private communication, argues that the regulation of online spaces would be "no more appropriate than regulating content for the telephone" and suggests that if online communication "evolves into a medium for the commercial provision of programming, cultural policy goals" will be required (1995: 28). In addition, this report devotes a brief, two-page section to "Illegal and Offensive Content" issues in which it argues that "Canadians must strike a balance between maintaining freedom of expression, and promoting tolerance and imposing controls to deter harm to societies and individuals" (1995: 48-49). Furthermore, it recommends a fine tuning of laws, the development of voluntary codes of ethics, public education and the development of technological fixes to protect against "offensive" content. And, finally, it concludes by noting that the capacity to control what information comes into the home "demands consideration" (1995: 48-49).

⁴³ According to data collected in May 1996, 3.6 million Canadian households, or 31.6%, were equipped with a personal computer. Of these homes, 1.8 million had a modem and over one-half reported using the Internet and other online services (Nielson, 1996).

Overall, the IHAC's online regulatory recommendations appear vague and, at times, contradictory. This is because the report makes sweeping, non-committal statements which do not properly frame the risks and challenges associated with online communication and the contexts in which it takes place. Moreover, the report downplays the discursive and definitional complexities tied into notions of broadcasting and private communication and completely ignores the inevitable obstacles inherent in "fine-tuning" provincial and federal legal statutes devised for other media. At the same time, the authors do demonstrate a refreshing awareness of the "need for bilateral and multilateral arrangements at the international level, [to deal] with harmful communications on global networks," but fail to point out the intrinsic challenges of such propositions (1995: 49). Nevertheless, the Council's appreciation for the transnational nature of online communication is a notable contribution to the debate, especially in light of its striking absence on the American stage.

Shortly after the release of the IHAC's study, *Getting Canada Online: Understanding the Information Highway* (1995), by David Johnson, Debra Johnson and Sunny Handa, was published. According to Johnson et al., their book, while in some sense a complement to the IHAC report, is not intended as a supplement (1995: ix). Instead, the authors are seeking to illuminate many of the key public policy issues Canada will face as it grapples with the emergent complexities of the information age. With respect to state control of online expression, Johnson et al., argue that this long-standing debate will ultimately be determined by what Canadian "society will tolerate and what limits it is willing to place on freedom of expression" and further notes that it is misplaced

reasoning to use the broadcast metaphor for a entirely new and different medium (1995: 163). In addition, the authors argue that government “censorship in the home is socially and legally unacceptable and practically impossible [because it] fundamentally erodes freedom of expression and contravenes the values of a democratic society” (1995: 163). Finally, the authors go on to suggest that since the harmonization of laws on a global scale is likely unrealistic, it is essential that alternatives to state control be prioritized. To this end, they advocate: community intervention, self-policing, established codes of ethics, public education and technological solutions, since it is their belief that these strategies will most effectively engender a “‘healthy’ balance between free expression and community interests” (1995: 164).

Johnson et al.’s discussion of content-control procedures and the role of the state in the regulation of online communication in the new information age is, in the final analysis, a useful contribution. While their recommendations do parallel those of the IHAC report, their understanding of the enormity of the challenge at the local, state and international levels, demonstrates a keen sensitivity for the nuances of this debate. Moreover, their recognition that the regulation of the online medium cannot, and should not, be patterned after pre-existing models devised for other communications media, is a substantive contribution which is all the more relevant in the wake of the challenges American legislators have encountered in their efforts to fold the Communication Decency Act into a regulatory framework devised for other telecommunications technologies.

Since the release of the IHAC report, the Canadian government has not proposed or enacted any legislation to regulate online communication spaces. In fact, in February

1996, following the signing of the CDA into law in the United States, Keith Spicer, who was at that time the head of the Canadian Radio and Telecommunications Commission, stated: "Censorship of the Internet has not even come up as an idea, and the idea of regulating it is out of the question" (Marotte, 1996). However, since that time, the Canadian Human Right Commission has attempted to regulate online hate speech, the Quebec government has attempted to ban English-language Web pages and Industry Canada has held meetings across the country to gather information on Canada's regulatory environment. Moreover, in a speech to delegates at the Canadian Association of Broadcasters convention in Edmonton, Alberta on October 28, 1996, former Heritage Minister Sheila Copps "promised a regulatory clampdown on cyberspace" (Helm, 1996: B9).

Thus, given the above considerations it is clear, then, that the debate over online regulation in Canada, although contradictory, may well escalate as more Canadians stake their claims in online spaces. Indeed, in a Southam-Global poll of 1,410 Canadians conducted between November 28 and December 2, 1997, women, especially mothers of young children, were found to be leading the call for government regulation of online spaces. Moreover, when asked whether they favored new laws to regulate Internet content, 66% of Canadian adults said yes, while 80% of women in the 35-54 age category, said yes. David Jones, president of the anti-censorship group Electronic Frontiers Canada finds these results disappointing, but not all that surprising. After all, until recently, most online users were young, affluent, middle-class males, but the new wave of users is attracting more families and children. As such, he feels that once government regulation

proponents actually start using these new communicational spaces, “they will change their minds about” the need for regulations as they “come to realize that they can make choices for themselves and decide what they can see or not” (Cobb, 1997: A1).

2. Europe

i. The European Commission

In January 1996, The European Commission (EC) began considering policy positions for new communicative spaces, such as the Internet. Although European Telecommunications and Culture ministers were in agreement that it “is clearly the responsibility of Member States to ensure the application of existing laws,” it was nevertheless felt that given the decentralized and transnational nature of online communications, concrete policies to ensure cooperation between EC Member States were necessary (Akdeniz, 1996). With this in mind, two discussion documents were commissioned to (1) summarize problems presented by the rapid growth of the Internet and (2) to assess the desirability of European or international regulation. These reports were released on October 16, 1996.

The first, a Communication entitled “Illegal and harmful content on the Internet,” argues that online communication is:

[R]adically different from traditional broadcasting. It also differs radically from a traditional telecommunications service. This constant shift from “publishing mode” to private communications mode” - two modes governed by very different legal regimes - constitutes one of the main challenges of Internet regulation. (EC, 1996b)

It also contends that existing or new legislation may not be the best or most efficient strategy for combatting harmful or illegal online content given the multinational nature of the medium. Therefore, it concludes that the best strategy for dealing with the online medium is to work within the constraints of its unique characteristics to develop “innovative, and specific, solutions” which can accommodate the diverse, and at times contradictory, legislation and criminal statutes that are already in place within the European Commission and other international contexts (EC, 1996b). As such, the following policy options are offered: cooperation between member states to combat criminal content; a clarification of the regulations that apply to access providers; cooperation and self-regulation by Internet access providers; community action to support the use of filtering software and rating systems; and an international conference to assess the feasibility of “immediate measures including a framework for international co-operation, using the existing legal framework” (EC, 1996b).

The second report produced for the EC, a “Green Paper on the Protection of Minors and Human Dignity in Audiovisual and Information Services,” offers an overview of the history of audiovisual and information services, analyzes existing policies and legislation in European and international contexts and considers the implications of using such statutes and policies for the protection of minors and human dignity (EC, 1996a). The policy options considered range from government regulation, self-regulation through cooperation, awareness campaigns and education, to the development of parental control systems. Drawing from the policy options presented in the Communication on “Illegal and harmful content on the Internet,” this paper identifies three key themes for further

consideration: strengthening legal statutes, encouraging parental control and responsibilities and improving international cooperation. In addition, it concludes by calling for contributions from interested parties and states an intent to seek the opinion of the European Parliament before advancing any additional proposals.

On the surface, the European Commission's strategy for the development of online regulatory policies appears ambitious and well-considered. The EC appears to recognize the need to set aside print, telecommunications and broadcast metaphors and seems prepared to be a leader in the development of innovative and flexible new communications policies, both at the European and international levels. Furthermore, the EC's position stands in stark contrast to the American approach, characterized by ill-conceived legislation pushed through Congress with little thought for its far-reaching implications and the Canadian context, where little considered discussion has been undertaken. Still, despite these positives, McKnight and Neuman note that European technology policy initiatives have an unimpressive record, "which can be explained by the failure to provide for sufficient dynamism and flexibility in government programs to adapt to marketplace and user needs" and a policy development approach that is less attuned to the "speed-of-light changes in technology" (1995: 145-146). Thus, while these papers are clearly a step in the right direction, it remains to be seen whether they will have any substantive influence on this debate as it unfolds in its member states and on the international stage.

ii. The United Kingdom

To date, the United Kingdom (UK), with approximately two million online service

users (Dahlberg, 1998), has not enacted any legislation specifically designed to regulate online content or communications. According to Ian Taylor, British Trade and Industry Minister, the UK is more interested in enforcing existing obscenity laws through voluntary and cooperative measures undertaken by Internet service providers (ISP) and police departments (Sorenson, 1996). To encourage the enforcement of this policy, the British Home Office has held workshops with representatives from government, police departments and Internet service providers to review criminal statutes covering adult, obscene and indecent material and methods of online self-regulation. At these meetings, the government has consistently stressed that it has no plans to introduce “some heavy handed system of regulation” since it would discourage use of online communication spaces and be “extremely difficult to devise and implement a system that even worked” (Stewart, 1996).

However, despite these promises, mixed messages from government and law enforcement officials have been commonplace. For example, in May 1996, upon the creation of the Internet Service Providers Association (ISPA), a voluntary grouping of service providers, Ian Taylor stated that if the ISPA was not effective in its efforts to self-regulate online content, the only alternative to voluntary action would be: “increased political pressure for legislation in various areas [and that] pressure may get increasingly hard to resist” (Sorensen, 1996). Similarly, on August 9, 1996, Steven French, Chief Inspector of the Clubs and Vice Unit of the Metropolitan Police Service in London, sent a letter to all ISPs in which he instructed them to censor over 130 “pornographic” USENET

news groups and concluded by stating: "We trust that with your co-operation and self regulation it will not be necessary for us to move to an enforcement policy."

Not surprisingly, Britain's Internet service providers and their community of users have been taken aback by the Metropolitan Police's censorship request and alarmed by the heavy-handed nature of their enforcement policy insinuations. From the perspective of the ISPs, they are common carriers, not publishers, and they do not appreciate being coerced into an online censorship and law enforcement role. Thus, as it presently stands, the UK's online content control and regulation policy appears tenuous, contradictory and poorly executed. On the one hand, the government is asserting that it is prepared to let the market self-regulate to enforce existing laws, but at the same time it is using a misplaced controlling metaphor to instruct ISPs to regulate and self-censor under the threat of government intervention if their actions are deemed unsatisfactory. Since August 1996, Britain's online users have been actively protesting these coercive tactics and most recent efforts have been directed toward getting the popular press to recognize and support their arguments against online censorship. In addition, they have been combatting a government proposal made in early 1997 that the Platform for Internet Content Selection (PICS) (an Internet self-rating framework) be enforced as a required component of all British-based Web pages.

iii. France

According to SOFRES, a French marketing research institute, fewer than 15% of French homes had personal computers, compared with 25% on average in Western

Europe and 35% in the United States in early 1996 (Ministère délégué à la poste, 1996). Given this low market penetration, it follows that an even smaller percentage of French homes were equipped for online communication. In fact, according to an Associated Press estimate, fewer than 400,000 French citizens were users of the Internet or other online computer services in May 1996, representing less than one-tenth of one percent of the French population (Nando.net, 1996).⁴⁴ Since that time, however, this estimate has tripled to nearly 1.2 million (Dahlburg, 1998). Nevertheless, France still lags behind many of its European counterparts, particularly England and Germany, in terms of the online medium's overall market penetration. At the same time, though, given its widespread penetration across the rest of Europe and around the world, the French government has been quick to recognize the need to make sense of the online context's long-term legal and regulatory implications for French society.

In June 1996, a report submitted by the Internet Interministerial Commission (IIC) to the French government's Ministry of Postal Services, Telecommunications and Space and Ministry of Culture was released. This report was commissioned to devise a methodology and philosophy to better understand the Internet as well as to develop a set of propositions for government policy-makers. At its outset, its authors argue that:

⁴⁴ While economic factors (i.e., the high cost of computers in France and the absence of flat-rate local telephone services) have doubtlessly played a role in the apparent lower popularity of computers and computer-mediated communication in France, it can also be linked to the enormous popularity of France Telecom's, Minitel, a pay-per-use videotext system first introduced in 1981 that provides its users with access to an electronic telephone book, electronic mail, stock prices, sports results and a wide variety of commercial services (Lemos, 1996).

It is necessary . . . to recognise that the specific and deeply innovative character of the Internet which prohibits the automatic transposition of pre-established ideas; the Internet is not part of the broadcasting or telematics domain; it upsets classic definitions of the right to communicate founded on the distinction between private correspondence and audiovisual communication; it is in reality a world of users . . . who cross different interconnected networks . . . to seek the information and services they need. (IIC, 1996)

Furthermore, the report goes on to stress that current French laws offer a reasonable means to address most online regulatory issues and that a priority should be placed on their modification so that the roles of online service providers in a transnational communications context are properly defined and applied.

With this in mind, the report presents four “convictions” that its authors believe are essential for an effective regulatory framework for online communication in France. These are: a recognition that a uniquely national approach is unrealistic; the need for a gradual and concerted effort to analyze and understand the medium as it evolves before implementing legal and regulatory solutions; the realization that there cannot exist any single or efficient solution to control online content; and the belief that any policies developed “should be oriented in a positive way, in a proactive way, to the development of French services on the Internet, rather than limited to a defensive arsenal” (IIC, 1996). In light of these objectives, the report next turns to a set of regulatory propositions which include: a preference for self-regulation rather than government control; a clarification of the roles of online users and information carriers; the development of international cooperation; the encouragement of electronic commerce; the establishment of a government-sponsored advisory body to survey, analyze and mediate online service and

communications disputes; the implementation of awareness and education campaigns; and, finally, the promotion of France and the French language.

Not long after the release of the Internet Interministerial Commission's report, Amendement N°200 to the Telecommunications Law Reform Bill was tabled in the French Senate by François Fillon, Minister of Postal Services, Telecommunications and Space. Dubbed the "Amendement Fillon," the proposed legislation made three recommendations: Article 43-1 proposed that Internet service providers be required to offer technical means of restricting Internet access; Article 43-2 called for the creation of the Comité supérieur de la télématique (CST) to oversee the enforcement of Article 43-1; and Article 43-3 placed upon ISPs an obligation of results and called for their prosecution if they did not follow the advice of the CST (Fillon, 1996b).

Alarmed by the implications of this new legislation, the Association des utilisateurs d'Internet (AUI), a non-profit organization representing the interests of French Internet users, soon issued a press release in which the amendment was condemned for being "hasty, legally useless and unjustified, technically inapplicable and dangerous for democracy and freedom of expression in France" (AUI, 1996b). Six weeks later, on July 24, 1996, the Conseil Constitutionnel, a working group charged to examine the unconstitutionality of articles in the Telecommunications Act reached the same conclusion and ruled that Articles 43-2 and 43-3 be rejected. Since that time, Senator Fillon has stated that he will table new propositions "afin de protéger les individus tout en favorisant le développement de l'Internet en France" (Fillon, 1996a). In addition, a government-

sponsored working group in charge of developing a code of good conduct for the “auto-regulation” of the Internet by professionals has been formed (AUI, 1996a).

More recently, France’s Prime Minister Lionel Jospin has called for a greater French presence on the Web. To this end, a campaign designed to help foster an “information society” in France was launched in late January 1998. Its alleged purpose is to ensure that all services presently available via Minitel (France’s aging and rudimentary online service, first launched in 1981) be made accessible over the Internet by 1999. Moreover, all government ministries, agencies and offices that deal with the public must establish electronic communications services for themselves and their publics by 2000. “The Internet must become the norm for the administration,” declared Jospin, in announcing the initiative (Dahlburg, 1998).

Overall, then, the debate over the regulation of online communication in France has, to date, demonstrated a sophisticated understanding of the medium and a remarkable sensitivity for its potential implications, benefits and risks. The IIC’s dismissal of the broadcast metaphor in favour of the less narrow “world of users” seeking out and distributing information, is a refreshing departure from the definitional efforts of other jurisdictions where the application of labels derived from regulatory approaches used for earlier communications technologies has been a consistent practice. Moreover, the conviction that any policies implemented should be positive and proactive, rather than restrictive and defensive, suggests that French policy-makers are not prepared to swiftly implement knee-jerk regulatory regimes similar to the reactionary principles of the American CDA. Instead, it appears that the French government, in consultation with key

stakeholders of the medium, is attempting to develop a method of self-regulation that can simultaneously protect individual rights and freedoms, promote the use of online communication in a transnational context and facilitate the enforcement of French laws, where applicable.

iv. Germany

Unlike France's seemingly proactive approach to online regulation and policy development, Germany's stance has tended toward the reactive in dealing with the activities of its estimated 2 million online users (Dahlberg, 1998). The first sign that the German government was concerned with content available through online service providers emerged in December 1995 when its authorities asked CompuServe Inc., a U.S.-based commercial computer network with 200,000 German users, to ban access to over 200 USENET newsgroups containing sexual content that they believed was illegal under German law (Martin, 1995: 1). In response, CompuServe cut access to the listed groups, however, since their software was not designed to deny access to a single country or region, all four million CompuServe subscribers around the world were cut off. Following extensive national and international negative publicity surrounding this ban, German authorities relented and, by February 1996, CompuServe had restored access to all but five groups (Sorensen, 1996).

Germany has also tried to apply its strict anti-hate speech laws to the online domain. For example, in January 1996, Deutsche Telekom (DT), Germany's national telephone company, cut access to several USENET newsgroups available via its T-Online

computer network because it believed that they were being used to spread neo-Nazi and anti-Semitic propaganda (Sorensen, 1996). In addition, DT cut access to several ISPs who were deemed to be distributing neo-Nazi propaganda, as well as a California-based computer service, Web Communications, because they were providing a World Wide Web site for Ernst Zundel, a German-born neo-Nazi living in Canada (Sorensen, 1996).

Finally, in October 1996, all Internet service providers in Germany were ordered by the government to block *xs4all*, an ISP Web server in the Netherlands, because it hosts a page with left-wing political content that is illegal under German law (EFF, 1996).

In February 1996, Rita Suessmuth, president of the Bundestag, the German parliament, stated that: "The information superhighway must not be allowed to become a forum for those who defile children . . . [and] . . . Freedom of expression reaches its limit when human dignity is violated and violence is promoted" (Sorensen, 1996). Two months later, Justice Minister Edzard Schmidt-Jotzig introduced an Internet censorship bill that would make ISPs liable for illegally posted content, including pornography and neo-Nazi information, if they knowingly permitted such materials to be housed on their servers. Under this proposed legislation, which follows from European Commission guidelines, ISPs would only be held liable if they were made aware of illegal content and took no subsequent action to have it removed. To date, the draft legislation has not become law, however, Schmidt-Jotzig expects it will receive the "rubber-stamp" by Chancellor Helmut Kohl, as soon as other aspects of the multimedia bill to which it is appended are agreed upon by Germany's state governments (Dennis, 1996).

Although Germany appears to have taken a harder line than its European partners with respect to online law enforcement and regulation, its actions, to date, betray a weak understanding of computer-mediated communications networks and their structure. Indeed, by randomly targeting specific Internet sites, service providers and commercial networks, German efforts at online law enforcement have been largely ineffective.⁴⁵ More recent actions, however, suggest that the German government is moving away from its heavy-handed enforcement approach toward a broader model of government-enforced regulation in which the onus will be placed on Internet service providers to ensure that German laws are not being violated. In a sense, this strategy strongly resembles the situation in the United Kingdom where ISPs have been asked to screen out or remove illegal content upon the request of law enforcement officials, or when made aware of its presence. At the same time, though, Germany's move toward online regulatory legislation represents a step beyond the British model, where voluntary enforcement of existing laws, as opposed to the implementation of new laws, has been undertaken. In both instances, however, one theme remains constant: policy-makers are treating Internet service providers as publishers and, accordingly, are seeking to impose upon them the roles and responsibilities that follow from historically defined and legislated aspects of this industry.

⁴⁵ For example, when CompuServe temporarily complied with the government's USENET newsgroup ban, it was still possible to access the blocked groups via CompuServe if a user connected to a remote server that also offered USENET newsgroups. Similarly, at the time Ernst Zundel's Web site was "banned" through T-Online, it was still accessible via CompuServe and dozens of other ISPs throughout Germany.

3. Asia

Near the end of 1995, it was estimated that there were approximately 1.5 million users of online communications services in Asia, with two-thirds in Japan (Sorensen, 1996). Studies of online service expansion and personal computer sales penetration in Asia suggest that the region will experience a significant increase in households accessing computer networks by the year 2000 (Reuters, 1996). Some Asian governments have opted to regulate online communications networks by limiting access to state-regulated or owned service providers (e.g., India, Malaysia, Pakistan, South Korea, Vietnam), others have called upon ISPs to self-regulate (e.g., Hong Kong, Thailand), while some have appeared relatively unconcerned with the need for legislation or controls (e.g., Indonesia, Japan) (Sorensen, 1996). By contrast, Chinese and Singaporean governments have implemented strict legislative measures to prevent their online users from accessing sites deemed "morally or politically offensive" (Arnold, 1996).

In September 1996, the Association of South East Asian Nations (ASEAN) with member nations in Brunei, Indonesia, Malaysia, Philippines, Singapore, Thailand and Vietnam, drafted an agreement to study the use of computer networks and the question of what, if anything, should be done to regulate or censor online communication while simultaneously preserving Asian cultural values (Williams, 1996a). Although the ASEAN agreement does not propose the implementation of a common regulatory policy for all of its member nations, many human rights, free expression and electronic privacy organizations have collectively expressed a concern that this process could eventually lead to a unified effort to regulate or censor online communication in Asia. This, they feel,

would run counter to ASEAN's stated desire to protect free speech and Asian cultural values. Moreover, given the support some ASEAN delegates have expressed for Singapore's strict and sweeping Internet Code of Practice, which calls for ISPs to block access to all material concerning sex, politics and religion, opponents argue that it is a risky and futile undertaking to introduce any online content regulation measures given the diversity of cultural values that exist within and between ASEAN's member states (Human Rights Watch, 1996).

With these factors in mind, the following section reviews online regulation initiatives in China and Singapore, two Asian countries where government legislators and policy-makers have implemented strict regulatory measures to control the content and uses of online communications networks.

i. China

In May 1995, upon the formation of ChinaNet, based in Beijing and Shanghai, individual Internet accounts became available for the first time, but at costs well beyond the means of most Chinese citizens (Sorensen, 1996). Nevertheless, despite this access barrier, it was estimated that there were between 40,000 and 70,000 users of online computer services in China in early 1996 (Sorensen, 1996; Williams, 1996c). Control of these users has been very strict and individuals seeking online access have been required to register with the Ministry of Posts and Telecommunications (MPT). China's business community has also had access to business-related information since 1995 via the Hong Kong-based China Internet Corporation (CIC), principally owned by China's state-

controlled Xinhua News Agency, while educational institutions have been using CASnet, the Chinese Academic Network (Williams, 1996b).

Censorship of online content has been an official government policy since the introduction of online communication networks to China. “[A]s a sovereign state, China will exercise control on the information’ entering China . . . By linking with the Internet, we do not mean the absolute freedom of information” stated China’s telecommunications minister in June 1995 (Sorensen, 1996). Following from this policy, many USENET newsgroups have been banned from China’s Internet host computers and all business information routed through CIC has been pre-screened in Hong Kong prior to being routed to users in China.

On January 1, 1996, just a few days after CompuServe complied with the German government’s request to cut access to USENET newsgroups, the Xinhua News Agency reported that the Chinese State Council and the Communist Party Central Committee were planning new online legislation to ban “pornographic or obscene material” as well as the production, duplication or distribution of “detrimental information” or information that might “hinder public order” (Sorensen, 1996). Two weeks later, a “moratorium” on new Internet accounts was declared and on January 23, in a State Council session chaired by Chinese Premier Li Peng, a set of draft rules designed to prevent citizens “from engaging in subversive activities, pornography and other forbidden actions on or via” international computer networks were adopted (Williams, 1996b). To ensure full enforcement of the

proposed law, the government noted that its implementation would also extend to all of its territories, including Hong Kong.⁴⁶

On February 1, 1996, the day after the final versions of the Telecommunications Act of 1996 were passed in both houses of the United States' Congress, China's "Regulations for the Management of International Networking with Computer Information Networks of the People's Republic of China" was signed into law by Premier Li Peng (Williams, 1996c). Three days later, it was announced by Xinhua that all existing computer networks would be "liquidated" and were required to re-register with the Ministry of Posts and Telecommunications. Furthermore, all inbound and outbound Internet links would be routed through MPT, the Ministry of Electronics Industry, the State Education Commission and the Chinese Academy of Science (Williams, 1996c). Less than two weeks later, the Ministry of Public Security issued an order for all users of international computer networks in China to register with the national security agency within 30 days of obtaining an online account. According to Xinhua, failure to comply would result in prosecution under the country's "Regulations on Protection of Computer Information System Security" (Williams, 1996b).

In keeping with its desire to control ISPs, China has also introduced sweeping controls to prevent the dissemination of state secrets and the spread of "harmful

⁴⁶ Since reverting to Chinese control on July 1, 1997, Hong Kong has been guaranteed the integrity of its telecommunications jurisdictions (Reuters, 1997a). However, if China rules that online communication falls under domestic security laws, which China says supersede Hong Kong's Bill of Rights and Basic Law, then some worry that its sweeping Internet controls will eventually be imposed on Hong Kong's computer users (Armstrong, 1996a).

information” (Reuters, 1997a). On December 30, 1997, new legislation was enacted for a broad range of crimes including, leaking state secrets, political subversion and spreading pornography and violence. In turn, these regulations also address computer hacking, viruses and other illegal computer activities. Anyone found in violation of these new laws will face unspecified “criminal punishments” or fines. As one Chinese newspaper explains “the Internet must not be used to ‘split the country’” (Reuters, 1997a). Quite clearly, then, this is an implicit message that the Chinese government is not prepared to tolerate any use of the Internet to advance separatist movements, particularly in Tibet and the Muslim regions of Xianjiang.

Unlike online regulation debates in the North American and European context, China’s efforts to control computer-mediated communication have been far-reaching and absolute. However, John Ure, director of Hong Kong University’s Center of Asian Studies telecommunications research project has argued that, “Everything in China is open to interpretation, so first you’ve got the implementation, then you’ve got the interpretation -- and that’s never 100% in China” (Armstrong, 1996a). For example, Ure believes that MPT’s exclusive control over the provision of international connections will be challenged by Liantong, a newer state telecommunications provider and will eventually collapse as more communications gateways open up. Moreover, he believes that it is “inconceivable that these controls will be kept forever, [and that] China realizes this and is saying, ‘We’ll do it for as long as we can and that will help instill some kind of self-policing’” (Armstrong, 1996a). Nevertheless, given the notable barriers to online service access in China, coupled with its government’s determination to protect its national, political and

cultural interests via rigorous controls on acceptable uses for online communication, it appears unlikely that its strict new communications policies will be relaxed in the near future.

ii. Singapore

Approximately 120,000 out of a population of roughly three million are estimated to be users of the Internet and other online computer services in Singapore (Aguilar, 1996a). It is expected that this figure will grow significantly as the nation moves toward its goal of installing fibre-optic lines into every home by 2000 (Aguilar, 1996a). Given this heavy investment in its information technology distribution network, Singapore is rapidly moving to the forefront as a world leader in the provision of publicly accessible computer-mediated communications services for all citizens. Ironically, Singapore is also at the forefront in the regulatory domain given its determined efforts to regulate online content and communications activities.

On July 15, 1996, Singapore became the second Asian jurisdiction since the passage of the CDA in the United States to enact legislation designed to regulate online communication. "It's kind of an anti-pollution measure in cyberspace" stated Information Minister George Yeo upon the announcement of Singapore's Internet Code of Practice (Armstrong, 1996b). Under the new legislation, Internet service providers are licensed as broadcasters and are monitored by the Singapore Broadcasting Authority (SBA). In addition, operators of cybercafés, all Singapore-based USENET newsgroups and all Singapore-based organizations that provide political or religious information about

Singapore must also register and pay a certification fee to the SBA. The SBA can impose fines and can revoke the business operating license of any company that refuses to comply with the law. Furthermore, the government has called upon its citizens to assist via self-regulation, community action and “the identification of objectionable sites in order to keep cyberspace clean,” and has set up a toll-free hotline where members of the public may report any “objectionable content” that they have found online (SBA, 1996a).

The SBA Internet Code of Practice places a heavy burden on ISPs, who are charged with the responsibility of filtering out material that “is against the public interest, public order, national harmony or which offends against good taste or decency.” More specifically, the following online materials are illegal: any content that may jeopardise public security or national defense; undermine public confidence in Singapore’s justice system; alarm or mislead the public; incite disaffection or promote hatred or contempt against the Government of Singapore; denigrate, satirise or encourage hatred or resentment against any racial or religious group; or, promote “religious deviations” or occult practices. In addition, any content that may harm public morals is forbidden. This includes: content which is “pornographic or otherwise obscene,” or propagates or depicts permissiveness, promiscuity, violence, nudity, sex, horror, or “sexual perversions such as homosexuality, lesbianism, and paedophilia” (SBA, 1996b).

Opposition to the SBA’s Internet content regulations has been widespread. Shortly after the Internet Code of Content was announced, a “Responsibility Not Regulation” black ribbon campaign was launched by concerned Singaporean Internet users (Lash, 1996). In response, government officials have repeatedly argued that it is not

attempting to curtail or censor online discussion of politics or any other subject, but that it is simply marking “out the areas clearly so that discussion on politics and religion in Singapore can take place in a way that does not undermine moral values, political instability [sic], or religious harmony in Singapore” (Yamamoto, 1996). Moreover, in a news release issued July 11, 1996, the government explained that the Internet Code of Conduct is designed to “safeguard the interest of the Internet community” and is devised to encourage “minimum standards in cyberspace and seeks to protect Net users, particularly the young, against the broadcast of unlawful of objectionable materials” (SBA, 1996a).

Since the enactment of Singapore’s stringent Internet Code of Conduct, the government has stepped up its efforts to control online content that enters the city-state by requiring all Internet service providers to maintain proxy servers to more effectively screen out “objectionable” political, religious and pornographic sites considered illegal under SBA guidelines. It is uncertain, however, whether this new measure, when coupled with the SBA’s earlier guidelines, will prevent Singaporeans from posting or accessing illegal materials. While there has been only one reported incident of an article posted to a USENET newsgroup being censored because it contained defamatory comments in violation of SBA guidelines, there have also emerged accounts of easy methods to bypass screening techniques and of religious and political Web pages being relocated to foreign sites to avoid SBA screening and registration. Indeed, according to Wayne Arnold (1996), the practice of circumventing Singapore’s gatekeepers is a relatively simple task and, ultimately, the government’s online restrictions will only succeed to the extent that it

can reinforce the negative consequences of accessing sites that users “think might be off-limits for fear that the government is watching.”

Along with China, Singapore’s restrictions over online content dissemination and access are, to date, some of the most stringent of any jurisdiction in the world and demonstrate pointedly the challenges of regulating a medium that pays little heed to conventional notions of national borders or jurisdictional boundaries. Thus, despite the city-state’s long-standing tradition of heavy-handed policies to control information, the advent of transnational, online communications networks may well, in the long run, undermine its capacity to strictly monitor and control the circulation and dissemination of computer-mediated information. Moreover, given the government’s questionable decision to fold all online communication under the jurisdiction of its Broadcasting Authority, coupled with the SBA’s broadly-defined censorship guidelines, it appears probable that Singapore’s regulators may soon find themselves mired in the same quandary that opponents to the United States’ CDA were in when asked to ban material considered “indecent” and “patently offensive” to those under 18 years of age.

4. Australia

In conjunction with extensive efforts to improve its telecommunications infrastructure, online information services have rapidly become part of the mainstream communications environment in Australia. According to a survey conducted in April 1996 by DBM Consultants for Telestra, Australia’s national telephone company, it was found that nearly half of all households have a personal computer and more than one million of

its citizens regularly use computer-mediated communications services, with average monthly increases in Internet traffic as high as 30%. Given these figures, Telestra places Australia among the top four countries in the world for Internet penetration.

Australia has been considering the regulation of online communication since November 1993 when the Department for Communications and the Arts and the federal Attorney General established a Computer Bulletin Board Task Force to study regulatory options for computer bulletin board systems. In November 1994, the task force released a report entitled, "Regulation of Computer Bulletin Board Systems," but given the emergent popularity of the Internet, it was updated and re-released in July 1995 as a "Consultation Paper on the Regulation of On-line Information Services." A primary goal expressed in both reports was the need for a system of online self-regulation, reinforced by legislative and punitive sanctions, that would protect freedom of expression, "while at the same time [limit] . . . exposure to harmful or unsuitable material" to persons under 15 years of age (Sorensen, 1996). Objectionable material was defined as any material that: "depicts, expresses, or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that it offends against the standards of morality, decency and propriety generally accepted by adults" (Australian Department for Communications and the Arts, 1996).

Aside from policy-development activities at the federal level, some state governments, including New South Wales (NSW), the Northern Territory, Queensland, Tasmania, Victoria and Western Australia, have also considered, or passed, online legislation (Sorensen, 1996). The most notable example is New South Wales' draft

legislation on Internet content regulation, first proposed by its Attorney General, Jeff Shaw, in April 1996. NSW's legislation was designed to apply to all online communication services and targeted material that would be: refused classification; unsuitable for minors of any age; explicit sexually or sexually related; or unsuitable for minors under 15 years of age. "The measures . . . protect children and others from intentionally or accidentally accessing abhorrent and objectionable material . . . [and] . . . will catch any person who introduces offensive material to the system -- both users and service providers," argued Shaw in a press release announcing the government's online regulatory proposal (Sorensen, 1996).

In June 1996, after obtaining a leaked copy of Shaw's proposed legislation, Electronic Frontiers Australia (EFA), a non-profit national organization formed in 1994 to "define, promote and defend the civil liberties of users and operators of networked systems," launched a national campaign entitled STOP! to protest the "implementation of irrational and unnecessary laws governing the Internet in Australia" (EFA, 1996a). According to the EFA, the draft legislation was far more "draconian" than the United States' CDA and would: make service providers liable for all material deemed unsuitable for children; make it illegal to transmit material via the Internet that could legally be sent through the mail; incriminate people who unknowingly receive certain materials; "redefine the everyday meaning of the word *transmit* to mean *send or receive*"; and oblige online service providers to monitor user activity and screen private e-mail. Moreover, because the draft legislation, now endorsed by NSW's Parliamentary Counsel, was to be considered as a basis for national legislation at a Standing Committee of Attorney

General's meeting in July 1996, the EFA was very concerned that "the Net community would [be forced] to comply with the laws of the most repressive State" (EFA, 1996b).

However, nearly forgotten amid the controversy surrounding the development of online regulatory legislation in NSW was that the Australian Broadcast Authority (ABA), an independent federal body responsible for the regulation of Australia's broadcast industry, had been investigating online information and entertainment services since August 1995 for the Department of Communications and the Arts. On June 30, 1996, the ABA's final report, "Investigation into the Content of On-line Services," was released.

With respect to the regulation of online services, the ABA noted that:

They challenge the traditional models for regulation of the media. There is no central control or ownership of them and the functions performed by the participants in the on-line environment are not as fixed as in existing publications and broadcasting models. Significantly, any person can create material and make it available on-line. (ABA, 1996)

Thus, given these conceptual challenges, it was the ABA's conclusion that self-regulation would be the most effective means to "facilitate the productive use of on-line services by the Australian community" (ABA, 1996). Moreover, it was the ABA's feeling that legislated strategies to restrict children's access would be ineffective and that filtering software, educational strategies, parental supervision and a content labelling scheme were far more reasonable alternatives. As such, it was proposed that a self-regulatory framework for online communication include: the identification of relevant "codes of practice" issues for online service providers, including "appropriate community safeguards, [and] . . . complaints handling procedures"; the development and registration by the ABA of the codes of practice after consultation with service providers; and a

monitoring role for the ABA to oversee the implementation and effectiveness of the codes of practice (ABA, 1996).

On July 5, 1996, in an address to the Internet Industry Association of Australia (INTIAA), Senator Richard Alston, Australia's Minister for Communications and the Arts, stated that: "with the controversy over proposed legislation by the NSW Government . . . and with the release of the judgment in the United States District Court on certain provisions of the Communications Decency Act . . . we are mindful of the dangers of heavy-handed regulation discouraging content and access." Senator Alston further stressed that while the government has no "jurisdiction to take action against those who publish objectionable material from over the world," any control measures implemented in Australia would work to address community concerns "in a balanced and realistic way." With respect to the ABA report, the Senator indicated that it was "broadly" in line with the government's perspective and that a "codes of practice" would be developed through appropriate amendments to Australia's Broadcast Services Act. As such, even though he supported placing online communication under the general rubric of the ABA, he nevertheless recognized that "the Internet is not a broadcasting or diffusion service as currently defined in the Act [and in] establishing our scheme we will need to start with a clean slate and devise a solution which recognises the special attributes of online services, particularly the Internet."

One week later, the Standing Committee of Attorney Generals met in Sydney, Australia and rejected the state legislation proposed by NSW's Attorney General in order to allow the Commonwealth Government, through the ABA, in consultation with industry

players, to implement a self-regulation framework for online communication services. For the EFA, this decision was seen as a major victory for Australians' online rights. At the same time, though, the online watchdog group warned that the ABA's proposed self-regulation framework, if not properly conceived, could leave people at the mercy of a cumbersome codes of practice mechanism where ordinary users, "provided with unprecedented opportunities to express an opinion and obtain information, [could] . . . become criminals simply because they misunderstand complex classification regimes and inadequately defined laws" (EFA, 1996c).

Thus, although the Australian debate over online communication has resembled similar discussions in Europe and North America, a unique characteristic has been the divergent and conflicting interests of its state and federal legislators. In general, Australia's state legislators have seemed less concerned with understanding the medium and more concerned with the implementation of strict legislation similar to the United States' CDA. In contrast, its federal legislators and policy-makers have made a concerted effort to make sense of online communication and have, to date, avoided heavy-handed, reactionary proposals in favour of legislative measures designed to encourage the growth and productive use of online spaces. Moreover, of notable interest is the fact that Australia's federal government has dismissed the legislative proposals of its state governments, acknowledged negative reactions to the CDA in the United States, rejected traditional broadcast and publication metaphors and proposed the implementation of a government endorsed, arm's-length framework for the self-regulation of online computer services.

At one time it looked as if Australia held the potential to play a lead role - and serve as a model - for jurisdictions where the primary objective was a regulatory framework that protects national interests and citizen rights without stifling the potential of communication via transnational computer services. However, confirming the EFA's worst fears, more recent efforts to impose an Internet labelling system, have undermined this potential. In particular, the Australian Broadcast System's early 1997 endorsement of the Recreational Software Advisory Council's (RSACi) rating system has raised the ire of many. Indeed, as an Electronic Frontiers Australia media release explains, "The RSACi system defines Profanity in [American] Christian terms and uses that criterion for assigning the 'language' rating." As such, any "Application of RASCI to the global Internet is a blatant [form of] religious and cultural bigotry" (EFA, 1997).

C. Discussion: Devising a Controlling Metaphor for Online Medium

This chapter has reviewed a number of jurisdictions where efforts to understand or regulate online communication have taken place. To begin, through an examination of the genesis of the Communications Decency Act and its judicial aftermath, the United States' dominant position in a global move toward the implementation of regulatory regimes for the online medium was reviewed. With this framework in place, the discussion next turned to an analysis of factors that have influenced or triggered calls for government-sponsored online regulation in Canada, Europe, Asia and Australia. In nearly every context, we found legislators and policy makers were drawing from regulatory models used for past communications technologies to make sense of the present and future status

of the online medium. As seen in chapter II, a reliance upon the past has always been an influential component of the regulatory process. Furthermore, as previously noted, communications scholars such as Pool (1983) and Lacy (1996) have both argued that key decisions determining the future of a new communications medium cannot be made without knowledge of the past. Benjamin Cardozo concurs and notes that the history of communications technologies can also offer many useful legal precedents. He explains, "I do not mean that the directive force of history . . . confines the law of the future to the law of the present and the past. I mean simply that history in illuminating the past, can illuminate the present, and in illuminating the present, illuminates the future" (1991, 53).

But at what point should we set aside legislative and legal lessons from the past to develop policies for new communications technologies? More specifically, can we even derive a controlling metaphor from past communications technologies to capture the essence of the online medium? To date, many legislators have stubbornly directed their efforts into overlaying traditional broadcast or print models onto the online medium. For example, much of the language in Senator Exon's first version of the Communications Decency Act was lifted verbatim from the Communications Act of 1934, which, as we saw in chapter II, was designed to regulate radio and telephone communications. Similarly, legislators in China and Singapore have borrowed extensively from their respective broadcast histories, while lawmakers in the United Kingdom, France and Germany have made awkward efforts to apply aspects of print media legislation to control content and conduct in online spaces.

Wallace and Mangan argue that “throughout history, each major innovation in communications technology has caused distress and confusion similar to what society is experiencing today about the Internet” and other online contexts (1996, 194). It is also their position that today’s advocates of online regulation and censorship are selectively relying on partial knowledge of the past and, as a result, are applying the wrong analogies in their efforts to control what they perceive to be a threat to the status quo. From their perspective, the online regulation debate is the beginning of a battle Ithiel de Sola Pool forecast in 1983 when he wrote: “It would be dire if the laws we make today governing the dominant mode of information handling . . . were subversive . . . The onus is on us to determine whether . . . societies . . . will conduct electronic communication under the conditions . . . established for the domain of print . . . or whether [it] . . . will be lost in a confusion about new technologies” (1983, 10). Thus, with Pool’s thoughts in mind, Wallace and Mangan propose that the print medium - based on its present-day American freedoms - be the controlling metaphor for online communication. Indeed, since the online context is essentially “a constellation of printing presses and bookstores,” it is their view that it should receive no regulation greater than what is permissible for books, newspapers and magazines (1996: 194).⁴⁷

As noted earlier, Judge Dalzell’s District Court ruling labels the online context as “a never-ending worldwide conversation” (Beltrame, 1996). However, unlike Wallace and Mangan, he does not believe that online communication should be treated as an

⁴⁷ Wallace (1996d) has since extended this argument and suggested that online networks are “a vast library, containing every type of information known to humans.”

extension of print. In his view, there are four reasons why the online medium is superior to print. First, the online context presents minimal barriers to entry; second, these barriers are the same for senders and receivers; third, because these barriers are so low, diverse forms of expression are facilitated; and, fourth, the online context provides “significant access to all who wish to speak in the medium, and even create[s] a relative parity among speakers” (Wallace, 1996c). Thus, for Dalzell, the online communications context is unique; it cannot, and should not, be reduced to a literal, print-based metaphor.

Moreover, as seen through the course of this chapter, Dalzell’s position, while rarely advanced by government legislators, has been frequently echoed by policy-makers and online rights advocates. At the root of this perspective is a belief that online regulatory regimes cannot be derived from past broadcast or print models because the rules of the past cannot apply to a communications medium that transcends and blurs traditional notions of agency, space and time. Yes, the online medium *could* be construed as broadcasting, but Pool notes that broadcast regulations for radio and television were implemented in response to the relative scarcity of broadcast spectrum space, and in the online sphere, there are no such limits (1983, 113). Similarly, the online medium *could* be considered an extension of print, however, as Dalzell has observed, the danger of this analogy is that it could “ultimately come to mirror print [restrictions], with messages tailored to a mainstream society from speakers who could be sure that their message was likely decent in every community” (Wallace, 1996c).

Therefore, given this poor fit between traditional broadcast and print metaphors and the online medium, is there another analogy that can be used? Leslie Shade (1996)

notes that many civil libertarian groups feel that the common carrier model, which governs the postal and telecommunications industries, is the most appropriate controlling metaphor for the computer-mediated communications context. Following from this regulatory principle, “network carriers . . . would be conduits for the distribution of electronic transmissions, but they would not be allowed to change message content or discriminate among messages” (1996: 27). Moreover, this model would shield online service providers “from legal liability for libel, obscenity and plagiarism .. and [would] ensure the continuance of the free and unfettered communication that is the hallmark of” the online sphere (1996: 28). Similarly, Judge Slovitz’s opinion statement from the ACLU v. Reno CDA trial, suggests that online “communication, while unique, is more akin to [common carrier] communication .. than to broadcasting . . . because, as with the telephone, an Internet user must act affirmatively and deliberately to retrieve specific information” (Wallace, 1996c).⁴⁸

However, while the common carrier analogy appears to be an ideal alternative to traditional print- and broadcast-based metaphors, Pool warns that many courts have had a tendency to treat common carriers “simply as instruments of commerce subject to any regulation the government choses to impose” (1983: 106). For example, as noted in chapter II, telephony in many countries has had a long history of restrictive licensing.

⁴⁸ Journalist and online activist Wade Rowland (1996) offers yet another perspective for this debate. He suggests that the architectural metaphors of “public space vs. private space” provides a more useful conceptualization of the online environment. After all, “We’re already beginning to hear more talk about the Net as a bazaar, or digital agora, or virtual city, or an electronic megalopolis,” argues Rowland, therefore, “public space is what it ought to be, and public space is what it is in practice.”

Furthermore, the United States' "Supreme Court, which has deemed special taxes on newspapers to be unconstitutional, has [had] no such problems with taxes on phone bills" (1983: 106). And, finally, both telegraphy and telephony have been, until recently, largely controlled by corporate monopolies, or oligopolies. Thus, with these factors in mind, a pressing question is brought to the fore: can preexisting communications-based metaphors be used to formulate new regulatory regimes for the online sphere?

At this point, this strategy appears unwise. The computer-mediated context captures qualities of every known communications medium. It represents an eventual convergence of bookstores, libraries, the telephone, radio, television, film and the post office. It is an infinite space without beginning or end and its unique characteristics are enabling previously unimagined modes of communication on a local, national and transnational scale. It is, as Wade Rowland, has aptly noted, a metamedium (1997: 1-2). As such, although metaphors can "create powerful images of the things they're trying to describe," they can also "remake whatever they're describing in their own image" (Rowland: 1996). Thus, for these reasons, it appears that a reliance upon preexisting controlling metaphors is pointless and, to some extent, hazardous. Consequently, while the lessons of the past are valuable and should not be dismissed,

It is this dissertation's position that - beyond a basic awareness of the benefits and risks of earlier regulatory histories - the metaphors of the analogue communications era are of little relevance in the digital age.

Indeed, as Australian Senator Richard Alston has suitably observed, it is time for "a clean slate." By adopting this stance, it is believed that policy makers and government

legislators will be better positioned to cope with a medium that has profoundly disrupted traditional notions of community, national sovereignty and interpersonal communication.

Through the course of a historical overview of regulatory regimes that have emerged in the wake of print, common carrier, broadcast and online communications platforms, the past two chapters have been largely informed by the perspective and historical methods of the communications scholars, Ithiel de Sola Pool (1983) and Dan Lacy (1996). As such, we have had some success at clarifying some of the ways in which legislators and policy-makers have consistently treated innovations in communications technologies as mere extensions of preexisting communications media. In addition, this approach has assisted us in appraising some of the ways in which premature, or ill-conceived, applications of metaphors derived from past regulatory regimes have shaped subsequent uses of new communications contexts and the development of their related industries.

At the same time, though, applying aspects of Pool's historical approach has highlighted some notable methodological drawbacks. For example, his focus on the role of legal, regulatory and institutional agents not only betrays a determinism that downplays competing or shifting power relationships, but simultaneously precludes an examination of the impact of particular grassroots' and middle-level interest-groups' politics and ideologies. Furthermore, his emphasis on the empowerment new communications technologies might derive from free market forces - as opposed to modes of government regulation or control - sets aside any consideration of the potentially legitimate

reservations that certain societal actors and groups might hold toward an unregulated new communications environment. And, finally, his treatment of regulatory metaphors as neutral constructs without symbolic value dismisses the possibility that they might later be appropriated by societal actors or groups seeking to influence or change public policy. Thus, although Lacy's attention to power relationships has helped us shore up some of Pool's methodological weaknesses, it is clear that further reinforcements are required if we are to gain a better understanding of some of the ways in which particular social actors and groups have shaped and impacted new communications policy debates.

Thus, to address the above considerations, the next chapter turns to the sociological literature on moral panics. In the process, it is anticipated that we will be able to better connect particular influences emanating from the regulatory histories of earlier communications technologies with some of the socio-cultural interests that are driving and shaping present-day new communications policy debates. In turn, it is expected that the mainstream media's powerful agenda-setting and meaning-making role in new communications policy debates will be brought to the fore. And, finally, it is expected the online medium's communicative potential will be seen in a new light, thus providing greater clarity and direction for government regulators, policy-makers and communications scholars alike.

**Locating Social Interests and Agendas in New Communications Policy Debates:
The Contributions of Moral Panic Theory**

As noted in chapter IV, the historical method that has been used to this point is tempering our efforts to gain a better appreciation for some of the ways in which particular social actors' and groups' interests and agendas have impacted past and present-day new communications policy debates. To address this methodological limitation, Carolyn Marvin's (1988) exploration of the social impacts and implications of nineteenth century electrical communication technologies provides us with some valuable insights and direction. Indeed, as previously noted in chapter II, Marvin's work refocusses and enriches Ithiel de Sola Pool's (1983) and Dan Lacy's (1996) artifact-centered, historical methods. To this end, she draws from nineteenth century popular technological and general press sources as a strategy to illuminate and challenge traditional views of the social origins of early communications technologies. As such, she not only highlights the roles key actors have sometimes played in the uses and development of particular technological innovations, but effectively demonstrates some of the ways in which new communications technologies have at times threatened boundaries of family, gender, class, race and nation.

Several critics have observed, however, that a notable drawback of Marvin's approach is the narrowness of her selected source material and its anecdotal application (Lipartito, 1989; Rudolph, 1989; Winston, 1989). Consequently, although her method

does point toward a much needed microanalytic strategy to get at some of the social roles and relationships underlying the evolution of regulatory regimes devised for new communications technologies, a more methodologically sophisticated approach is still required. Therefore, to fill this gap, this chapter turns to the theoretical and methodological contributions of the sociological literature on moral panics. Moral panic theory draws from a range of sociological fields, including deviance, collective behavior, social problems and social movements. According to Goode and Ben-Yehuda, moral panics typically “clarify [the] normative contours’ and ‘moral boundaries’ of the society in which they occur, [and] demonstrate that there are limits as to how much diversity can be tolerated in society” (1994: 29). Furthermore, moral panics show how negative reactions to new phenomena “do not arise solely as a consequence of a rational and realistic assessment of the concrete damage that [a] behaviour in question” is purported to inflict on society (1994: 29), but through the complex interrelationship of “positions, statuses, interests, ideologies, and values” (Cohen, 1972: 191).

The rationale underlying the selection of moral panic theory for the present discussion is best understood through a brief reconsideration of what this dissertation has addressed to this point. As noted above, we have so far examined past and present-day efforts to regulate new communications technologies within a historical framework. As such, we have learned how metaphors derived from laws and policies devised for past innovations in communications technologies have at times been used, or misused, to justify new regulatory regimes. In addition, we have observed how the arrival of each new communications platform has been to some extent impacted by political, economic,

judicial and, at times, moral considerations. Absent from this discussion, however, has been a more considered evaluation of the interests and agendas of the many societal actors and groups who have driven such regulatory initiatives. For example, movements such as: the Roman Catholic church's opposition to the printing press in the fifteenth and sixteenth centuries; Anthony Comstock's one man crusade against alleged indecent print material in the late nineteenth century; the National Association of Radio and Television Broadcasters' Television Code of the 1950s; Frederic Wertham's campaign against violent and sexually graphic imagery in comic books in the 1950s; and U.S. Senator James Exon's determination to pass the Communications Decency Act of 1996, are but five illustrations of moral crusades that have emerged in parallel with the mainstream popularity of a new communications medium.

But why have moral crusades so often arisen in response - or as a challenge - to the existing or potential uses of new communicative contexts? Moral panic theorists would argue that an array of ideological motivations - ranging from notions of morality, to materiality and status - lie at their core. To this end, they would explore how particular communications media have been conceptualized to locate the disparate societal segments from which such interpretations have typically emerged. And, most importantly, they would attempt to determine the ways in which moral movements have at times impacted the development of new communications policies and controls. Thus, with these considerations in mind, it is clear that moral panic theory can make a valuable contribution to the present exercise. Consequently, to facilitate a subsequent case study of a media-fuelled panic over the alleged pervasive availability of online/Internet pornography that

arose in 1995 in parallel with legislative efforts to regulate the online medium, this chapter introduces and adapts relevant aspects of moral panic theory. In doing so, it is expected that moral panic theory's usefulness as a method for pinpointing the way particular actors and groups have shaped the discourse surrounding new communications technologies and policies will be brought to the fore. In addition, it is anticipated that the print media's dominant role as an agent of social construction through which particular societal agents' interests and agendas have been selectively reinforced and disseminated will be extensively clarified.

To begin, this chapter undertakes an examination of three prominent theoretical contributions to the sociological literature on moral panics. First, core methodological components culled from Stanley Cohen's (1972) study of youth "hooliganism" in Britain in the late-1960s will be reviewed. Next, an overview of two dominant theoretical approaches to moral panics - *morality and content* and *interests and timing* - and Nachman Ben-Yehuda's (1986) proposed theoretical synthesis will be described and illustrated. And, finally, a unified model, derived from Erich Goode and Nachman Ben-Yehuda's (1994) origins-based theory of moral panics will be presented. Thereafter, using an integrated moral panic framework, chapter VI will test this unified model's applicability through a case study of the circumstances that gave momentum to the outbreak of an international moral panic over the alleged pervasive availability of Internet pornography in mid-1995. By following this approach through the course of the next two chapters, it is anticipated that moral panic theory will not only serve as a vehicle to illuminate the complex array of social and cultural variables that are impacting on present-day

movements for, and against, new regulatory measures for the online medium, but will simultaneously provide an ideal theoretical foundation to connect the regulatory histories of past communications technologies with some of the socio-cultural interests driving and shaping new communications policies for the online sphere.

A. Background

In *Outsiders*, an examination of marijuana use and its social control in the United States during the 1930s, Howard Becker notes that social groups typically create and perpetuate notions of deviance through the creation of rules that specify “some actions as ‘right’ and forbidding others as ‘wrong’” (1963: 1). Ben-Yehuda adds, however, that the boundaries of societal rules are also “the product of negotiations about morality among different social groups and individual actors” (1986: 495). But what is morality? For Ben-Yehuda, understanding the definitional nuances of morality is an important conceptual leap given the way its main functions can “orient and direct social action and define the boundaries of cultural matrices” (1986: 495). According to Rubington and Weinberg, morality can be understood from two contrasting perspectives: *subjectively problematic* (relative), or *objectively given* (absolute) (1987: 3-5). This latter perspective, explain Goode and Ben-Yehuda, is the traditional, or conventional perspective (1994: 67). It posits that we all know, or at least appreciate, the differences between good and bad, virtue and evil, right and wrong. It also assumes that immorality rests inherently within the nature of an act or behaviour. Therefore, if an act is deemed wrong, it is wrong forever, in all contexts, and is “*in the abstract*, an offense against nature, science,

medicine, God, or the universe - depending on the appropriate rhetorical vehicle” conveying the argument (1994: 64).

By contrast, morality as seen from a subjectively problematic, or relative, perspective sees issues of morality in an inverse sense and attempts to understand how and why actions or behaviours are sometimes perceived as evil, deviant, or wrong. This approach focuses on “the definition or understanding that members of a society hold with respect to the acts designated as undesirable” (1994: 65). Consequently, followers of the subjectively problematic approach set aside notions of evil or “wrongness” so that a more considered assessment may be made of how conceptions of morality are defined and mobilized within given geographic, cultural, historical and temporal contexts. This approach assumes that what may be viewed as wrong or evil in one space or time may be deemed entirely acceptable in another. As a result, explain Goode and Ben-Yehuda, labelling certain actions, behaviours, norms, values, individuals or groups “as deviant is problematic, not commonsensical, and it is the members of society who decide, not the external observer” (1994: 65).

Following from his discussion of patterns of rule-creation and enforcement, Becker notes that people or groups will sometimes seek to convince others to follow a particular value or moral system. He refers to these actors as *moral entrepreneurs* (1963: 147). Moral entrepreneurs, explains Becker, often start *moral crusades* to modify public perceptions toward specific issues, change or enact new legislation, or make deviant the acts of others (1963: 148). If successful, a moral crusade will sometimes trigger a crisis during which the actions or behaviours of certain individuals are deemed so problematic or

harmful to the “substance and fabric of the body social, that serious steps must be taken to control the behavior, punish the perpetrators, and repair the damage” (Goode & Ben-Yehuda, 1994: 31). This phenomenon is known as a *moral panic*.

B. Stanley Cohen’s Methodological Contributions

The moral panic phenomenon was first described by Stanley Cohen in *Folk Devils and Moral Panics* (1972) to explain societal responses to acts of youth hooliganism by “Mods” and “Rockers,” in seaside towns along Britain’s south coast between 1964 and 1967. According to Cohen, societies are from time-to-time subjected to a period of moral panic during which a phenomenon, individual or group is perceived as a threat to societal values and interests. Sometimes a panic is over a new issue, while at other times it will be over something more long-lasting with the potential to seriously impact public policy or the very organization of society. In most instances, the issue is presented in a stylized manner by the mass media; moral barricades are advanced by agents such as editors, politicians, lawmakers and police spokespeople; and proposed solutions or coping strategies are pronounced by experts or others agents who have vested interests in particular outcomes (1972: 9).

Cohen contends that to properly understand the full scope of a moral panic’s outbreak within a given societal context, the interrelationship between the mass media, the general public, law enforcement, politicians, and activist groups, must be carefully examined. He notes that “the student of moral enterprise cannot but pay particular attention to the role of the mass media in defining and shaping social problems” (1972:

16). Furthermore, he explains that the media have traditionally operated as agents of “moral indignation in their own right [and] even if they are not self-consciously engaged in crusading or muck-raking, their very reporting of certain ‘facts’ can be sufficient to generate concern, anxiety indignation or panic” (1972: 16). For these reasons, if alarmist media coverage consistently conveys a message that certain values are at risk, the likelihood that particular actors will exploit these preconditions to advance or advocate new rules or prescriptive solutions is greatly heightened.

To illustrate this process, Cohen devotes a great deal of his study to the role the mass media - particularly the print media - play in creating and sustaining the moral panic drama. He observes that press coverage can follow a consistent and stereotypical pattern that can be mapped via a composite picture of central themes. He further notes that stories run by the print media at the height of a moral panic are typically characterized by exaggeration and distortion, with overestimates of the number directly involved and the extent and impact of any resultant damage. In addition, sensationalistic and melodramatic headlines and vocabulary can be commonplace. For example, in the case of Britain’s youth conflicts, terms such as: “riot,” “orgy of destruction,” “siege,” and “screaming mob” were regularly used (1972: 31).

With respect to public perceptions of media-fuelled moral panics, Cohen argues that there can be some striking differences (1972: 65-66). Unlike the media’s stereotypical accounts, public interpretations of events can be far more sophisticated and may code media representations “in such a way as to tone down their more extreme implications” (1972: 66). This does not mean, however, that popular press

representations will not shape public opinion. On the contrary, note Goode and Ben-Yehuda, there must be some "latent potential" for a public reaction, otherwise a media campaign could never be mounted (1994: 26). For example, in Cohen's case study, he found that press reactions to seaside youth conflicts were symbolic of a more generalized societal discomfort surrounding the challenges brought about by World War II and the post-war rebuilding. Thus, it was the symbolic value underlying print media accounts of the senselessness of the youth conflicts - not necessarily their veracity - that led to the moral panic's social construction and reification.

Aside from the role of public opinion in mass media characterizations of the moral panic phenomenon, Cohen also identifies a bidirectional flow between the media and the perspectives of law enforcement officials. He believes that this symbiotic relationship serves to heighten public perceptions of an imminent, or ongoing, crisis and - if the pre-conditions for a moral panic are well established - further sensitizes certain societal segments. Smelser (1962) defines *sensitization* as "a form of the simplest type of generalized belief system, hysteria, which '... transforms an ambiguous situation into an absolutely potent generalized threat' (Cohen, 1972: 77). In the case of Britain's youth conflicts, the first sign of sensitization was increased attention paid by the print media to any type of youth-related rule-breaking, no matter how small. Subsequently, and in spite of the fact that law enforcement officials were equally susceptible to the impact of sensitization, coordinated enforcement efforts were made at the local and national levels to contain and preempt the apparent youth threat. In addition, through their strategic use of

the media, the apparent need for stiffer sentences and greater police powers were regularly reinforced.

Cohen also observes that legislators sometimes sway, or may even fuel, alarmist print media rhetoric at particular stages of a moral panic crisis (1972: 133). For example, in the wake of Britain's mounting panic over the apparent spread of youth "hooliganism," some politicians used the media to advance demands for stiffer penalties for youth-related crimes, a return to corporal punishment or the creation of forced labour camps. In turn, proposed legislation addressing an increase in the minimum driving age, seaside resort hooliganism, the need for "hooligans to be given . . . an effective deterrent," and the prevention of malicious damage, was tabled in Britain's House of Parliament (1972: 134).⁴⁹

Cohen identifies activist groups as a further societal segment that sometimes uses the media to shape public opinion through the course of a moral panic crisis. This is often accomplished through periodic media conferences or well publicized public awareness campaigns. Following from Becker (1963), these individuals are *moral entrepreneurs*. These agents typically feel that proposed remedies as enacted by society's traditional mechanisms are inadequate. In addition, they often have a vested interest in a particular outcome. Common examples of activist groups include those who favor, or support, new legislation to control abortion, drug use or pornography. In the context of the Mod-

⁴⁹ Most notable was the swift passage of the *Drugs (Prevention of Misuse) Bill*, actually drafted *prior to* the first incidents of youth violence, but presented by politicians and the mainstream media *as if* it were in response to the crisis.

Rocker conflicts, Cohen notes that activist groups extensively used the news media to reiterate the perspectives of legislators and police spokespeople who shared their beliefs.

Through the course of his examination of the mass media's involvement in the representation of issues and actors involved in the moral panic drama, Cohen identifies two additional thematic components: the construction of folk devils and the use of disaster rhetoric. Folk devils, explains Cohen, are "unambiguously unfavorable symbols," the personification of evil (1972: 41). For this reason, these symbolic targets often provide an ideal focal point for the media and the general public as a moral panic evolves. For example, in the case of Britain's Mod-Rocker conflicts, negative mass media representations of adolescent culture were reinforced and reified, prompting a "symbolic transformation" of their lifestyles (Cohen, 1972: 41). Furthermore, through misleading headlines, or dramatized and ritualistic press interviews containing inflammatory statements, a full-scale *demonology* was constructed (1972: 43-44). As Goode and Ben-Yehuda explain, once a folk devil has been identified and demonized through mass media representations, they become "deviants" whose harmful actions must be neutralized in order to restore a sense of societal order and normalcy (1994: 29).

Cohen's identification of the mainstream media's use of disaster rhetoric is the final component of his moral panic methodology. He notes that the media's use of disaster mentality rhetoric is analogous to statements made in the warning phase of a natural disaster (e.g., tornado, earthquake, volcanic eruption), when there are widespread predictions of imminent destruction or devastation (1972: 144). As with a natural disaster, he explains, moral panics are often exaggerated or distorted, with complicated

and formalized preemptive measures and “increasingly unreal and ritualistic” preparatory strategies that prompt numerous false alarms well out of proportion with any “imminent threat” (1972: 146). As a result, if newspapers predict further acts or events related to a panic, they can unwittingly fuel public perceptions of an imminent crisis. In the case of the Mod-Rocker conflicts, alarmist media rhetoric not only served to precipitate further incidents, but amplified the issue to a national level, thus causing subsequent warnings to be sounded earlier and the threat of future incidents to be “expressed in terms of certainty and not probability” (1972: 147).

Overall, then, Cohen’s study stands out as a landmark in the field of moral panic research. Not only does it highlight the central role the mass media sometimes play in shaping the moral panic drama on the public stage, but it helps demonstrate how the disparate ideologies and agendas of key societal actors and segments sometimes fuel and perpetuate a widespread sense of crisis or imminent danger. Indeed, as we will see in chapter VI’s case study of print media representations of the Internet pornography panic of 1995, this approach will be particularly useful for illuminating the media’s agenda-setting role (e.g., through their use of exaggeration, distortion and stereotypical repetition) at particular stages of the moral panic drama. In turn, it will help show how the print media’s emphasis on the debate’s most alarmist qualities (e.g., online pornography is rampant and is threatening the “innocence” of our children) either silenced or downplayed certain voices of reason (e.g., Internet/online users, anti-regulation activists and the general public). This, in turn, will help illuminate how media representations of particular authoritative/credible voices (e.g., law enforcement and legislators), fuelled a widespread

perception that new laws or repressive legislation for the online medium were necessary. Furthermore, it will help demonstrate how and why particular folk devils (primarily, pedophiles and purveyors of pornography), along with a set of oppositional folk devils (e.g., conservative politicians, the religious right), were created by actor groups on both sides of the debate. And, finally, it will help show how key actors' (e.g., the media, the police, conservative politicians and activists) use and repetition of disaster rhetoric, contributed to a sense of imminent danger in the months leading up to the panic's full-blown outbreak. Thus, taken together, it is clear that Cohen's approach will provide a useful methodological foundation for examining the moral panic phenomenon. Goode and Ben-Yehuda concur and further note that Cohen's moral panic perspective offers a useful method to expand "our understanding of social structure, social process, and social change" and, by extension, may assist in the clarification of the "normative contours" and "moral boundaries" of societies (1994: 29).

C. Nachman Ben-Yehuda's Theoretical Contributions

With the key components that characterize the moral panic phenomenon in place, this section describes two theoretical approaches that Nachman Ben-Yehuda (1986) believes have characterized most moral panic research: *morality and content* and *interest and timing*. Thereafter, his proposed theoretical synthesis of these two models will be reviewed and illustrated. As such, it is anticipated that theoretical considerations of greatest relevance for chapter VI's case study of the Internet pornography panic of 1995 will be brought to the fore.

1. **The Morality and Content Approach**

The central focus of the *morality and content* approach addresses how the content of a moral panic may be seen as a symbolic representation of a societal moral struggle. The works of Becker (1963) and Cohen (1972) are two notable examples of this method. Becker, for example, showed how “conventional” notions of morality were used by social actors or groups to control, or deter, marijuana use and demonstrated how stereotypical and exaggerated representations of the habitual marijuana user as a “dope fiend,” in violation of traditional moral imperatives, were widely circulated in print and other media during the 1930s. Along a similar vein, Cohen’s study of Britain’s Mod-Rocker moral panic, and the subsequent creation of adolescent folk devils, demonstrated how the content of a moral crisis can be a symbolic expression of a more profound societal angst. Other examples of the content-based approach to moral panics include: Gusfield’s (1963) study of the American temperance movement which concluded that the successful enforcement of the law was far less important than its role as a symbolic “affirmation . . . of certain social ideals and norms at the expense of others” (Hills, 1980: 37); Zurcher et al. (1971) and Zurcher and Kirkpatrick (1976) studies’ of the natural histories of two anti-pornography campaigns which revealed that the advancement of moral crusaders’ values was of greater symbolic importance than the actual elimination of pornography (1971: 217); Hill’s discussion of an American moral crusade against homosexual rights which noted that the symbolically-laden slogan “Save Our Children” was used despite the absence of any evidence to support the argument that children were endangered by adult homosexuals (1980: 166-167); and, finally, Ben-Yehuda’s (1980) study of the European

witch craze of the fourteenth to seventeenth centuries which showed that it was a rejection of the transition to modernity, not a fear of witchcraft, at the root of the crusade.

Ben-Yehuda (1986) argues that the competition between moral crusaders, moral crusades and moral panics represents what Klapp (1969) has labelled the “collective search for identity.”⁵⁰ Emanating from social spheres such the cultural, religious, political, scientific and economic, collective searches for identity are “widespread phenomena [found] mostly in pluralistic, heterogeneous societies whose structure enables such searches” (1986: 497). Within these contexts, morality is often the “focus of continuous debate and negotiation,” prompting heated discussions over the “nature and scope of a social system’s moral boundaries” (1986: 497). Furthermore, these *moral debates* are typically acted out by a range of *moral agents* “such as politicians, representatives of law enforcement agencies, lawyers, psychiatrists, social workers, media people, and religious figures” (1986: 497). However, with so many possible interpretations of “morality” and “immorality” fuelling moral debates or crusades, it is inevitable that certain perspectives eventually gain greater credibility than others.

According to Becker (1967), the competition between moral perspectives creates a *hierarchy of credibility*. He explains, “Any tale told by those at the top intrinsically deserves to be regarded as the most credible account obtainable . . . [Therefore] . . . if we

⁵⁰ According to Klapp, “modern society fails to give a person an adequate conception of [self] through a lack of an identifying ritual . . . that increase[s] our sense of identification with groups” (1969: 34). For this reason, argues Klapp, there has been a concurrent loss of sense of purpose to the symbolic conditions of modern life given the lack of symbolic self-references that are “found in: information accumulation, modernism, mobility . . . and . . . ritual[s] for emotional intensification and self-definition” (1969: 20).

are proper members of the group, [we are] morally bound to accept the definition imposed on reality by a superordinate group in preference to the definitions espoused by subordinates" (1967: 241). In other words, the higher a moral voice is within a given social order, the greater its credibility and influence. Rock concurs and further notes that because hierarchies of credibility connect status with morality, they simultaneously inject a "legitimated stratification" into the moral system (1973: 145). As a result, "Those who resist either the specific content or legitimacy of deviant labels are unlikely to be successful because they [will] confront both a power structure and a moral system . . . deliberately organised to persuade, convert or force others into redefining important sectors of the world" (1973: 100, 146).

The struggle between moral entrepreneurs for credibility and dominance during a moral crusade or panic also involves a process of *stigma contests* "which focus on various and competing definitions of boundaries between different symbolic-moral universes" (Goode and Ben-Yehuda, 1994: 198). As a result, explains Schur, "partisans in collective stigma contests are [often] widely engaged in the use of propaganda: the manipulation of political symbols for the control of public opinion" (1980: 135). This process serves to make certain practices deviant within certain subpopulations and, according to Ben-Yehuda, vividly illustrates how clashes between *moral universes* can be "linked intimately to the basic nature of various cultures" (1986: 497). Indeed, in their discussion of the conceptual make-up of *symbolic universes* - "bodies of theoretical tradition that integrate different provinces of meaning and encompass the institutional order in a symbolic totality" - Berger and Luckmann note that the intrinsic problem with *universe-*

maintenance is “accentuated if deviant versions of the symbolic universe come to be shared by groups of ‘inhabitants’” (1967: 95, 106). As a result, when two, or more, symbolic universes meet, those groups seen as heretical will “posit not only a theoretical threat to the symbolic universe, but a practical one to the institutional order legitimated by the symbolic universe in question” (1967: 107).

As noted above, moral entrepreneurs often pursue individuals branded heretic or deviant, despite a lack of substantive evidence, or identifiable targets. In these instances, a new target is sometimes found to justify the movement’s existence. For example, proponents of medieval witch hunts increasingly targeted women as the movement spread. According to Goode & Ben-Yehuda, the conditions for this target shift were facilitated by the changing roles of women - characterized by increases in prostitution, infanticide, unwed women and innovations in contraception - and was, in effect, “a futile effort to keep previous moral boundaries intact and prevent the changes that medieval social order was going through” (1994: 182-183). In other words, the socially constructed “immoral” universe of witchcraft was more a reaction to shifts in the symbolic and moral boundaries of the medieval social order, than a genuine phenomenon. Similarly, Gusfield has shown how the myth of the “Killer Drunk” has created and perpetuated a “moral sensus about values such as sobriety, control, rationality, and even hard work” (Ben-Yehuda, 1986: 497-498). In turn, the American “War on Drugs” campaign of the 1980s - which at its height freely mixed the metaphors of war, illness, crusades and religious righteousness to galvanize a nation into action against drugs - was aggressively pursued for nearly a decade

despite statistical data showing that self-reported drug use in the United States declined significantly in nearly every category between the 1970s and 1980s (Goode, 1990: 1088).

Overall, the value of the morality and content perspective lies in its capacity to show how conflicts between two or more moral universes may trigger a moral crusade or panic. It demonstrates how the surface-level rhetoric of a moral crusade often serves as a smokescreen for the advancement of a less apparent agenda. Moreover, it shows how moral contests are never random, or accidental, but a struggle between competing moral ideologies. For these reasons, an examination of the content of the moral panic phenomenon to uncover the motivating factors behind its “apparent” theme is an essential analytic component for the study of morality and moral panics in general. For the purposes of the forthcoming case study of the Internet pornography panic of 1995, this theoretical approach will serve to highlight the mainstream media’s agenda-setting role in the social construction of the meaning-making processes underlying the panic’s evolution. In addition, it will be particularly useful for the identification of topics and themes favored by the North American print media during the months leading up to, and following, the panic’s outbreak. And, finally, it will also facilitate a consideration of the media’s role in the selection and characterization of competing interests and agendas held by key actors and groups involved in the debate.

2. The Interests and Timing Approach

As noted above, the morality and content approach to moral panics shows how interest groups sometimes use morality as a smokescreen to advance particular personal

agenda(s). But how do the underlying components of competing interests or agendas shape the moral panic process as it unfolds? To answer this question, proponents of the *interests and timing* approach examine specific political, economic and social interests of actors or groups involved in a moral panic drama. These considerations, while sometimes noted in passing, were never examined in detail in morality and content studies such as Becker's (1963) discussion of anti-marijuana moral crusades, Gusfield's (1963) examination of the American temperance movement, or Cohen's (1972) analysis of Britain's Mod-Rocker conflicts. With these gaps in the traditional content-based approach in mind, Ben-Yehuda advocates a theoretical leap to an analysis of the "alternative interests' . . . of the specific political and social actors involved" rather than an exclusive focus on "depersonalized social roles" (1986: 1994). To date, however, only a handful of studies have studied moral panics in this manner. Ben-Yehuda identifies two versions: *general political interests of system level and middle level bureaucratic and/or occupational interest studies.*

The *general political interests of system level* approach is best exemplified by the work of social scientists who have studied the ideological and moral issues underlying anti-drug campaigns (e.g., Anderson, 1981; Conrad & Schnieder, 1980; Dumont, 1973). Morgan (1978), for example, demonstrated that the American anti-opium crusades of the late nineteenth century were not so much against the perceived dangers of opium, but an ideological reaction to the sudden rise in immigrant Chinese entering the working class labour force. California's first anti-opium laws, he argued, were not the end result of a moral crusade against the drug, "but coercive action directed against Chinese labourers

who threatened the economic security of the white working class” (Ben-Yehuda, 1986: 498). In a similar sense, Johnson (1975) showed how Britain’s nineteenth century anti-opium crusade against the Indo-China opium trade was built on misinformation about the risks of drug use and their “evil” nature. Furthermore, Bonachich’s (1972) theory of labour argued that moral crusades and antagonism against ethnic minorities often originates in economic interests. And, finally, Hall et al’s (1978) study of moral panics against socially constructed fears of increases in “muggings” and “crime waves” demonstrated how societal perceptions sometimes trigger anticipatory moral panics and, by extension, unwarranted preemptive policies.

Ben-Yehuda (1986) provides three illustrations of the *middle level bureaucratic and/or occupational interest* approach to the study of moral panics. For example, Galliher and Cross’s (1983) study of Nevada state legislation showed that its relaxed policies had little to do with morality or moral values and more to do with economics. In other words, to protect state revenues derived from gambling, quick marriages and divorces, and legalized prostitution in designated counties, Nevada’s state leaders were found to consistently reject legislation that might hurt such interests. Similarly, Fishman’s (1978) study of a “crime wave” against the elderly in New York City demonstrated that the phenomenon was a media construct, with roots in a symbiotic relationship between journalists, local politicians and the police, undertaken to justify their ongoing societal roles. As a result, despite statistical evidence suggesting a decline in crimes against the elderly, opposite claims were advanced by the actors of this moral drama. And, finally, Dickson’s (1968) study of American moral crusades against drugs during the 1960s

demonstrated that antidrug policies and legislation could be directly linked to the Narcotics Bureau's diminished budget and potential closure. For these reasons, via its strategic use of the media, the Narcotics Bureau fabricated a moral crusade which prompted new legislation and penalties and, by extension, a shift in dominant societal attitudes toward the consequences of illicit drug use.

The *interests and timing* approach to the study of moral panic opens the door to a deeper exploration of the ideological issues that are often used by social agents or groups to mobilize public support for, or against, a particular moral concern. In addition, it sheds light on how the timing of a moral panic is often directly related to political or economic threats to the ongoing (and presumably dominant) status of particular interest groups, agencies or individuals, ranging from agents of social control, to the media, legislators, lawmakers or activists. For the purposes of the upcoming Internet pornography panic case study, this method will serve to highlight the duplicitous nature of the agendas of certain actors who were involved in the social construction of the moral panic drama. In addition, it will help illustrate how the mainstream print media has at times been exploited by certain actors and groups (e.g., police and government spokespeople) to create a sense of impending crisis, less out of a sense of fear or concern and more so to advance material, status or ideological interests.

3. **Ben-Yehuda's Theoretical Synthesis**

Ben-Yehuda argues that the *morality and content* and *interests and timing* approaches to moral panics are complementary rather than competing and should be

merged “to gain a better understanding of, insight into, and interpretation” of the moral panic phenomenon (1986: 505). His examination of a May 1982 Israeli moral panic over adolescent drug abuse is an ambitious application of this integrated approach. This section summarizes and discusses Ben-Yehuda’s case study as a strategy to illuminate its theoretical and methodological usefulness for chapter VI’s exploration of the Internet pornography panic of 1995.

Using an historical method, Ben-Yehuda begins his analysis of the 1982 Israeli drug panic over adolescent drug abuse by tracing its roots to a set of key events that were widely reported by the mainstream media during the years prior to its outbreak. He argues that the cumulative impact of these events, coupled with ongoing government-sponsored antidrug initiatives, very gradually heightened public sensitivities toward the issue of adolescent drug abuse, thus fostering the ideal conditions a moral panic. Next, he points out how politicians fuelled the panic by staging an open meeting to present “alarming” police statistics which purported that adolescent drug use was on the rise. He observes that because this meeting was well attended by prominent police, education and government officials, the media were quick to seize upon the issue. As a result, in the days and weeks that followed, the Israeli public was “flooded” with sensationalistic media coverage regarding the apparent adolescent “drug epidemic,” prompting many worried parents to call upon the Ministry of Education to do something about the “terrible drug problem” (1986: 503).

Roughly a week after the panic’s outbreak, a second public gathering on the adolescent “drug abuse problem” was convened. Ben-Yehuda, as an active participant in

the drama, met with key actors in the debate to provide some “accurate statistics” which he believed defined the true scope of the issue.⁵¹ Despite these efforts, accusations of the previous week were reiterated. Members of the conservative moral universe portrayed their antagonists as conspirators, uncooperative, liberals who lack the militant spirit ‘needed,’ . . . to squash drug abuse, and [the] morally confused” (1986: 503).

Consequently, despite a public admission by Israel’s national police chief police that their previously reported drug abuse figures were not scientific, this second meeting did very little to slow the mounting panic.

Due in part to mounting publicity surrounding clear and reasonable solutions, Israel’s moral panic over adolescent drug abuse gradually lost momentum over the next two weeks. Using the mass media as his primary source, Ben Yehuda identifies a set of key themes along which the panic crystallized during this period. Accordingly, he concludes that the historical development, rise and fall of the panic shows that it was a

⁵¹ Although beyond the scope of the present discussion, it should be noted that Ben-Yehuda’s role as an active participant in the moral panic drama is a factor which, in itself, injects numerous methodological questions. In his review of case study research methods, Yin lists three major problems, or biases, that sometimes emerge when a researcher is an active participant: “First, the investigator has less ability to work as an external observer and may, at times, have to assume positions or advocacy roles contrary to the interests of good scientific practices. Second, the participant-observer is likely to follow a commonly known phenomenon and become a supporter of the group or organization being studied, if such support did not already exist. Third, the participant role may simply require too much attention relative to the observer role.” (1984: 87-88). These tradeoffs between opportunities and problems, argues Yin, can, at times, seriously undermine the credibility of a study. In the context of Ben-Yehuda’s research, it is readily apparent that he was aligned with what might be termed a “morally liberal” universe/perspective. Whether this moral connection impacted his interpretation and presentation of events is, at least in this instance, unclear; nevertheless, it highlights a consideration that should not be taken lightly when undertaking such forms of participant-observation studies.

moral panic as previously outlined via *morality and content* models developed by moral panic scholars such as Cohen (1972). He further notes that the moral entrepreneurs who launched the panic were successful due to their socially ascribed levels of power and credibility, the pre-existing public perception of a drug threat, their skilful manipulation and use of the media, the lack of opposition and the presentation of clear and acceptable solutions.

Following from these conclusions, Ben-Yehuda examines ways in which ideological interests, coupled with traditional notions of morality, helped shape the panic's content, thus fuelling its rise and fall. He observes that ideological moral issues have consistently driven anti-drug campaigns and that there are many illustrations from societies across space and time where anti-drug arguments were situated within traditional, objectively given, "right" versus "wrong" moral-ideological frameworks. Furthermore, he notes that while the choice of a societal "drug menace" was not likely planned at a conscious level, there were at least two ideological agendas at the root of the panic. First, "'drug scares' are attractive to both the media and the masses, especially [those] concerning youth" (1986: 506). And, second, ideologically-based moral statements help to reinforce and maintain "moral boundaries" between the dominant perspectives of "morally right" and "morally wrong."

Another factor that helped shape the moral panic's content, tone and boundaries was the ease with which its topic could be presented and understood. Drug abuse, explains Ben-Yehuda, is an "easy enemy . . . : [as] it can be used in a moral panic as a boundary maintenance vehicle in a clash between opposing moral universes." For

example, when a state witness revealed in a May 1982 trial that many of those charged in a 1980 drug seizure had been framed by the police, the police countered by diverting attention away from the key issues (i.e., their dubious law enforcement methods and the absence of a genuine drug problem), to one that instead defended and advanced their reputation and interests (i.e., drug abuse was high and middle-class and elite adolescents were involved). Thus, with consistent rhetoric - from highly credible sources - advancing the notion of a heated battle against an enemy that was corrupting the morality of Israel's young and, by extension, its future, damning revelations against police practices were largely downplayed by the media.

Finally, Ben-Yehuda concludes with an examination of two parties who had specific political/economic interests in creating the panic: the police and politicians. In doing so, he shows how the police used the media to divert attention away from their past improprieties, while simultaneously advancing their drug enforcement interests. In turn, he demonstrates how the political aspirations of key actors behind the panic were motivated by their positions as members Israel's opposition party. Therefore, given that the preconditions for a moral panic over adolescent drug abuse were well established, the police and particular political actors were well situated to exploit the news media to draw public attention to the contrasting values of two moral universe (i.e., "evil" versus "good") as a self-serving strategy to advance specific professional/political interests.

Ben-Yehuda's case study of the 1982 Israeli drug panic offers an ideal theoretical foundation for exploring key events leading up to, and following, a widespread moral panic. His integrated theoretical approach helps clarify why certain credible actors are

sometimes ignored, or dismissed, by the mainstream media and shows how the timing of a moral panic may come about through the convergence of specific political, economic or oppositional interests that have very little, if anything, to do with moral values or concerns. For the purposes of the upcoming case study of the Internet pornography panic of 1995, the value of Ben-Yehuda's theoretical synthesis is two-fold. First, it provides an ideal template for merging the most useful aspects of the *morality and content* and *interests and timing* approaches to moral panics; and, second, it offers an innovative approach for building a media-centred chronology of events underlying a moral panic's outbreak and evolution.

D. Erich Goode and Nachman Ben-Yehuda: Integrating Motives and Origins

While Nachman Ben-Yehuda's theoretical synthesis of the *morality and content* and *interests and timing* models stands out as one of the most innovative applications of an integrated moral panic theory to date, a further refinement is added through his subsequent collaboration with Erich Goode. In *Moral Panics: The Social Construction of Deviance*, Goode and Ben-Yehuda (1994) argue that an eclectic approach to the study of moral panics - due to the complex interrelationship and overlap between notions of morality, interests, agendas, actors, groups and societal segments - is all but inevitable. To this end, they posit six theoretical paradigms, spread across two axes, which they believe delineate the full range of possible approaches to the study of moral panics.

[insert figure 4.1 about here]

Figure 4.1
Theories of Moral Panics: Motives and Origins
(Source: Goode and Ben-Yehuda, 1994: 125)

Origin Level	Motives	
	<---- Morality/Ideology ---->	<---- Material/Status ---->
Elite	1	2
Middle	3	4
Public	5	6

As can be seen in figure 4.1, the horizontal axis captures motives, ranging from *morality/ideology* at one end to *material/status interests* at the other, while the vertical axis contains three levels of origin: *élite*, *middle* and *public*. However, according to Goode and Ben-Yehuda, not all of these paradigms are empirically likely, or even possible. For example, cell 1 calls for élites to trigger a moral panic out of deep ideological and moral feelings, in isolation from their material and status interests; however, possibly because “it is difficult for us to imagine elite ideology divorced from elite interests” an empirical example of this approach has never been seen (1994: 126-127). Similarly, illustrations of cell 6, which posits a public divorced from morality and ideology generating a moral panic solely for material and status needs, have never been empirically observed. Nevertheless, despite these illustrative gaps in the typology, the remaining four cells do serve to organize and understand numerous moral panic studies.

Cell 2, for example, emerges from the Marxist tradition. It holds that élites “engineer” moral panics to advance material or status interests. Advocates of this model argue that élites often fabricate a moral panic over a trivial or non-existent issue, either to gain materially, or to divert attention away from an issue that could conceivably threaten their own interests. By contrast, cells 3 and 4 exclude élites and instead consider the actions and roles of agents from societal segments that hold middle-level status, such as law enforcement, social activists, professionals, or the mass media. Advocates of the cell 3 model argue that middle-level actors often advance competing moral/ideological universes to challenge societal élites, whereas proponents of the cell 4 approach contend that middle-level actors are more concerned with material or status gains. However, as

seen in Ben-Yehuda's previously described study of the 1982 Israeli drug panic, separating components of the morality/ideology (cell 3) and material/status (cell 4) continuum is not a simple process, nor absolutely necessary. These two cells comprise what Goode and Ben-Yehuda label the interest-group model. Lastly, advocates of the cell 5 dimension believe moral panics arise from the "bottom up," with grassroots agents or groups spontaneously generating panics in response to generalized public fears or concerns.

To highlight the relevance of Goode and Ben-Yehuda's multi-dimensional, origins-based approach for the upcoming Internet pornography panic case study, this section reviews the three most frequently observed approaches: *the grassroots model* (cell 6), *the elite-engineered model* (cell 2) and *interest-groups theory* (cells 3 and 4).

1. The Grassroots Model

Proponents of the grassroots model argue that moral panics originate with the general public. This model holds that when concern over a potential threat - whether legitimate or misplaced - gains sufficient critical mass in the public consciousness, it will be mediated through the discourse of the mass media, legislators, lawmakers, the police and action groups. But how do concerns for "threatening" issues arise? For grassroots theorists, these concerns are *latent fears* which either arise spontaneously, or are "assisted, guided, triggered, or catalyzed" by key actors or societal sectors (Goode & Ben-Yehuda, 1994: 129). At first glance, this model appears to be necessarily bidirectional; that is, public impressions of an issue will be shaped via mass media coverage of an issue, and vice-versa. However, advocates of the grassroots approach maintain that this is not

necessarily the case. For example, provocative issues are often presented in similarly alarmist styles by the mainstream media, but only a precious few strike a chord, and even fewer trigger a generalized panic. Given this factor, the grassroots theorist argues that a given issue cannot be fabricated in the absence of a preexisting generalized fear or concern. Moreover, the efforts of politicians, action groups and other societal sectors will only be successful to the extent that the public "is distressed about an issue that demands correcting" (1994:128). Thus, for the grassroots theorist, uncovering deeply rooted values and attitudes that might foster a widespread public impression that a fear or concern is a legitimate threat to society is a necessary process for making sense of the circumstances surrounding the rise, existence and fall of a moral panic. Examples of research that have demonstrated how populist concerns can fuel a grassroots panic include: Stolz (1990), whose study of American federal drug legislation in the late 1980s found evidence to suggest that congressional policies may have been "a response to concerns of the general public, not just those of interest groups" or élites, rather than a cynical response to address the "threat to their own reelection" (Goode and Ben-Yehuda, 1994: 129); and a series of studies (e.g., Slovic, Layman & Flynn, 1991; Perrow, 1984) on the widespread public hostility toward nuclear energy in the United States, which have shown how public fears, as mediated by the mainstream media - not the interests of the political and economic élite (who, of course, benefit enormously from the nuclear power industry) - have slowed the industry's growth.

While the grassroots model helps explain some moral panics, Goode and Ben-Yehuda note that its reliance upon heightened public fears or concerns limits its usefulness

in instances where the role of the public is less apparent. Nevertheless, its value as an explanatory model should not be immediately dismissed. After all, there are numerous examples of instances where “intense and seemingly exaggerated fears” have arisen either spontaneously or with limited external assistance. At the same time, there are many other examples of moral panics that have appeared disconnected from the more generalizable sentiments of the public sphere. The next two sections turn to models that take some of these instances into consideration.

2. The Elite-Engineered Model

The élite-engineered model injects aspects of Marxist socio-political theory on power relationships into historical interpretations of moral panics. Its supporters contend that élite actors or groups will purposely generate public fear or concern for a given issue in order to divert attention from more pressing issues, or to advance élite interests. Furthermore, these theorists also assume that ruling élites dominate or control the mainstream media, legislators, the police and many of the resources upon which activist and social movements are dependent. Given this line of thinking, this model is particularly useful for making sense of connections between the conditions of moral and ideological production and differential power relations between societal segments.

The work of Hall et al. (1978) is the most widely known application of the élite engineered perspective. During the early 1970s, despite substantive evidence suggesting street crime was on the decline, a moral panic over muggings arose in Great Britain. Hall et al. found that this crisis was fuelled in part by alarmist media representations, harsh

court rulings and expressions of public outrage that were entirely “out of proportion to any level of actual threat” (1978: 29). But if street crime was not on the rise, why did a nationwide moral panic over a non-existent problem occur in the first place? Furthermore, what was it about muggings and street crime that outraged so many? And, finally, what fears and anxieties was it “really” mobilizing? (1978: viii).

Hall et al. argue that Britain’s moral panic over street crime was not so much due to an “actual threat . . . [but] . . . a reaction by the control agencies and the media to the *perceived* or *symbolic* threat to society - what the ‘mugging’ label represented” (1978: 29). They further contend that the panic was engineered by political and economic élites to: (1) legitimate an aggressive law enforcement and control program and (2) draw attention away from a mounting fiscal and industrial recession, which was causing a “crisis” in British capitalism.⁵² Indeed, Hall et al. note that the 1970s were a period during which Britain was facing a “crisis in profitability” (1978: 263). Profits were falling, manufactured exports were down and heightened unemployment was being deliberately exploited by business and government to stabilize the economy and combat inflation. Therefore, given the scope of its economic crisis, the British state felt obliged to assume “total social authority . . . over the subordinate classes” and, by extension, shape “the whole direction of social life in its image” (1978: 216-217). Consequently, with the far-

⁵² Hall et al. (1978) assert that they are not attempting to construct a conspiratorial model for making sense of moral panics. Rather, it is their belief that the ruling élite sometimes *orchestrate hegemony* to divert the attention of other societal sectors from one issue to another. Thus, in the case of Britain’s street crime crisis, “the real enemy [was] not the crisis in British capitalism but the criminal[s] and the lax way [they] have been dealt with in the past” (Goode & Ben-Yehuda, 1994: 137).

reaching political implications and consequences of an economy in disarray, a moral panic over street crime was deemed an ideal diversion to “rescue an ailing capitalist system” (Goode & Ben-Yehuda, 1994: 136).

But how could such a diversion have been managed and mobilized? Hall et al. point to the mainstream media as a key societal sector through which the interests of the capitalist élite can be advanced prior to, and during, a moral panic. They believe that even without being on the payrolls of the élite, the “media come . . . to reproduce the definitions of the powerful” and, by extension, “faithfully and impartially . . . reproduce symbolically the existing structure of power in society’s institutional order” (1978: 58). This occurs because the media typically adhere to dominant definitions of authority, power and credibility. Thus, with societal élites acting as the primary definers of reality, all media-based interpretations of reality will necessarily be shaped in reaction or support for, or against, élite formulations. For this reason, even when the media take on what might be termed a “value-neutral” stance, they are still, in fact, unwittingly serving the interests of the dominant classes.

To illustrate, consider the rise of the moral panic over street crime in Britain. The élite drew attention to street crime, the harm it was causing to all levels of British society and the need for an aggressive enforcement program before the crisis escalated to epidemic proportions. Taking their cues from such an alarmist message, the media treated it as a newsworthy item and gave it blanket coverage. Then, as other societal sectors began to take notice, their combined reactions soon served to fuel and launch a nationwide moral panic over muggings and street crime. Thus, indirectly, the British media were

used as pawns to protect and serve the interests of the élite at a time when a “control culture” was desperately needed to divert attention away from a crisis in the capitalist state.

The élite-engineered model is a particularly important and instructive addition to studies of moral panics. Through the unwitting complicity of agents - such as the media, the public, the police, courts and legislators - this theory highlights how each societal sector unwittingly “performs its work on behalf of the capitalist system” (1978: 208). Moreover, unlike the grassroots model, this approach demonstrates how public opinion, far from being a spontaneous occurrence or an expression of generalized views, can be shaped and structured by the interests of a dominant élite. Thus, following from this perspective, it can be argued that moral panics do not necessarily arise from the moral or ideological interests of the masses, but may in some instances be a manifestation of efforts by societal élites to maintain political or economic power interests.

3. Interest-Group Theory

The interest-group model is the method that has most frequently been used to describe and make sense of the moral panic phenomenon. This approach posits that middle-level groups such as the mainstream media, the police as well as religious, professional, activist and educational organizations are the key “movers and shakers” who very often “dictate the content, direction, or timing of panics” (1994: 139). It further asserts that interest-groups often have an *independent* interest in highlighting a particular issue or cause, and in many instances these views may run counter to those held by the

ruling élite. Moreover, this approach sees issues of morality, ideology, materiality and status as central foci and contends that moral panics do not arise from the grassroots or the upper echelons, but somewhere in the middle. Goode and Ben-Yehuda note, however, that this perspective does not necessarily run against all aspects of the grassroots model (1994: 139). After all, once a panic is brought to the fore by various actors or special interest groups, it is not uncommon for grassroots segments (i.e., the general public) to widely seize upon the urgency of a given issue. At the same time, though, most interest-group studies have countered the élite-engineered model, with consistent arguments “that the exercise of power in the creation and maintenance of moral panics is more likely to emanate from the middle rungs of the power and status hierarchy than at the elite stratum” (1994: 139).

The primary questions addressed by interest-group advocates are: Who benefits? Who profits? And, for whose advantage? In other words, who is to gain if a particular issue is widely accepted as problematic? As noted earlier, morality and ideology have typically been separated from material considerations under the interest-group approach. This is because many believe that “interest-group politics are usually . . . cynical, self-serving, devoid of sincere belief” (1994: 139). Goode and Ben-Yehuda note, however, that, in practice, this arbitrary separation is not always a good idea, or even possible. For example, some interest-group actors - such as the media, politicians and the police - may genuinely believe that their efforts are for a moral or noble cause. At the same time, though, advancing such a cause “*almost inevitably* entails advancing the status (and often the material interests) of the group who believes in it, and advancing the status and

material interest of a group *may* simultaneously advance its morality and ideology” (1994: 139). For example, Zatz (1987) found that although a late 1970s panic over Chicano gang violence in Phoenix, Arizona was stirred up to acquire more funding for a specialized police unit, most officers who worked in the problem neighbourhoods genuinely believed that crime among Chicano youths was a major issue. Similarly, Jenkin’s (1992) work on Britain’s satanic ritual abuse panic of the late 1980s found that religious conservatives used the argument “that satanism is alive and well in contemporary society and doing his evil deeds” (Goode and Ben-Yehuda, 1994: 140) not only to advance material interests (i.e., gain more followers), but to advance ideological interests (i.e., confirm the limitations of left-leaning, liberal theology).

With these illustrations in mind, Goode and Ben-Yehuda argue that a theoretical separation between interests and morality is a difficult, and ultimately, unnecessary undertaking. Indeed, as seen in the previously described application of Ben-Yehuda’s (1986) integrated theoretical model for the study of the Israeli drug panic of 1982, the interest-group perspective enables the moral panic analyst to treat morality and interests as two separate phenomena that are sometimes interconnected, while in other instances more directly tied to specific motives, ranging from ideological beliefs to status or materiality. Thus, whether an activist movement is genuinely noble, or not, the interest-group model provides sufficient theoretical latitude to build a bridge between self-interests seemingly detached from status or material stakes, to the study of moral or ideological causes that are being simultaneously exploited to advance material or status objectives.

E. Discussion

From a review of Stanley Cohen's study of the Mod-Rocker moral panic of the 1960s to Nachman Ben-Yehuda's independent and subsequent collaborative work with Erich Goode to construct an integrated typology for the study of moral panics, this discussion has covered considerable ground in an effort to spell out some of the theoretical and methodological considerations underlying the moral panic phenomenon. How, then, in the wake of so many disparate theories and approaches can we arrive at some conclusions that will lend direction for the forthcoming case study of the Internet pornography panic of 1995? After all, to argue that the most applicable moral panic perspective cannot be determined until the nature of a moral panic is understood is circular reasoning at best and does very little to advance theoretical inquiry. Conversely, to assert that a given model must be applied in an unbending manner to make sense of a moral crusade or panic, closes off the possibility of alternate explanations and, ultimately, may hinder, more than it might benefit, the investigative process. With this in mind, it appears, then, that a theoretical and methodological *coalition* is the most appropriate strategy. That is, by drawing from and reflecting upon the theoretical and methodological lessons and values of each moral panic perspective, it is being argued that a broad-based, coherent and flexible method for an effective and meaningful study of the moral panic phenomenon can be developed and applied.

Stanley Cohen's contributions to the field of moral panics lie at the core of this model. His pioneering analysis of the moral panic phenomenon locates the mass media as a central focal point through which a cast of key agents and groups (i.e., the general

public, the police, lawmakers, politicians and activist groups) disseminate information - or misinformation - though the course of a moral panic drama. He also illustrates how certain societal segments, such as the media, the police and politicians, sometimes exploit their capacity to circulate alarmist and evocative language or imagery to create folk-devils and/or a prevailing sense of disaster. Equally valuable is Cohen's capacity to draw out the relationship between particular social, political and economic circumstances and how they set the preconditions for the rise of a moral panic. Thus, taken together, Cohen's work spells out a coherent language and offers a useful methodological starting point for the delineation of a moral panic's historical pattern as well as its potential connection to power conflicts between various societal sectors.

It should be noted, however, that Cohen's approach has at times been criticized for being excessively functionalist, with poor explanatory potential. For example, Olson (1992) asserts that a primary drawback with Cohen's moral panic perspective and method is that "it veils the fact that in society there is 'a perennial struggle between different systems of norms and values' and precludes an analysis explaining the actors' actions 'from the vantage point of the interests of different social classes' (Boëthius, 1995: 43). This critique is to some extent misplaced. While it is true that Cohen devotes more attention to a chronological delineation of the unfolding of events and the range and roles of actors and groups involved, it is abundantly clear, as noted above, that he is not unaware of a moral panic's interconnection with power and conflict as it relates to the ideological interests of competing groups. At the same time, Olson's point is well taken. Cohen's attention to the deeper socio-political and economic influences within the larger

context of the moral panic phenomenon, rather than being a central focal point, receives summary treatment. Nevertheless, notes Boëthius, Cohen's contributions to the field of moral panics should not underestimated; after all, "It is not a matter of [developing] mutually exclusive explanatory models but rather a question of a gradual broadening of perspective" (1995: 43).

With the merits and limitations of Cohen's moral panic perspective in mind, Ben-Yehuda's theoretical synthesis of two alternate approaches - (1) morality and content and (2) interests and timing - is an important stepping stone toward a more fully integrated model. Overall, his integrated theory of moral panics lends support to his contention that studies of the phenomenon should treat its analytic components (i.e., content, morality, interests and timing) as complementary rather than competing. Not only does his model help us understand why a moral panic occurs when it does, but it simultaneously sheds light on how and why the mainstream media select specific content for their reports. Moreover, his approach offers a flexible method whereby one may explore and interpret competing and, at times, contradictory, agendas of political and social actors seeking to achieve specific goals. And, finally, his analysis shows how particular actors sometimes exploit the media to reinforce the drawbacks of an oppositional moral universe in order to redefine the "moral-symbolic boundaries between the morally desirable and the morally undesirable" (1986: 509).

At the same time, though, a variable still missing from Ben-Yehuda's approach is a means whereby one might acquire a more textured appreciation of a moral panic's roots and origins. This void is filled by Ben-Yehuda and Goode's multidimensional typology of

moral panics, which maps notions of morality/ideology and materiality/status across one dimension and posits a second continuum comprised of elite, middle-level and grassroots origins. From this framework emerge three useful approaches: (1) the grassroots model, which argues that moral panics arise spontaneously from generalized public fears or concerns, (2) the elite-engineered model, which contends that moral panics are fabricated to advance the material and status interests of the societal elite and (3) interest-group theory, which contends that moral panics arise from a society's middle-level in response to competing, or complementary, notions of morality and ideology and/or to advance personal interests or status.

Assessed in isolation, the value of the grassroots model is suspect, at best. After all, it is nothing short of a truism to declare that the arousal of latent public fears or concerns is typically behind the outbreak of a full-scale moral panic. Indeed, in the absence of public support, how else could a moral panic possibly arise? Goode and Ben-Yehuda concur and further note that not even the most "cynical elite or . . . self-serving representatives of one or another interest group" could possibly fabricate concern "over a nonexistent or relatively trivial threat" (1994: 141). Moreover, they feel that the emergence of a moral panic necessitates the interplay between the ideological views of competing societal segments, otherwise, it is "almost inconceivable that [a moral panic] could be foisted off on the public, [or] that the public becomes intensely concerned" (1994: 141). For these reasons, the contribution of the grassroots model to a broad-based moral panic theory lies more in its analytic capacity to draw attention to the way in which

the mainstream media feed upon, or fuel, public sentiments, and less in its independent explanatory potential.

Elite-engineered theory places similar limitations on the exploration of the moral panic phenomenon. While it was highly a effective model for Hall et al. (1978), Goode and Ben-Yehuda note that its explanatory potential for tracing the origin of a moral panic has been limited, or largely inapplicable, in most other contexts. However, this does not mean that components of the elite-engineered approach are without their value. Indeed, Schissel notes that “without this type of critical perspective, we are left with the presumption that the media acts alone, isolated from economy and politics, and that its mistaken mandate is the result of poor journalism and the requirement to compete in the supply and demand world of news” (1997: 13). Hall et al. further note that the media very often “represent the primary, and often the only source of information about many important events and topics (1978: 56). Seen in this light, it becomes clear, then, that elite-engineered theory should not be dismissed out of hand. For example, its capacity to highlight the media’s function as a conduit through which the dominant moral, ideological, material and status interests of societal elites are defined, circulated and reinforced, opens the door to a more nuanced appreciation of the structured relationship between the discourse of the media and ruling elites. Similarly, its concern with the disingenuous connection between the capitalist power structure and prevailing notions of morality serves to illustrate how new policies and legislation are consistently shaped to reinforce personally, politically or economically advantageous conceptions of “right” and “wrong.”

A prevailing cynicism is the most notable drawback of interest-group theory. With its main focus on the relationship between interests and morality, this model encourages, and may, by extension, exaggerate, a generalized suspicion that the actions and motivations of *all* actors in the moral panic drama are designed to advance personal, group, material or status interests, rather than an ideological or moral cause. This is not to say, however, that interest-group theory has nothing to offer to a broader-based theory of moral panics. For example, with its sensitivity for the multiplicity of contexts from which a moral panic might arise, interest-group theory helps make sense of a panic's preconditions, context, content and timing. Furthermore, via its theoretical articulation of middle-level motivations (morality/ideology to material/status interests), this model simultaneously demonstrates that mutually exclusive/opposition pair explanations of a moral panic's origins are not always needed, or possible. And, finally, this model has exceptional analytic latitude, which enables the reprioritization of its operational variables - treating one or another as more or less dominant - depending upon the circumstances of a particular panic. Given these factors, the value of interest-group theory comes clear: it lies less in its overall explanatory potential and more in its analytic flexibility to examine the interplay between conceptions of motivations based on morality and/or interests as they emerge from middle-level actors in the moral panic drama.

To sum up, the theoretical and methodological contributions of previous efforts to study the moral panic phenomenon pave a path toward a unified theory of moral panics that will extensively inform and guide the forthcoming case study to the Internet pornography panic of 1995. Cohen's method provides the language and a flexible analytic

framework for making sense of media representations of the moral panic phenomenon. Ben-Yehuda's theoretical synthesis articulates, operationalizes and demonstrates the complementary nature of the phenomenon's seemingly disparate analytic components. And, lastly, Goode and Ben-Yehuda's three theories of moral panics provide a multidimensional, origins-based starting point that simultaneously facilitates the exploration of (1) the roots of societal fears and concerns, (2) the relationship between elite-level interests and media representations of key issues and (3) the way the media at times exploit/mobilize grassroots, middle or elite-level sentiments. If used in accordance with their relative applicability, it is believed that this unified model offers an ideal framework for mapping the Internet pornography panic's origins against a disparate array of underlying motivations and agendas.

What follows in chapter VI is a case study of a moral panic over Internet pornography that erupted in the United States and Canada in 1995 and spread around the world in 1996. Through a review of print media characterizations of key actors and events between 1992 and 1995, this study will test the above-described unified model of moral panics in an effort to (1) illustrate and develop its analytic potential and (2) shed light on how the interplay between the interests and ideologies of particular societal agents and sectors is impacting and shaping the development of regulatory policies for the online medium. In addition, through a secondary analysis of relevant online sources stemming from an Internet-based resistance movement against mainstream media rhetoric that was fuelling the panic, the role online users played in reshaping the panic's outcome will be investigated. As such, it is anticipated that this case study will provide policy-makers and

communications scholars with new insights, directions and prescriptions for the design and implementation of regulatory initiatives for the online realm. In addition, it is expected that it will make a significant contribution to moral panic theory by underscoring the analytic relevance of the online medium, a societal segment previously unobserved by moral panic theorists.

VI

The Internet Pornography Panic of 1995

As noted in chapter I, the early 1990s was a period during which the mainstream media regularly celebrated the communicative and empowering potential of the Internet. For many, the online medium was a utopian paradise - a space that would free us from the physical constraints of our bodies to interact as equals - a McLuhanesque cliché where people from all contexts would be united in the long-awaited “global village.” But as the hype began to fade, journalists soon started uncovering the online realm’s “darker” side. At first, there were near-romantic tales of hackers and online criminals; but soon, alarmist accounts of virtual rapes, pedophiles luring children and the widespread availability of pornography were being related both in North America and around the world. By early 1995, the Internet’s image was notably tarnished. Stories of its far-reaching potential were still commonplace, but calls for new regulatory measures were becoming an equally recurrent refrain among agents of social control, legislators, journalists, activists and concerned citizens. A handful were worried by hate crimes, privacy violations, intellectual property rights and fraud protection. But the emotionally and politically charged battle cry - “to protect the innocence of our children” - was reason enough for many others who were motivated by a media-fuelled perception that sexually explicit materials, depicting a shopping list of sexual fetishes ranging from bestiality to child pornography, had spread like a rampant plague across the online sphere. Under conditions such as these, it is hardly surprising, then, that an international panic over Internet pornography erupted following

the publication of a sensationalistic *Time* magazine cover story on “cyberporn” in late June 1995.

Informed by theoretical and methodological insights gained from chapter V’s review and appraisal of the sociological literature on moral panics, this chapter examines the circumstances surrounding the outbreak of the Internet pornography panic of 1995.⁵³ To situate the discussion, the definitional complexities associated with the term “pornography” will be discussed. Next, the nature of the online pornography industry will be reviewed. Thereafter, the Canadian print media’s role in fuelling the panic’s mid-1995 outbreak will be explored. Following from this discussion, an Internet resistance movement devised to counter the panic’s media-fuelled rhetoric will be described. And, to conclude, insights derived from particular thematic trends and key actor groups involved in the moral panic drama over Internet pornography will be considered. The primary questions guiding this case study will be:

1. *What roles did particular media sectors play in the construction of a moral panic over Internet pornography?*
2. *How can a better understanding of these and other societal groups’ roles, interests and agendas assist policy-makers and lawmakers in the formulation of new regulatory policies for the online communications context?*

⁵³ While the Internet is by no means the only context in which computer-mediated communication occurs, chapter I demonstrated that it is rapidly becoming the platform of choice for many users of the online realm. Given this trend, this chapter focuses on the panic as it arose over the apparent dangers of Internet-based pornography. The description of key events, however, will at times include relevant media references to other contexts in which online pornography is sometimes found.

By following this approach, it is anticipated that the complex interrelationship between the media and other societal agents involved in the agenda-setting process underlying the moral panic crisis will be extensively illuminated. Furthermore, it is expected that the online medium's capacity to upstage the traditional media's interpretative agenda will be highlighted. As such, the communicative potential of the online medium - a societal segment/analytic unit previously unobserved by moral panic theorists - will be brought to the fore, thereby providing greater clarity and direction for government regulators, policy-makers and communications scholars alike.

A. Defining "Pornography"

A broad range of issues associated with pornographic materials and efforts to censor or limit the availability of such materials have been examined and discussed by social scientists, humanists, lawmakers and legal experts. For example, an extensive literature exists on the psychological, social and cultural processes that have led to particular sexually explicit representations being labelled "pornographic" by some, but not others (e.g., Russell & Lederer, 1980; Steinem, 1980; Longino, 1980). Similarly, numerous studies supporting or discounting a causal relationship between exposure to pornography and subsequent behavioral patterns have also been published (e.g., Donnerstein, Linz & Penrod, 1987; Lederer, 1980). A considered exploration and evaluation of these works, however, is well beyond the scope of this discussion. At the same time, to properly frame the present case study of the Internet pornography panic of 1995, an appreciation for the definitional complexities surrounding key terms that have

shaped the discourse of movements for and against the censorship of pornography is essential. Indeed, as Hawkins and Zimring explain, to assume that “we will know [pornography] when we see it represents an evasion of definition. Even if by means of some kind of intuitive insight we were able instantly to recognize pornography, we would still not be able to say upon inspection what it is that is pornographic about pornography. And unless we can do this . . . it would be impossible to tell what [we are] agreeing about” (1991: 20).

Dictionaries typically define pornography very generally as writings or images that present sexually explicit content with an intent to arouse sexual desire. In addition, countless scholars, policy-makers and activists have advanced detailed definitions or constructed complex classifications schema - based on apparent levels of violence, degradation or sexual explicitness - in an effort to delineate the potential range of pornographic representations.⁵⁴ However, despite these many undertakings, an inherent drawback of such definitional frameworks has regularly surfaced: subjective interpretations of sexual representations - whether artistic depictions of nudity found in museums, or “soft-” or “hard-core” depictions of sexuality found in audio-visual or print materials - will vary considerably between individuals and groups, from one context to the next. Recognizing this issue, government legislators and policy-makers in the United States and Canada have on several occasions assessed the conceptual merits of the term “pornography” as it relates to the formulation of new policies or laws. For example, in the

⁵⁴ See Leighton and Brannigan (1990) for a comprehensive survey of the social science evidence on the apparent effects of pornography and an overview of various classification typologies.

American context, the Meese Commission's report on pornography concluded that "*pornography* seems to mean in practice any depiction of sex to which the person using the word objects . . . [therefore], we have tried to minimize the use of this word" (1986: 227-228). Similarly, the Johnson Commission's study of pornography in the United States concluded that the expression *explicit sexual material*, rather than pornography should be used since the latter "appears to have no legal significance . . . [and] most often denotes subjective disapproval of certain materials rather than their content or effect" (1970: 3 n. 4). And, finally, echoing a similar sense of futility, the authors of a Canadian report by The Special Committee on Pornography and Prostitution opted against a working definition of pornography given that a consensus has never been advanced by "those who have struggled with the question of the meaning of pornography" (1985: 52, 54).

The above definitional issues bring into focus some of the challenges underlying a clear-cut understanding of pornography from a content-based perspective. After all, if one defines pornography solely on the basis of its content, it not only advances an implicit assumption of unanimity, but it ultimately limits definitional boundaries and betrays an agenda that in all likelihood will hold little, if any, regard for interpretive variations that might exist between differing actors and groups. Indeed, consider for a moment what pornography might mean to particular actors in the pornography debate. For pornographers - or *agents of production* - pornography is "adult entertainment" - a product - a means to an end that is partly or wholly distanced from its potential societal impacts or consequences. Thus, for these actors, pornography is a passport to economic gain designed to arouse sexual interest among potential consumers through the

exploitation and commodification of sexually explicit representations. By contrast, individuals opposed to graphic or implied sexual representations - or *agents of restraint* - necessarily view pornography through a different prism. For example, many adherents to particular schools of feminist thought contend that most sexually explicit representations are acts of aggression designed to oppress or silence women.⁵⁵ Other individuals, ranging from those who hold socially conservative political views to members of some religious organizations, argue that all forms of sexually explicit materials, from works widely considered art to the most graphic sexual representations, are a moral threat to the integrity of traditional family/religious values that must be strictly regulated (or eliminated) to protect future generations. But these oppositional forces do not operate in a vacuum. Two additional actors around which the pornography debate revolves are *defenders of free expression* and its *consumers*. For this latter group, the availability of pornography represents a means whereby diverse sexual interests, curiosities and preferences are explored or fulfilled, whereas for *defenders of free expression*, the production and circulation of pornography, even if it is personally distasteful, represents an acceptable trade-off to the extent that it serves to protect generally accepted, or legislated, rights to free speech or expression. Thus, with the above actors in mind, it becomes clear that “pornography,” as used in the present discussion is best treated as a fluid construct, containing numerous content-based characteristics that will vary on the basis of individuals, groups, uses and contexts. Zurcher and Kirkpatrick concur and further note

⁵⁵ The most vocal proponents of this school of thought are Andrea Dworkin and Catharine A. MacKinnon. For examples of this literature, see Dworkin (1980a, 1980b, 1980c, 1989), MacKinnon (1985) and Cole (1992).

that meanings ascribed to a term such as pornography are *value judgements* that assume “that sexually explicit material can be and is invested with valences by individuals in a manner consistent with their overall network of value orientations, socialization patterns, and self-concepts” (1976: ix).

Moving beyond the definitional connundra surrounding the term “pornography” are several other expressions that have shaped or informed many debates over pornography. As demonstrated in chapters III and IV, history is replete with illustrations of agents of production, agents of restraint and defenders of free expression calling upon like-minded legislators and lawmakers to implement, or alter, legislation in the wake of new communications technologies being used for the production or distribution of materials containing sexually explicit content. A cumulative consequence of such efforts has been the gradual evolution of an operational terminology which has enabled many governments to define the parameters of what constitutes legal and illegal forms of pornography. In the United States, for example, all forms of pornography are *presumptively* legal under the free speech provisions of the First Amendment and are only overridden if found to be “obscene” or “child pornography.” Similarly, the Canadian Charter of Rights and Freedoms, provides free speech protections, but with Criminal Code limitations that protect against representations deemed obscene, violent, degrading or dehumanizing against women or children.

But what is obscenity? Under American law, pornography must meet all three parts of a test devised by Chief Justice Warren Burger in a 1973 court ruling, *Miller v. California*. First, there must be a state statute in place that describes in detail the particular

sexual acts that cannot be represented. Second, the depiction of a sexual act must be considered “patently offensive” and “appeal to the prurient interest” as judged by a “reasonable” person applying the standards of a given community. And, third, the material must lack “serious” literary, artistic, scientific, political, or other social value (Godwin, 1995). By contrast, in Canada, where prior to 1982 an American-style constitution did not exist, its constitutionally entrenched commitment to protect free speech carries certain limitations. Most notable is a 1992 Supreme Court of Canada decision, *Regina v. Butler*, which prohibits “anything depicting sexual acts involving children, violence or degradation” while allowing “sexually explicit material with scientific, literary or artistic merit . . . as long as it does not include banned material” (Ross, 1992). This decision overrides key aspects of the Canadian Charter of Rights and Freedom’s free speech provisions, and broadens the legal parameters of obscenity to such an extent that virtually any sexually explicit representation could be judged illegal in court.

With respect to definitions of “child pornography,” most countries have considered such material illegal for many years, regardless of its apparent level of “obscenity” (Godwin, 1995). For example, in the United States, federal law stipulates that child pornography is any *visual* material that depicts a “real” child posing or engaged in explicit sexual acts in a “lewd and lascivious” manner. For this reason, written accounts of children engaged in sex acts, as well as digitally-altered computer images or materials that in no way involved children in their production are “technically” *not* child pornography in the eyes of the law. However, since these same materials would likely be deemed “obscene” in most communities, most representations and accounts of children involved in

explicit sexual activities are still considered illegal under American law. By contrast, Bill C-128 of the Canadian Criminal Code takes a far less circuitous approach in its prohibition of child pornography. It stipulates that child pornography means any “photographic, film, video or other visual representation . . . that shows a person who is or who is depicted as being under the age of eighteen years and is engaged in or is depicted as engaged in sexually explicit activity,” and further notes that “any written or visual representation that advocates or counsels sexual activity with a person under the age of eighteen years . . . would be an offence under the act.” Thus, both in the United States and Canada, the legality of child pornography, unlike most other forms of pornography, is not only judged on the basis of its content, but also in terms of the treatment of the actors portrayed.

Two final expressions linked to debates over pornography are: *indecentcy* and *exposure to inappropriate material*. While the former is sometimes used interchangeably with obscenity in Canada and the United States, it is a term that has taken on a very specific meaning for American policy-makers and legislators. Under legislation governing broadcast and sexually explicit “dial-a-porn” telephone services, both of which fall under the jurisdiction of the Federal Communications Commission (FCC), “indecentcy” has come to represent “patently offensive” sexual content or profane language that can be prosecuted under federal law (Godwin, 1995). In the print industry, however, this same term has never carried any such legal weight or consequences for similar sexual representations. Instead, the expression *exposure to inappropriate material*, which prohibits individuals under the age of eighteen from accessing sexually explicit materials,

has been used to deny access to print materials that would otherwise be considered legal (i.e., materials that are neither obscene nor child pornography).⁵⁶

Through a summary of some key terms that have shaped the discourse of pornography debates, this review has opted against a definitive content-based conceptualization of what constitutes pornographic material given its inherently value-laden nature and contextual fluidity. At the same time, this discussion has endeavoured to highlight and describe related concepts - such as obscenity, child pornography, indecency and exposure to inappropriate materials - that have taken on specific meanings through the creation of new laws and legal judgments. But how much have we really learned? For example, the legal definition of obscenity calls upon the use of vaguely defined expressions such as “prurient interests” and “community standards.” Similarly, an interpretation of “indecency” from a legal standpoint calls for an understanding of the equally elusive expression “patently offensive.” In other words, like “pornography,” each of these related concepts carries its own set of subjectively ascribed associations that will inevitably vary between individuals, groups and communities. In the final analysis, though, it seems that

⁵⁶ The importance of this distinction comes clear in the context of present-day efforts to regulate the online medium. As noted in chapter IV, early drafts of the Communication Decency Act of 1996 raised the ire of many free speech advocates due to its use of term “indecency.” For many, this was an indirect way to associate the online medium with broadcasting, the FCC and a pre-existing body of legal precedents and regulatory statutes devised to control sexually explicitly representations on the basis of broadcast and common carrier-based metaphors. By contrast, if one uses the more functionally arbitrary term, *exposure to inappropriate materials*, it not only limits the impact of any new legislation on adult users of the online realm, but symbolically moves it away from the far-reaching ramifications of collapsing online communication under the general rubric of traditional FCC (i.e., broadcast-based) regulatory regimes.

making sense of these terms beyond their basic legal and scholarly variations is largely unnecessary. Indeed, as will be revealed through the course of the forthcoming case study, an understanding of these terms lies less in the identification of their definitional boundaries, than it does in being sensitized to the ways in which the media, in conjunction with actors from other societal sectors, at times appropriate or exploit discourses on pornography in their various efforts to advance particular interests or agendas related to its production and distribution.

B. Online Pornography: Industry Overview

Some analysts believe that “adult” entertainment, sales and services are not only setting the standard for online business practices, but predict that they will have a profound impact on the direction and nature of the medium in the years to come. Alleged online pornography can be found in many forms and contexts including: images, videos, peep shows, stories, how-to-guides, chat lines and discussion groups. However, due to the wide array of products, modes of delivery and services provided, obtaining accurate estimates of the online pornography/adult entertainment industry is a daunting task. Overall, the adult sex industry - which includes videos, strip clubs, escort services, telephone services, magazines, sex products, CD ROMs, private dances, televisual services and an array of computer-mediated products and services - was estimated to be worth well over \$10 billion dollars U.S. in the United States and \$100 million U.S. in Canada in 1996 (Gladman, 1997). The fastest growing sector of this industry, reportedly worth between \$50 and \$100 million U.S., was computer-mediated sales, services and

products (Huffstutter, 1997: D11; Gladman, 1997). Based on these latter estimates, adult-oriented computer sites are believed to have figured in well over 10% of all online sales in 1996.

But how many adult-oriented Internet sites do these figures represent and how many consumers do they attract? While no precise estimates are available, it appears that Internet-based, adult-oriented/sexually explicit computer sites probably represent a very small proportion of all online sites. For example, in a mid-1995 examination of *Yahoo!*, the most popular index of materials available on the Internet, it was determined that 217 of 50,000 catalogued Web sites, representing just 0.4% of the overall total, contained sex-related subject matter (O'Conner, 1995). Today, this figure has increased in real terms, but has dwindled proportionately to less than one tenth of one percent, with just 1,891 of *Yahoo's* 730,000 catalogued Web sites containing references to sex-related subject matter.⁵⁷ Similarly, results obtained from *AltaVista*, a user-searchable database of over 100 million Web pages, indicate that fewer than one percent of all Web pages contain the word "sex." However, because a large proportion of these Web-based references to "sex" are actually addressing topics ranging from sexually transmitted diseases to sexual abuse and safe sex, it can be concluded with some certainty that these percentages significantly overestimate the actual number of adult/sexually explicit online sites. Moreover, since search engines such as *Yahoo!* and *AltaVista* catalogue sites from all over the world, these figures become even smaller if adjusted to represent the North American context.

⁵⁷ This estimate was derived through a November 5, 1997 *Yahoo!* search and a telephone interview with Jennifer Kwan, a public relations coordinator with *Yahoo!*.

According to Al Cooper, clinical director of the San Jose California Marital and Sexual Center, "sex" leads the way as the most searched for topic on the Internet (Reuters, 1997a). Unfortunately, given the absence of any research on this matter, obtaining accurate measures with respect to the overall number of Internet users who regularly visit adult-oriented/sexually explicit Web sites is not possible. Nevertheless, a few isolated reports do provide some direction. For example, a Nielsen-I/Pro study of Penthouse magazine's Web presence found that visits to their site totalled over two million user visits and 54 million page views, for an average of nearly 87,000 visits and over 17 million page views per day in December 1995 (Whitmer, 1996). Echoing a similar perspective, Eileen Kent, director of Playboy magazine, Penthouse's chief print-based rival, has more recently stated that their Web site "owns the Internet" given its high volume of traffic and extensive online sales (CNN, 14 Dec. 1996). However, beyond anecdotal reports such as these, very little else can be said about the overall number of people accessing Web sites containing adult-oriented/sexually-explicit content.

At the same time, although very little is known about Web users' overall rates of access and viewing practices, past studies of USENET traffic do shed some light on the apparent popularity of sexually-oriented subject matter in one sector of the online realm.⁵⁸ USENET newsgroups, which totalled more than 20,000 in late 1997, include roughly 200 areas where participants may discuss, distribute or advertise materials of a sexually explicit nature. While many of these groups allow users to write stories, tell jokes, discuss personal experiences, ask questions or obtain sexually explicit images, others run the

⁵⁸ See chapter I for further background on the USENET.

gamut from an unusual array of sexual fetishes to the discussion of serious concerns related to human sexuality.⁵⁹ From the late 1980s, until mid-1995, Brian Reid, a computer scientist with Digital Equipment Corporation, posted a monthly list of the most popular USENET newsgroups. Throughout this period, sex-related newsgroups often appeared among the most frequently accessed groups. For example, in July 1995, eight newsgroups were among the top 35 most popular USENET newsgroups (see Appendix A).

Altogether, these eight groups attracted well over 1.1 million readers and received nearly 56,000 messages. Among the top 10 were: *alt.sex* with an estimated 260,000 visitors, for a 4.6% share of all newsgroup readers; *alt.sex.stories* with 220,000 readers and a 4.2% share; and *alt.binaries.pictures.erotica* with 170,000 readers and a 3.7% share. Thus, while these figures cannot speak to the overall presence of sexually-explicit materials available on the Internet, they do suggest that the discussion and viewing of sexually explicit materials may well be a popular pastime for some online users.

Beyond the challenges of determining the overall presence and popularity of sexually explicit online materials, even less is known about the people who access such services. In a 1996 survey of Internet users conducted by Matrix Information and Directory Services, Inc. it was found that men outnumbered women at a ratio of approximately 2:1, children represented approximately three percent of the Internet population and that the largest proportion of Internet users were college age (Quarterman,

⁵⁹ Examples of newsgroup titles representing this diverse range of topics include: *alt.binaries.erotica*, *alt.sex.masturbation*, *alt.sex.fat*, *alt.sex.fetish.startrek*, *alt.sex.fetish.waifs*, *alt.sex.prostitution*, *alt.sex.movies*, *alt.sex.swingers*, *alt.sex.strip-clubs* and *alt.sex.teens*.

1996). Similarly, a 1996 survey conducted by US Interactive found a gender gap of 30% female, 70% male, with an average age of 31 years. This survey also sought to determine why people use their Web browsers. The top four activities cited were “simply browsing” (77%), entertainment (64%), education (53%), and work (51%).⁶⁰ However, because this item did not specifically measure an intent to access sexually explicit, adult materials, its results contribute very little to a better understanding of overall patterns of online pornography consumption.

One study that does provide some direction is a 1995 Iowa State survey of 320 journalism students which found that more than 50% of male respondents, compared with just 20% of female respondents, reported having viewed Internet pornography, either in words or pictures (Walter, 1995). At first glance, these findings do seem to shed some light on overall access rates and gender-based differences in the consumption of online pornography. At the same time, though, due to the context-specific nature of the sample used, coupled with the absence of further supportive data, it would be premature to assume that these findings could be generalized to the full population Internet users.

Due to the relative paucity of substantive research, the preceding survey of the online pornography industry has painted an inconclusive and somewhat unsatisfactory picture of its overall presence, popularity, or lack thereof. Consequently, beyond a recognition that the online “adult entertainment” industry has become a highly lucrative and diversified growth area for many entrepreneurs and consumers, it is not possible to

⁶⁰ This is by no means an attempt to infer that Internet users are, by extension, accessing sexually explicit materials, but merely an effort to point out the degree to which casual and entertainment-oriented activities are a part of their repertoire.

say very much about its scope, nature, or the behaviors and preferences of the actors and groups involved. Deliberately omitted from this discussion was any mention of the findings of a 1995 *Georgetown Law Journal* article, "Marketing Pornography on the Information Super Highway," which reported the research results of a study conducted by Martin Rimm, a Carnegie Mellon University undergraduate. Although this study stands out as one of the most ambitious efforts ever made to survey the forms and uses of sexually explicit online materials (in two particular computer-mediated contexts: USENET and adult-oriented computer bulletin boards), numerous methodological weaknesses make its overall findings unusable. This does not mean, however, that Rimm's study should be dismissed. On the contrary, in much the same way that Ben-Yehuda (1986) found that statistical findings regarding apparent adolescent drug abuse were misrepresented in the Israeli drug panic of 1982, it will be seen in the forthcoming discussion that Rimm's data were appropriated to advance particular interests in the moral panic drama over Internet pornography, thus transforming a simmering concern over online pornography into a widespread moral panic. For this reason, Rimm's findings and their subsequent impacts on the debate over online pornography will be addressed in a later section as a strategy to further inform aspects of the present case study.

C. Data

As noted in chapter V, the media typically play a central role in fuelling a moral panic's outbreak (e.g., Cohen, 1972; Hall et al, 1978; Ben-Yehuda, 1986). With this in mind, Canadian print media coverage of the Internet pornography phenomenon from 1992

through 1996 was selected as a primary source for the present analysis.⁶¹ Articles on “Internet pornography” and “cyberporn” were collected from CanDisc and GlobeDisc, two CD ROM databases that provide full-text transcriptions of articles from a set of major Canadian newspapers. In addition, relevant American news media sources that contributed to the panic’s outbreak and maintenance were used as supplementary resources. Finally, because the online medium is a context where information related to the panic was extensively debated and distributed, applicable materials were also collected from several Internet sources.

D. Print Media Analysis

A topical analysis of North American news media databases (major newspapers, magazines and some broadcast news programming) reveals that in parallel with the advent of the online medium’s mainstream popularity, media interest in the Internet pornography phenomenon escalated rapidly between 1993 and 1996. As table 6.1 demonstrates, the issue of online pornography was rarely addressed in 1993, with just a handful of news media references.

⁶¹ Although much of the early debate over Internet pornography can be traced to American discourse from a range of societal sectors, there are three main reasons guiding the selection of the Canadian context for the present analysis: First, levels of Internet penetration in Canada and the United States have been proportionately equal for some time (see chapter IV for statistics). Second, overall shifts in news media coverage (print and broadcast) demonstrate that the Internet pornography phenomenon arose in parallel in Canada and the United States between 1993 and 1996 (see Table 6.1), with extensive crossover of American news items into Canada (see Appendix C, Part B, “Article Characteristics”). And, third, Canadians have for many years enjoyed a relatively unfiltered window into American cultural perspectives and practices due to the United States’ hegemonic influence and geographic proximity.

[insert table 6.1 about here]

By 1995, however, coverage of the phenomenon peaked, with 2.9% of Canadian and 2.3% of American Internet stories making direct or indirect references to online pornography. Thereafter, despite a proportionate decline in media coverage in 1996, it can be seen that the issue continued to garner extensive attention in terms of the total number of stories reported. Thus, taken together, these findings lend strong support to the argument that a moral panic over Internet pornography was triggered at some point in 1995. Furthermore, they reveal the rapidity with which the issue of online pornography was seized upon and popularized by the North American news media between 1993 and 1996.

To learn more about the media's role in shaping public attitudes and discourse prior to the Internet pornography panic's full-blown outbreak, this section begins with a review of applicable Canadian print media sources from 1992 through 1994. Thereafter, the principal findings from a content analysis of relevant Canadian newspaper articles from 1995 will be used to inform a chronology of major thematic shifts surrounding the Internet pornography panic's mid-1995 outbreak.

1. Laying the Foundation for a Moral Panic

Paralleling Cohen's (1972) study of Britain's mid-1960s moral panic over Mod-Rocker conflicts and Ben-Yehuda's (1986) examination of the Israeli drug panic of 1982, relevant Canadian print media articles from 1992 through 1994 show how the panic over

Table 6.1
North American news media coverage of the
Internet Pornography/Cyberporn Phenomenon
1993 - 1996
(Canadian Sources: Canadian Newdiscs; Globediscs)
(American Source: Lexis-Nexis)

Year	Canadian News Media			American News Media		
	Number of stories that mentioned:			Number of stories that mentioned:		
	The Internet	Internet Pornography/Cyberporn	% Internet stories that mentioned pornography	The Internet	Internet Pornography/Cyberporn	% Internet stories that mentioned pornography
1993	463	9	1.9	5563	33	0.6
1994	2125	41	1.9	29158	353	1.2
1995	9434	276	2.9	104665	2457	2.3
1996	17933	438	2.4	247344	3719	1.5

Internet pornography was in part founded on distorted and unsubstantiated print media representations of the online medium. For example, a June 1992 *Globe and Mail* cover story on the apparent increase in sexually explicit material available via university computer systems observed “that while there have been few public complaints, there is growing concern and awareness in police circles about the [USENET] sex groups” (Moon, 1992: A1). Similarly, an August 1993 *Vancouver Sun* cover story on the apparent increase in children being stalked or lured by pedophiles in the online context noted that although “there haven’t been any cases of sexual assaults involving computer-network contacts, the Vancouver police have . . . formed a group to investigate the possible use of networks by pedophiles . . . [since] This is definitely how pedophiles are making contact with kids” (Bula, 1993: A1). These statements not only highlight the role police and print media played in the early stages of the Internet pornography panic, but they demonstrate the extent to which public concerns were seen as secondary to advancing law enforcement interests.

An event from early 1994 illustrates another way in which early print media reports distorted aspects of the Internet pornography debate. In February 1994, the University of Waterloo banned several sexually explicit USENET newsgroups following a complaint made by a campus women’s centre. In response, the Department of Computing Sciences noted that eliminating all “offending” newsgroups was impossible since they could still be accessed indirectly through other systems. In no way discouraged, a women’s centre representative declared: “At least we know that a precedent has been set . . . We are talking about the worst child pornography you could imagine . . . These newsgroups were

completely infringing on our right to a safe education” (Gooderham, 1994: A1). This statement shows how public perceptions regarding the apparent pervasiveness of online pornography were shaped by the discourse and rhetoric of anti-pornography activists during the early days of the Internet pornography debate. Not only does it conflate the alleged censorship of child pornography with a set of newsgroups that *did not* actually contain such materials, but it reifies this association through its celebration of an apparent precedent.

Sensationalistic print media accounts illustrate a further way in which early representations of the online medium again parallel the findings of Cohen and Ben-Yehuda. In mid-1994, alarmist stories relating a range of online crimes and indiscretions became increasingly commonplace.⁶² A notable illustration is an April 1994 cover story from *The Ottawa Citizen* which opened by making the following declaration: “Cyberspace is a lawless world . . . Vandals, thieves, terrorists, pedophiles and murderous thugs ride this electronic frontier, knowing law enforcers are far, far behind. Police have a shortage of expertise, equipment and, some would argue, laws to back them up. Computer users of any age . . . have access to hate propaganda, hard-core pornography, stolen credit card numbers, even a massive blueprint to circumvent telephone billing systems” (Abraham, 1994a: B1). Thereafter, anecdotal accounts of online crimes committed in Canada and the United States were reviewed and a number of quotations from Canadian law enforcement

⁶² For example: “Cybercrime: As the information highway grows, so do the terrorists, vandals, pedophiles and other criminals who cruise it” (Abraham, 1994b: B5); “A new modern operandi. Criminals - even pedophiles - are using computers more. And so are the police” (Davis, 1994: A21); “User friendly - Sick crowd filling information highway gutters” (Pihichyn, 1994).

officials were offered. For example: “veteran Metro detective Sgt. Chuck Konkel cannot describe [what he has seen] without stuttering. ‘It’s hard-core, it’s bestiality, it’s sado-masochism, it’s child porn, it’s . . . it’s, it’s beyond the sense of any good taste.’” (Abraham, 1994a: B1). This article’s sensationalistic, anecdotal and decontextualized discourse demonstrates how many early media accounts of the online medium shaped alarmist perceptions regarding apparent dangers awaiting its users. Furthermore, it again highlights the way police enforcement interests were used to legitimate and reinforce a sense of imminent crisis.

Finally, a focus in late 1994 on the need to protect children from apparent Internet dangers demonstrates yet another way in which the print media contributed to an atmosphere conducive for a moral panic over Internet pornography. For example, an early August *Toronto Star* cover story on “Cybersex” advised parents to become more aware of their children’s use of the computer since, “Let’s face it, sex sells . . . and there doesn’t seem to any way to stop this stuff - even if we wanted to” (Kelly & Karmazyn, 1994: F1). Similarly, a late September Canadian Press story, which was reported in least a half-dozen newspapers across Canada, advised schools and parents to “street-proof” their children “before travelling on information highways littered with obscene material” (Canadian Press, 1994: A8). And, finally, in late December, *The Ottawa Citizen* launched a ten week series designed to introduce parents to the benefits and perils of “cyberspace” and assist them in getting their children “on-line, while keeping what they’re exposed to in line” (Brethour, 1994: F3). Not only does this thematic shift betray a tacit acceptance of pornography as a pervasive component of the online realm, but it reveals the extent to

which print media, police and activist rhetoric successfully reinforced negative perceptions of the online medium between mid-1992 and late 1994.

2. Chronology of Key Events from 1995

As noted in chapter V, Cohen (1972) identified: (1) exaggeration or distortion in news media accounts, (2) the use of alarmist or sensationalized reporting methods, (3) the repetition of inaccurate, unsubstantiated or decontextualized evidence, and (4) a sense of imminent disaster, as key components underlying the onset of a moral panic. Given that many aspects of this inventory were observed in Canadian print media coverage of the Internet pornography phenomenon between 1992 and 1994, it is apparent that a fertile atmosphere for a full-blown moral panic over online pornography was well established by late 1994. As will be demonstrated further on, such a panic, in fact, took place in mid-1995.

To learn more about the circumstances underlying the outbreak of the Internet pornography panic, a content analysis of 236 relevant Canadian print media articles from 1995 was conducted. According to John Fiske “a content analysis is designed to produce an objective, measurable, verifiable account of the manifest content of messages” (1982: 119). Furthermore, “much of the interest of content analysis derives from the choice of the unit to be counted, and this count should involve a comparison” (1982: 122). Guided by these considerations, data covering the following topics were collected: publication source, publication month, story origin, story placement, story theme(s), story rhetoric, story prescription(s) and actors represented.

What follows is a chronology of key events surrounding the outbreak of the Internet pornography panic of 1995. To illuminate the mainstream media's agency in shaping the panic on the public stage, key findings from the Canadian print media content analysis will be incorporated through the course of this discussion.⁶³

i. The Panic Mounts

Overall, 84 articles, representing 36% of the data set collected for the Canadian print media content analysis, mentioned Internet pornography/cyberporn during the first half of 1995. Table 6.2 shows that the number of articles to make such references increased steadily during this period, from just eight in January to 20 in June.

[insert table 6.2 about here]

These findings highlight the rapidity with which the subject of Internet pornography was seized upon by the Canadian print media between January and June 1995. Moreover, they lend strong support to Cohen (1972) and Ben-Yehuda's (1986) contention that the print media are a key societal sector involved in fuelling a panic's eventual outbreak.

An analysis of story perspectives on online pornography further reinforces the way the print media, via their representations of key actors, societal sectors and themes, fuelled the rise of the Internet pornography panic during the first half of 1995. As table 6.3 reveals, sensationalistic print media stories alleging the pervasive presence of sexually

⁶³ See Appendices B and C for coding category and sampling frame summaries.

Table 6.2
Canadian print media stories on Internet pornography: Monthly breakdown
January - December 1995
(236 valid cases)

Month	Number of articles	Overall %
January	8	3
February	14	6
March	13	6
April	17	7
May	12	5
June	20	9
July	40	17
August	24	10
September	29	12
October	5	2
November	19	8
December	35	15

explicit online materials were commonplace between the year's first and second quarters, with rates increasing from 52% to 61%.

[insert table 6.3 about here]

Concurrently, just six percent of all stories during this same period downplayed the apparent pervasive nature of Internet pornography, while roughly 40% treated pornography as a reality of the online medium. Typical examples of alarmist headlines from these months include: "Evil lurks on the Internet . . . and kids are at risk" (Magnish, 1995: 47) and "The super-modern information highway has spawned a grimy gutter of grunge" (Canadian Press, 1995a: A9).

Print media references to pedophiles using the Internet to lure children and/or distribute child pornography also increased during the first half of 1995. As table 6.4 indicates, the overall rate of story references to pedophiles luring children increased from just six percent to 20% between the year's first and second quarters.

[insert table 6.4 about here]

During this same period, the pervasive availability of child pornography via Internet sources was alleged in nearly one half of all articles, while appeals to protect children, ourselves and others from apparent Internet dangers increased from 45% to nearly 70%. "Gone are the days when the pedophile exclusively lurked in parks, schoolgrounds and video arcades" declared one police source, "child molesters are [now] surfing the Internet" (Magnish, 1995: 47).

Seemingly swayed by this increasingly alarmist media rhetoric, legislators and lawmakers soon started stepping into the fray. As table 6.5 demonstrates, print media

Table 6.3
 Perspective of Canadian print media stories on the apparent pervasiveness
 of Internet pornography by monthly quarter
 January - December 1995
 (232 valid cases)
 (percentages = # of cases / total # of stories)

Monthly Quarter	Story perspective on online pornography			Total number of articles
	Pervasive %	Neutral %	Not Pervasive %	
January - March	52	42	6	31
April - June	61	33	6	49
July - September	45	44	11	93
October - December	41	56	3	59
Overall	48	44	7	232

Table 6.4
Story rhetoric of Canadian print media stories on Internet pornography
by monthly quarters
January - December 1995
(236 valid cases)
(percentages = # of cases / total # of stories)

Monthly Quarter	Story Rhetoric/Story References to:						Total number of articles
	Child Pornography		Pedophiles luring children		Protecting children		
	#	%	#	%	#	%	
January - March	17	49	2	6	13	45	35
April - June	23	47	10	20	19	69	49
July - September	32	34	14	15	42	63	93
October - December	24	41	4	7	20	41	59
Overall	96	48	30	13	94	56	236

references to proposed government regulatory initiatives for the online medium nearly doubled between 1995's first and second quarters, with rates of 24% and 46%, respectively.

[insert table 6.5 about here]

This thematic increase can in large part be accounted for by United States' introduction of the Communications Decency Act (CDA) - legislation structured to outlaw "indecent" online materials and activities - and an announcement made by Canada's Information Highway Advisory Council that they were considering the need for an Internet code-of-conduct (e.g., Schwartz, 1995: A11; *The Globe and Mail*, 1995a: A26).

Aside from government-sponsored prescriptions designed to address the issue of Internet pornography, table 6.5 reveals that references to university/school-based efforts to regulate Internet usage dropped from 28% to zero between the first and second quarters of 1995. The short-term interest in this particular theme is explained by a key event that garnered considerable attention during the year's first quarter. In January, a Russian girl reading the USENET newsgroup, *alt.sex.stories*, encountered a violent and misogynistic account of rape, torture and death by Jake Baker, a University of Michigan sophomore (Schwartz, 1995: A11). Alarmed by its content, her father passed it on to a lawyer with connections in the United States. As a result, by mid-February, through the involvement of university officials, the FBI and the U.S. Attorney's office in Detroit, Baker was suspended by the University of Michigan and indicted by a federal grand jury for "knowingly transmitt[ing] communications in interstate and foreign commerce containing a threat to injure the person of another" (Wallace & Mangan, 1996: 73). For

Table 6.5
Top five themes/topics of Canadian print media stories on Internet pornography
by monthly quarters
January - December 1995
 (multiple response; represents 330 of 401 coded themes; 197 valid cases)
 (quarterly percentages = # of cases / total # of Internet pornography stories per quarter)
 (overall percentages = # of cases / total # of valid cases)

Theme/Topic	Jan-Mar %	Apr-Jun %	Jul-Sep %	Oct-Dec %	Overall %
Protect children, self, others	45	69	63	41	56
Gov't regulation debate/issues	24	46	28	67	41
Self-regulation option/techniques	24	46	35	41	37
Law enforcement efforts	48	40	23	10	26
University, school, regulation	28	0	5	6	8

the North American media - whose obsession with the “dark” side of the Internet was by now growing at a geometric rate - this precedent-setting case could not have been more timely. Print media coverage of this case was extensive and journalists regularly mentioned its implications in accounts detailing the apparent risks of the online medium between January and March.

Early 1995 was also characterized by numerous Canadian print media stories of police efforts to curtail the distribution of pornographic materials over computer networks. As table 6.5 reveals, law enforcement efforts to regulate Internet content and activities was a popular story theme with the print media between the year’s first and second quarters, with rates of 48% and 40%, respectively. Illustrations of this thematic emphasis include: early March incidents in which charges of disseminating pornography were laid against computer bulletin board operators in Surrey and Langley, British Columbia (*The Vancouver Sun*, 1995: A8) and a subsequent RCMP raid in Quebec in which twelve computer bulletin board operators suspected of distributing illegal software and pornography were arrested (Canadian Press, 1995b). Equally notable was a late April incident in which the first known charges for the possession of child pornography were laid against a man in Calgary, Alberta (Mitchell, 1995: A4). In each of these cases, police spokespeople repeatedly stressed that the “proliferation” of online pornography was raising serious enforcement issues, thus creating a pressing need for new laws. Moreover, in an apparent effort to highlight the ineffectiveness of existing laws for the online sphere, a police source in the Calgary case pointed to the suspected existence of an “active national and international child pornography ring.”

Aside from government and police spokespeople, several other actor groups were also represented in print media accounts of the Internet pornography debate during the first half of 1995. For example, as table 6.6 indicates, print media representations of activist voices (both for and against Internet regulation) increased from six percent to 22% between the year's first and second quarters.

[insert table 6.6 about here]

At the same time, Internet "experts" were cited in roughly one quarter of all stories.⁶⁴ However, although activists and experts opposed to Internet regulation were at times consulted, far more commonplace were citations from actors whose perspectives reinforced the print media's alarmist rhetoric. For example, in early May, Clifford Stoll, a sixteen year veteran of the online medium and author of *Silicon Snake Oil - Second Thoughts on the Information Highway*, received extensive media attention following his declaration that the media hype surrounding the advent of the Internet was largely misplaced. The Internet is far from being a utopian global village, he argued; instead, it is laden with "'bad stuff' including vicious hate mail, racist propaganda, pornography and pedophile rings" (Mitchell, 1995: A4; Steed, 1995a: A2). At about the same time, Ralph Reed, leader of the Christian Coalition, a right-wing religious organization in the United States, stepped into the controversy with the unveiling of "The Contract with American Families" at a news conference in Washington, D.C. (Reuters, 1995a: A14). Included in

⁶⁴ This category includes: scholars, futurists, prominent citizens, industry consultants, authors, researchers, professors, business leaders, technology consultants, software developers, policy analysts and Internet/online service providers.

Table 6.6
Actors represented in Canadian print media stories on Internet pornography
by monthly quarters
January - December 1995
(236 valid cases)
(percentages = # of cases / total # of stories in which actor was represented)

Actors Represented	Jan-Mar %	Apr-Jun %	Jul-Sep %	Oct-Dec %	Overall %
Internet "Experts"	23	22	32	29	28
Police	29	20	15	5	16
Government	29	27	3	12	14
Activists	6	22	5	24	14
Judicial	20	10	10	0	9
Public	9	16	8	0	8
Online/Internet Users	11	2	7	10	7

this contract was an appeal to the United States' Congress to implement legislation that would restrict the production and distribution of all forms of pornography over the Internet. And, finally, in early June, the Simon Wiesenthal Centre, a Canadian anti-racism activist group, released a discussion document entitled "The Need for Regulation on the Information Highway," which called for the Internet to be defined as broadcasting and placed under the jurisdiction of the Canadian Radio Television and Telecommunications Commission (Johnston, 1995: B1).⁶⁵ This report, along with the alarmist proclamations of Internet "experts" such as Stoll and religious activists such as Reed, are prime exemplars of the way print media characterizations of particular actor groups added fuel to a mounting concern over Internet pornography during the second quarter of 1995.

As previously noted, table 6.5 shows that mid-1995 was characterized by a heightened print media emphasis on government efforts to regulate the online context. Moreover, as table 6.6 reveals, government spokespeople received steady representation between the year's first and second quarters, with citation rates of 29% and 20%, respectively. This ongoing emphasis can in large part be explained by the fact that the United States' Senate voted in favor of attaching the CDA to a new telecommunications reform bill in early May (e.g., Kapica, 1995: A15). Furthermore, in Canada, Ray Pagtakhan, a Liberal MP from Winnipeg, was urging Parliament to legislate an Internet code-of-conduct, while, in Quebec, Fatima Houda-Pepin, a Liberal MNA, was insisting that government regulation of the Internet was the only feasible way to curtail hate,

⁶⁵ Although its primary purpose was to outlaw Internet hate literature, this document received extensive media coverage and was frequently collapsed into Canadian print media debates related to Internet pornography in the months following its release.

intolerance and pornography in the online realm (Martinuk, 1995: A22; Johnston, 1995: B1).

Parallelling the media's mounting interest in government-sponsored regulatory prescriptions for the online medium, a potential solution - Internet self-regulation - showed similar increases during the first half of 1995. As table 6.5 illustrates, print media references to self-regulatory alternatives increased from appearances in roughly one-quarter to nearly one-half of all articles between the first and second quarters of 1995. Illustrations of this thematic trend include: early March coverage of the release of *Net Nanny*, a Canadian-made Internet screening program that shuts down a computer if it encounters certain key terms (*The Vancouver Sun*, 1995: A8) and the late May launch of *Surfwatch*, an American-made software program that screens out Internet "topics that some might find offensive" (Kapica, 1995: A15). The emergence of these self-regulatory alternatives for the online medium highlights a thematic shift that would extensively redirect the focus of print media coverage during the second half of 1995. In addition, it points to a key factor that contributed to the panic's eventually resolution.

In late May 1995, the Canadian news magazine, *Maclean's*, published a cover story on the "dark side" of the Internet. It opened by stating: "It is quite a neighborhood. *Penthouse* magazine is there, along with amateur pornography purveyors offering graphic portrayals of every form of sexual activity, from kiddie porn to bestiality" (Caragata, 1995: 50). Thereafter, it proclaimed: "Canada has not so far experienced the kind of cybercrime wave seen in the United States" but the Justice Minister has suggested that "Ottawa [is] on the verge of action . . . to limit use of the Internet and other forms of

communication” (1995: 50-51). These statements pointedly illustrate the way the media were conflating issues prior to the full-blown outbreak of the Internet pornography panic. In turn, following from Cohen’s (1972) characterization of disaster mentality rhetoric, it shows how the media were normalizing the issue of apparent Internet dangers, thus fuelling a generalized sense of imminent disaster. Furthermore, it demonstrates the extent to which a mounting moral panic over Internet pornography in the United States was beginning to transcend national boundaries, thus fostering a parallel crisis in Canada and presaging its eventual spread to the international stage.

ii. **The Panic Begins**

With the release of a *Time* magazine cover story to North American newsstands on June 26, 1995 (July 3 cover date), the furor over Internet pornography reached new heights. On its cover was a close-up of an astonished young boy in front of a keyboard, staring directly at the reader. In large bold-face type beneath his chin was a single word: “CYBERPORN.”

[insert figure 6.1 about here]

Illustrations inside the magazine were no less spectacular; two showed naked men having sex with computers, while another showed a small child being lured by a lollipop displayed on a computer screen.

[insert figure 6.2 about here]

The story, by senior *Time* writer Philip Elmer-DeWitt, was headed by the following teaser: “It’s popular, pervasive and surprisingly perverse, according to the first

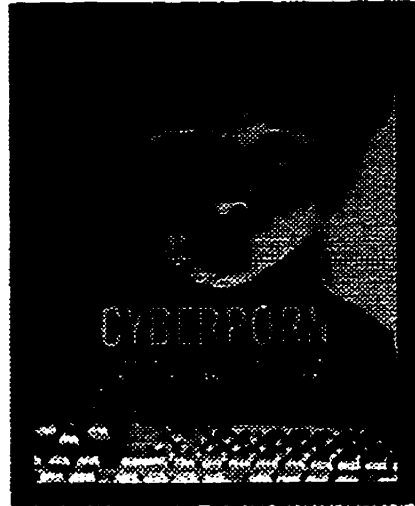


Figure 6.1: Cover Illustration
(Time, 3 July 1995).

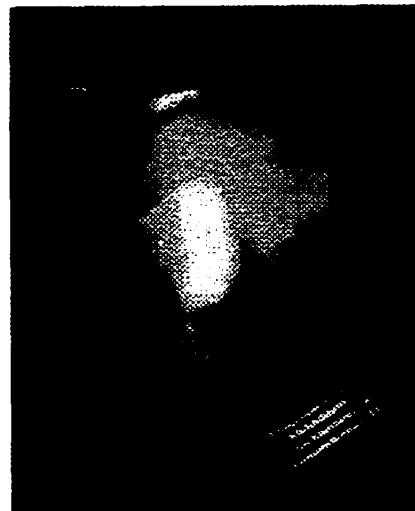


Figure 6.2: Story Illustration
(Time, 3 July 1995: 33).

survey of online erotica. And there's no easy way to stamp it out" (1995: 32).

Thereafter, it opened with: "Sex is everywhere . . . these days . . . Something about the combination of sex and computers make otherwise worldly-wise adults a little crazy. How else to describe the uproar surrounding the discovery by a U.S. Senator . . . that pornographic pictures can be downloaded from the Internet. Yet suddenly the press is on alert, parents and teachers are up in arms, and lawmakers in Washington are rushing to ban the smut from cyberspace" (1995: 32).

Elmer-DeWitt next reported data from a study undertaken by Martin Rimm, a Carnegie Mellon University undergraduate, which was to be published later that week in the *Georgetown Law Journal* and for which the exclusive rights had been secured for *Time*. He explained: "A research team at Carnegie Mellon University in Pittsburgh, Pennsylvania, has conducted an exhaustive study of online porn - what's available, who is downloading it, what turns them on - and the findings . . . are sure to pour fuel on an already explosive debate" (1995: 32). Its principal findings (as summarized by Elmer-DeWitt) were that sexually explicit materials were not only pervasive, popular and ubiquitous on the Internet, but that there was a decided preference for violent or sexually explicit representations of children, youth, bondage, sadomasochism, urination, defecation and animals. Moreover, in what was to become one of the most controversial statistics of Rimm's study, it was reported that "On those newsgroups where digitized images are stored, 83.5% were pornographic" (1995: 34).

Even though Elmer-DeWitt was careful to include a range of perspectives and acknowledged that the online medium was in fact "more than a place to find pictures of

people having sex with dogs” (1995: 34), the consequences of his feature were far-reaching. As table 6.2 illustrates, Canadian print media coverage of the Internet pornography phenomenon increased notably following the publication of Elmer-DeWitt’s article. Overall, 179 Canadian print media articles, representing 64% of the data set collected for the present content analysis, mentioned Internet pornography/cyberporn during the second half of 1995. Moreover, 93 articles, representing nearly 40% of the data set were published between July and August. July was the most active month, with 40 articles, representing a 100% increase from June, while December was a close second with 35. The month with the fewest articles was October with just five.⁶⁶

A notable increase in cover stories reveals another way in which print media coverage of the Internet pornography debate escalated during the second half of 1995. As table 6.7 indicates, January through March was the quarter with the fewest cover stories, during which none were featured on the front pages of newspapers and just six percent were found on the front pages of inside sections.

[insert table 6.7 about here]

These figures, however, gradually increased until the year’s final quarter, during which 16% of all articles addressing the question of Internet pornography were featured on the front pages of newspapers and a further 12% were published on the front pages of inside

⁶⁶ It is probable that extensive coverage of the Quebec sovereignty referendum, scheduled for October 30, 1995, temporarily pushed the online pornography issue from Canadian newspapers in October 1995. Moreover, the ongoing North American fixation with the O.J. Simpson murder trial verdict - announced in late September 1995 - may also help account for this short-term decline.

Table 6.7
Placement of Canadian print media stories on Internet pornography by monthly quarters
January - December 1995
(227 valid cases)

Monthly quarter	Story placement			Total number of stories
	Front Cover %	Front cover, inside section %	Inside newspaper %	
January - March	0	6	94	32
April - June	7	4	89	46
July - September	3	7	90	92
October - December	16	12	72	57
Overall	7	8	86	227

sections. This steady increase in high profile coverage highlights the extent to which the print media reprioritized the issue of Internet pornography during the second half of 1995. Moreover, given that a great number of these cover stories cited *Time's* feature and/or Rimm's findings, it provides a telling illustration of the way the print media fuelled the debate - and the panic - both on the national and international stage.

Events following the publication of *Time's* cover story further reinforce its far-reaching impact. In the United States, for example, Senator Charles Grassley introduced the full text of the *Time* article into the congressional record and co-sponsored (with Senator Bob Dole) "The Protection of Children from Computer Pornography Act of 1995," an anti-pornography bill that would make it an offence to distribute "indecent" material over the Internet (Goar, 1995: A4). Meanwhile, across North America and around the world, press reports of police activities - despite showing overall declines as a popular story theme (see table 6.5) - were frequently celebrating law enforcement success stories. In early July, for example, a Mississauga, Ontario man became Canada's first convicted virtual pedophile for creating and distributing pornography over computer networks. "It is fair to say that there is virtually every kind of pornographic material out there," declared "porn hunter," Detective Bob Matthews (Bindman, 1995: A1). Then, in late July, British police officials reportedly "smashed" an international Internet child pornography ring, with arrests in the United Kingdom and further suspects in Canada, Hong Kong, the United States, South Africa and Germany (Reuters, 1995b: A5). And, finally, in a mid-September "cyberporn crackdown," the FBI in the United States raided

120 homes to seize child pornography allegedly distributed over computer networks. (Associated Press, 1995a: A6).

A prevailing mood of crisis over the alleged widespread availability of Internet-based pornography stretched well into the late summer months of 1995. For example, when Calvin Klein Inc. was forced to withdraw an advertising campaign that used teenaged models in suggestive poses, frustrated former executives with the company blamed the “tenor of the times” - particularly the *Time* cover story on “cyberporn” - as a reason why critics had likened their campaign to child pornography (Goldman, 1995: A13). Concurrently, police spokespeople continued to emphasize the “explosive” and “shocking” nature of the problem, while reports of raids, arrests and indictments across Canada, the United States and around the world continued to be commonplace (e.g., Steed, 1995b: A1). In effect, the overall pervasiveness of online pornography was now being treated as a given and - despite periodic oppositional statements made by Internet experts, the general public and online users, in columns,⁶⁷ opinion pieces and letters to the editor - many journalists seemed far more interested in highlighting the phenomenon’s sensationalistic dimensions (e.g., Christmas, 1995: A5).

At the same time, however, some journalists were starting to discuss ways in which Internet users could cope with online pornography. As table 6.8 reveals, between the year’s second and fourth quarters, print media endorsements of government-sponsored

⁶⁷ An example of this story type is a syndicated column by Microsoft Inc. CEO Bill Gates from late September in which he argues that self-regulation and parental control are the best strategies to protect children from adult-oriented content (1995: 42).

regulatory prescriptions decreased in frequency from 30% to 11%, while support for self-regulatory alternatives increased from 40% to 56%.

[insert table 6.8 about here]

Examples of self-regulatory story topics from the second half of 1995 include: articles on Internet screening services such as *Net Nanny*, *Surfwatch*, *Cyber Patrol* and the *Platform for Internet Content Selection (PICS)*; reports of companies or schools launching “pornography-free, profanity-free” computer services (e.g., Eng, 1995: I4); and, finally, reports of schools and universities introducing Internet codes-of-conduct or other self-regulatory measures (e.g., Dempster, 1995: A1).

As 1995 came to a close, signs of the road ahead seemed mixed for those individuals seeking to quell the media-fuelled Internet pornography panic. For example, in late November, in accordance with the anticipated passage of the CDA and its own policy against the “use of obscene or vulgar language,” America Online (AOL), an American online service provider, banned use of the word “breast” (Associated Press, 1995b: H10).⁶⁸ Then, in mid-December, over 60 civil rights groups from the United States and around the world announced a “National Internet Day of Protest” aimed at legislators working on the Communications Decency Act (Reuters, 1995c: E4). As a spokesperson explained: “Outrageous proposals to censor the Internet demand that the Internet community take swift and immediate action. We must stand up and let Congress know that we will not tolerate their attempts to destroy this medium” (1995c: E4). These two

⁶⁸ A few days later, however, the company reversed its decision and admitted that it had made a mistake (Associated Press, 1995b: H10).

Table 6.8
Suggested prescriptions of Canadian print media stories on Internet pornography
by monthly quarters

January - December 1995

(multiple response; 164 valid cases; 193 prescriptions)

(percentages = # of prescriptions / total # of stories in which prescription mentioned)

Story prescriptions for online pornography					
Monthly Quarter	Gov't legislation	Existing laws working/adequate	Self-regulation	Oppose/not possible	Total number of stories
	%	%	%	%	
January - March	12	62	42	12	26
April - June	30	8	40	40	40
July - September	23	26	52	19	62
October - Dec.	11	25	56	17	36
Overall	20	27	48	23	164

events sharply illustrate the way alarmist print media rhetoric was impacting key actors during the second half of 1995. For AOL's decision-makers, fear stemming from alarmist media rhetoric was prompting knee-jerk, preemptive measures; whereas, for activists against Internet regulation, fear was fuelling an organized resistance.

In early December, a Congressional subcommittee in the United States voted in favor of the final version of the CDA, with its passage into law slated for early February 1996 (London, 1995: A1). Then, on December 29, in a move marking the first known example of government censorship of Internet content, the American-based online service provider, CompuServe Inc., suspended member access to 200 sexually-themed USENET newsgroups in response to a German government request (*The Globe and Mail*, 1995b: B13). Two days later, the Amsterdam-based Internet service provider, *xs4all*, shut off a subscriber's access after he allegedly uploaded several hundred sexually explicit images of children (Associated Press, 1995; I4). Canadian print media coverage of these two events reached heights unparalleled since July (see table 6.2); in addition, feature-length cover stories appeared at rates unseen at any point in 1995 (see table 6.6). It was official: the Internet pornography panic was no longer limited to the North American context. It had spread to the international stage.

As the moral panic over Internet pornography entered its second calendar year, Canadian, American and international print media attention continued to escalate, with a heightened interest in happenings in the European and Asian context. As table 6.1 reveals, despite a proportionate drop in the total number of stories, the overall number of stories in 1996 to address online pornography increased, both in Canada and the United States. At

the same time, though, following from thematic shifts first observed in the second half of 1995, print media coverage in the new year was characterized by a decline in support for government-sponsored Internet regulations and a growing interest in self-regulatory alternatives. As a result, upon the signing of the CDA into law in early February, and a subsequent Philadelphia District Court ruling in mid-June 1996 which ruled the Act unconstitutional (described in detail in chapter IV, part A), the print media's agenda-setting rhetoric shifted away from government-sanctioned prescriptions to an ever-expanding array of self-regulatory alternatives. In the wake of this new emphasis, alarmist print media coverage subsided considerably and, by late 1996, the Internet pornography panic was all but over.

E. The Internet Resistance

As a strategy to illuminate its characterization on the public stage, the preceding section deliberately emphasized the Canadian print media's role in shaping the rise of the Internet pornography panic of 1995. At the same time, this focus was also used to draw attention to representation rates that particular societal sectors received as the drama unfolded. Indeed, as table 6.6 reveals, although expert, police and government spokespeople were generally well represented by the print media at particular stages of the debate - with overall citation rates of 28%, 16% and 14%, respectively - the opinions of the general public and online users were offered in fewer than 10% of all stories. But this does not necessarily mean that these actor groups were inactive players in the process. On the contrary, while the mainstream print media were advancing their versions of events

and issues, a powerful and well organized online resistance movement, with representatives from a diverse range of societal sectors, was actively debating and devising strategies - not only to counter alarmist print media rhetoric - but to resist emergent government efforts to regulate online content and activities. Using information collected from relevant Internet sources, this section reviews key aspects of the online resistance that arose in the wake of *Time's* "Cyberporn" cover story.

1. **Chronology of Key Events**

At the same time as the mainstream media were fuelling a full-blown panic over the apparent dangers of Internet pornography in mid-1995, something remarkable was happening on The Well, an Internet-linked, computer bulletin board system based in Sausalito, California. Journalists, writers, scholars, activists and other system users were critiquing *Time's* "Cyberporn" story - and the Carnegie Mellon University study by Martin Rimm on which it was based - line by line, statistic by statistic, for all to see. Moreover, because Philip Elmer-DeWitt (author of the *Time* article) was also a Well subscriber, he, too, was drawn into the debate.

It began innocently enough. On June 23, a participant in The Well's Media Conference noted that *Time* would soon be publishing a story on pornography and the Internet based on Rimm's findings (Thomas: Message #2).⁶⁹ Voices of dissent and

⁶⁹ A transcript of The Well's Media Conference debate over the *Time* "Cyberporn" cover story is available from *HotWired* at: [<http://www.hotwired.com/special/pornscare/well/>]. In total, 895 messages were written between June 23 and July 6, 1995. References to this transcript represent the numeric value of the message cited.

declarations of imminent disaster were immediate. Donna Hoffman, an expert on Internet traffic patterns, warned that *Time's* story was "going to be a true disaster for defenders of the Net as-we-know it." Based on what she knew of Rimm, his research, she contended, was "Reckless . . . with the potential to impact public policy" (#5). Others concurred, but as one user observed, *Time's* report would "give it a great deal of exposure and credibility . . . whether it's credible or not" (Schwartz: #4). Elmer-DeWitt, however, was quick to defend his story; he replied, "I'm not sure you can dismiss the research as reckless before you've read the study" (#17)

Over the next two days, details surrounding Rimm's research started to surface. Most notably, Mike Godwin, head of the Electronic Frontier Foundation, posted a draft of the study's abstract that he had previously received from Rimm (#26) (see Appendix D). Media conference participants were appalled. The abstract made sweeping claims regarding the apparent variety and availability of online pornography, thus advancing the impression that it was a pervasive aspect of the online sphere. One observer proclaimed: "Is this actually going to be a cover story . . . ? Good lord. I can't believe this publication would stoop to feeding such a huge shovelful into the Great Internet Panic" (Wheeler: #29).

On June 25, a text version of Elmer-DeWitt's story appeared on America Online. Initial reactions ranged from warm to complete outrage. Howard Rheingold, author of two books detailing life in the online sphere,⁷⁰ remarked that "The story is competent, fair, balanced, and intelligent" (#77). Similarly, Jim Thomas, a professor of sociology at

⁷⁰ *Virtual Reality* (1991) and *The Virtual Community* (1993).

Northern Illinois University, observed that “The cover story is nothing to get upset about. In fact, it’s simply trite . . . nothing new here. What I find most disturbing is his uncritical use of the Rimm study as a . . . teaser, to anchor his discussion” (#61). By contrast, Jon Glass declared: “I’d have to say it **is** a quite a big deal. The first several paragraphs are breathless and dire. . . [This] piece can easily be imagined to help [Congress] and the [religious right] in their drive to regulate the net, I can’t understand how Phillip [sic] could write this piece of ‘journalism’” (#64). Along a similar vein, Brock Meeks, a veteran Internet journalist, proclaimed: “Philip’s story is an utter disaster and will damage the debate about this issue because we will have to spend lots of time correcting misunderstandings that are directly attributable to the story” (#88)

After *Time*’s print version hit North American newsstands on June 26, the debate over the story’s potential impact and far-reaching implications took a new twist. Upon seeing the feature’s sensationalistic artwork, Jon Glass declared: “I’d have to say that the over-all effect is **much worse** than I previously stated. This is shameless, low-down-dirty-gutterball-sleazoid-pandering-to-our-worst-fears-crap, masquerading as journalism” (#89). Meeks and several others concurred and started picking apart Elmer-DeWitt’s presentation of Rimm’s findings. “You could **easily** have started your story with: ‘The first ever exhaustive study of pornography on the Internet found that only 3% of all information trafficked . . . contains material of a sexual nature.’ Not quite the ‘hook’ though, is it?” argued Meeks (#101).

In response to a rising barrage of angry accusations and condemnations, particularly from Godwin and Meeks, Elmer-DeWitt did try to defend his story. He

explained: "this study was going to get covered whether I did it or not. It wasn't an easy story to write for a lot of reasons . . . I did the best I could. You can blame me if it makes you feel better . . . sometimes the facts do play into the hands of [anti-pornography] activists" (#96). But this defense did little to calm nerves. Aaron Dickey, an Associated Press reporter, noted that he had been asked by co-workers "_three separate times_ where to go on the net to get porn . . . all because they saw *Time* . . . [T]his means the AP's about to jump on the cyberporn bandwagon with a nice series that will run in papers all over the country," bemoaned Dickey (#100). Meanwhile, another user reported that her mother, "a brilliant woman . . . but not all that savvy about the Net" expressed "confusion and concern" after reading the *Time* article. She lamented, "My mother's the type of person to re-read something . . . Most casual readers of *Time* aren't going to be so thorough. *Time* has done an enormous disservice to . . . online communications" (Wheeler: #108).

On June 27, Elmer-DeWitt, Godwin, Rimm and Ralph Reed of the Christian Coalition appeared on the ABC news program *Nightline* to discuss Internet pornography and the proposed Communications Decency Act. The taped lead-in focused on Rimm's study and the apparent finding that children could easily access online pornography. Thereafter, Godwin was given a chance to voice his concern over the study's design, validity and overall applicability to the online sphere. However, as he reported afterwards, "I doubt it made a difference -- ABC guys aren't terribly interested in hearing nerds talk about statistical inference" (#197). Well users concurred. While they were generally pleased with Godwin's performance, many were annoyed by the story's overall packaging.

As Jon Glass observed: "It seems we accurately predicted the effect of the Time article; it made this a national story, and it heavily slanted the view of the Internet as a porn palace, and . . . played right into the Christian Coalition's agenda" (#264)

2. Resistance Strategies and Consequences

The same day that the *Nightline* report was broadcast, Well users began discussing strategies to counter the mounting panic over Internet pornography. Suggestions ranged from sending letters to magazine and newspaper editors, to writing an op-ed piece for the *New York Times* "that really speaks to these . . . issues" (#210). Then, on June 28, the full text of Rimm's *Georgetown Law Journal* article, "Marketing Pornography on the Information Superhighway," appeared on the Web. Almost immediately, David Post, a visiting professor with the Georgetown University Law Center, issued a scathing "preliminary discussion" of its methodological peculiarities. Six days later, Donna Hoffman and Tom Novak, professors of management at Vanderbilt University, posted an equally critical analysis on their "Project 2000" Web page, a research site devoted to marketing issues in computer-mediated environments.

In the ensuing days, dozens of other online users started circulating their own critiques of Rimm's study. While many were posted on The Well and in the USENET's *alt.internet.media-coverage* newsgroup, others were uploaded to personal Web pages around the world. To facilitate user access to these documents, Hoffman and Novak created a Web site where links to critiques, print media coverage, relevant activist

organizations and information on proposed government legislation were listed.⁷¹

Similarly, *Wired* magazine's online Web presence, *HotWired*, launched "JournoPorn" where details of the "Great Internet Sex Panic" were summarized and critiqued by prominent actors in the debate.⁷²

As the Internet-based outcry over Rimm's study and the *Time* article gained further momentum, the assault against Elmer-DeWitt in The Well's Media conference continued unabated. Although Elmer-DeWitt was now acknowledging that he had been warned of the study's potential weaknesses, he steadfastly refused to admit that it was "fatally flawed or a 'fraud'" (#401). Well users, however, felt differently. On July 3, David Kline, a freelance writer and columnist with *HotWired*, noted that "The real issue which Phil has not digested is this: Time was preparing a cover story it knew could have a major impact on a . . . debate . . . which could shape the character of . . . free-speech guarantees for decades to come . . . [H]e and Time had a duty to conduct what I call journalistic 'due diligence'" (#685). For Elmer-DeWitt, this accusation was the final straw. Shortly thereafter, he confessed: "I think he's put his finger on precisely where I screwed up" (#688).

Around the same time Elmer-DeWitt was admitting his mistake on The Well, several actors affiliated with Rimm's work were moving quickly to distance themselves from the study. For example, Carolyn Speranza, a CMU lecturer who Rimm acknowledged, informed USENET readers that she had been given credit "without my

⁷¹ See [<http://www2000.ogsm.vanderbilt.edu/cyberporn.debate.cgi>].

⁷² See [<http://www.hotwired.com/special/pornscare/>].

knowledge or consent” (Platt, 1996). Similarly, Adam Epstein, another apparent contributor, posted a Web page in which he lamented: “I’d like to be able to say this is completely untrue . . . I did unfortunately write a few primitive . . . scripts which Mr. Rimm presumably used to sift through the data . . . If I had been fully aware of its nature, I certainly wouldn’t have had anything to do with it.” And, finally, Brian Reid, whose USENET tracking methods were replicated by Rimm, declared: “Every professional is going to vomit when they see this study” (Platt, 1995). “The writer appears . . . not to have a glimmer of an understanding of basic statistical measurement” (Reid, 1995b).

By mid-July, details of Rimm’s background started surfacing across the Internet. For example, one user discovered that Rimm conducted a survey at his Atlantic City high school in 1981 which purported that 64% of his classmates had illegally gambled at the city’s casinos (Thomas, 1995). Widely circulated, these findings later prompted the New Jersey legislature to raise the gambling age from 18 to 21. Even more damaging to his credibility, however, was the revelation that he had previously published a book entitled *The Pornographer’s Handbook: How to Exploit Women, Dupe Men & Make Lots of Money*. While Rimm called it “satire,” online critics viewed it as a practical guide for computer bulletin board operators seeking to market pornographic material for profit.

By late July, with evidence undermining Rimm’s credibility reaching a critical mass in the online realm, *Time* magazine and Philip Elmer-DeWitt were forced to revisit the “Cyberporn” cover story in a one-page article. “Serious questions . . . regarding the study’s methodology” have been raised, explained Elmer-DeWitt, but because “*Time* was constrained by exclusivity terms” imposed by the *Georgetown Law Journal*, outside

readers were prevented from seeing the study before the story was released. Then, in a blatantly transparent effort to paint *Time* as a victim of the resultant panic surrounding its own coverage of the study, Rimm's "colorful" and recently exposed past was reviewed. At no point, however, did Elmer-DeWitt repeat his online admission that he had "screwed up" by taking the Rimm study at face value.

Further embarrassments would soon follow for Rimm. Most notably, the U.S. Senate's judiciary committee on children and computer pornography rescinded an invitation for his testimony at its hearings in late-July. And, soon thereafter, Carnegie Mellon University formed a Committee of Investigation to determine whether undergraduate credit Rimm had received for his study should be revoked given the "substantial criticism . . . on the [its] scholarship and the methods by which the data were acquired and used" (Platt, 1996).

In his assessment of the Internet "porn polemic," Scott Rosenberg (1995), a *San Francisco Examiner* staff critic notes that "Getting the Big Media to present alternative points of view can be a tough proposition" at the best of times. For this reason, *Time's* mainstream exposure of Martin Rimm - despite its disingenuous strategy to distance itself from a mess of its own making - was a watershed moment for defenders of the online medium. In the months that followed, concerned Internet users launched dozens of online resistance movements and campaigns across North America and around the world. The message was clear. Users of the online medium were no longer prepared to sit back and quietly tolerate the circulation of alarmist allegations regarding its dangers. Moreover,

they had an effective means to mount a well organized and highly sophisticated counter-offensive to speak in their own defense. The online medium had come of age.

F. Discussion

This chapter's case study has reviewed the actions and motivations of key actors and societal segments who were involved in a media-fuelled moral panic over Internet pornography that erupted in July 1995. In doing so, many of the factors underlying the panic's construction and perpetuation have been extensively illuminated. Most significantly, through evidence gathered from a content analysis of applicable Canadian print media stories from 1995, it has been demonstrated how the panic was fuelled - and triggered - by sensationalistic print media rhetoric which reinforced and reified the apparent hazards of online pornography. Moreover, it has been revealed how the panic was maintained by the alarmist declarations of actors from media, police, government, expert and activists circles who were less interested in an outright elimination of pornography and more concerned with the enforcement of existing laws and/or the creation of new laws or strategies to protect children from gaining easy access to such materials. And, finally, through the reconstruction of an Internet resistance movement, it has been seen how users of the online medium - an actor group that was largely excluded from mainstream characterizations of the debate - mobilized themselves to reshape, combat and quell aspects of the panic's media-fuelled rhetoric.

But was the Internet pornography panic in fact a *moral panic* as characterized by Cohen (1972), Ben Yehuda (1986) and Goode and Ben Yehuda (1994)? Goode and Ben-

Yehuda list three criteria that must be met if an anti-pornography movement is to be labelled a moral panic (1994: 45-47). First, its adherents should be motivated by protectionist and rational fears of concrete, objectively determinable harm that they attribute to pornography. Second - even in the *absence* of clear-cut evidence - its proponents should consistently emphasize that pornography is in fact *causing* concrete harm. And, third, its advocates' characterizations of the phenomenon should consistently distort, or exaggerate, its true nature and scope. Given that aspects of all three of these criteria were regularly evidenced in this chapter's case study, it appears, then, that the Internet pornography panic of 1995 was a moral panic.

Furthermore, following from Cohen's inventory of components underlying a moral panic's onset, additional evidence serves to support and reinforce the above conclusion. For example, via exaggerated and distorted news media accounts, the issue of online pornography was presented as an imminent threat to children, families and "traditional" societal values. In addition, through the use of alarmist and sensationalistic reporting methods, isolated incidents (e.g., the arrest of a pedophile; the seizure of a computer system containing pornographic materials) fostered the creation of "folk devils" (e.g., online pedophiles; purveyors of online pornography) which, in turn, helped to further justify the apparent need for new laws and/or new enforcement resources. Moreover, through the repetition of inaccurate, unsubstantiated or decontextualized evidence made by seemingly credible middle and elite-level actors, the mainstream media's agenda-setting influence sharply delineated the moral boundaries of "right" and "wrong." And, finally, through their selective use of disaster rhetoric, the media - in conjunction with moral

entrepreneurs such as the police, government spokespeople and particular anti-pornography activists - successfully predicted, triggered and intensified a widespread crisis.

Thus, guided by the above findings stemming from this chapter's application of the principal tenets of moral panic theory, this section concludes with a more considered exploration of contributions made by specific actors and societal segments who were involved in the Internet pornography panic of 1995. As such, the media's impact on particular grassroots, middle and elite-level actors who were involved in the panic will be further illuminated, thereby supporting chapter V's assertion that moral panic theory would benefit from a unified theoretical approach for making sense of the phenomenon. In addition, based on evidence gathered from this chapter's chronology of the Internet resistance movement, it will be argued that the online realm is a communicative context - previously unobserved by moral panic theorists - where actors from disparate societal levels may converge to discuss and effectively combat mainstream media rhetoric underlying a moral panic's outbreak.

In their study of American anti-pornography movements of the late 1960s, Zurcher and Kirkpatrick observed that anti-pornography crusades sometimes "escalate into a more intense and complex mobilization for action" if its leaders perceive sufficient community support (1976: 327). Supportive agents can include the media, the police and politicians. The movement against Internet pornography mirrored this process from its earliest days. For example, during the first six months of 1995, the print media frequently echoed police spokespeople's concerns regarding an array of potential harms associated with online

pornography (see table 6.6). In doing so, an association between the apparent pervasiveness of pedophiles, child pornography, other forms of pornography and the online realm was successfully reinforced. These negative impressions helped the print media to control the debate's interpretive agenda on the public stage. In addition, this tactic enabled the police to report subsequent increases in public complaints and community outrage across North America and around the world.

Whether alleged increases in public complaints over online pornography were genuine, however, is unclear. What is clear, though, is that manifest grassroots concerns were minimal, at best, during the early stages of the crisis. For example, it was mentioned earlier that despite a complete absence of sexual assaults via computer network contacts, the Canadian print media reported that some police forces started to investigate the possible use of the online context by pedophiles since "this is definitely how pedophiles have been making contact with kids" (Bula, 1993: A1). Concurrently, these, and other, print media accounts regularly accentuated the frustrations of police spokespeople who claimed that a lack of computer skills and resources was impeding their enforcement efforts. These statements highlight how the police shaped and exploited the prevailing media discourse in the months leading up to panic's outbreak. Thus, in much the same way that Ben-Yehuda (1986) found that the police shaped the Israeli drug panic of 1982, it seems that these actors were seeking to construct grassroots support, less out of a sense of moral or ideological outrage - or a pressing need to combat a measurable presence of criminal acts in the online sphere - and more so out of a desire to meet material and status interests for technologically sophisticated enforcement skills and mechanisms.

What is also clear regarding alleged increases in public complaints over the availability of online pornography is that the print media defined and diffused this impression through repeated generalized accounts of community outrage and fears. For example, comments such as “the dark side of the Net has people worried (Caragata, 1995: 50) and “parents and teachers are up in arms” (Elmer-DeWitt, 1995: 32) were typical throughout the first six months of 1995. But were these apparent concerns accurate representations of the public mood? While it was beyond the scope of this chapter’s case study to survey public opinion, whether these agents’ worries were genuine or widespread is, to some extent, irrelevant. Indeed, since the police were more likely motivated by material and law enforcement interests, their alarmist statements of moral outrage, as echoed via a cooperative print media, were little more than a means to an end. Thus, taken together, these considerations strongly suggest that the moral panic over online pornography was a construct that gained momentum through the actions of middle-level actors such as journalists and law enforcement officials. In turn, these factors highlight the agenda-setting role that the media played in defining and shaping the parameters of the moral panic during the months prior to its full-blown outbreak.

This chapter’s examination of story placement and rhetoric illuminates another way in which the media shaped the discourse of the Internet pornography panic. Although Canadian print media cover stories were relatively uncommon during the first six months of 1995 (see table 6.7), table 6.9 reveals that those that did appear through the course of the year were far more likely to use alarmist rhetoric to reinforce the apparent dangers of the online medium.

[insert table 6.9 about here]

For example, whereas 73% of front page stories collected for this chapter's content analysis alleged a connection between the Internet and child pornography, just 36% of articles published inside newspapers made similar associations. Similarly, while 61% of all front page stories stressed the need to protect children from apparent Internet dangers, fewer than 40% of articles found inside newspapers made comparable assertions. And, finally, while 20% of all newspaper cover stories made a connection between pedophiles stalking children online, just 13% of articles published inside newspapers made similar allegations.

Compounding the agenda-setting and meaning-making potential of alarmist cover story rhetoric, was the fact that many of these same articles were headed by statements such as "Kiddie porn nearly impossible to trace" (Bindman, 1995: A1) and "Perils of cyberspace: Chat lines used to lure children" (Murphy, 1995: A1). Following from Cohen's (1971) characterization of moral panics, it is through this reporting style that the print media, in conjunction with the leaders of a moral crusade, often create folk devils. In this case, repeated unsubstantiated allegations connecting online pornography with an immediate threat to the "innocence" and safety of "our" children created two folk devils: purveyors of online pornography and online pedophiles who stalk/lure children. For this reason, upon the panic's full-blown outbreak in mid-1995, the alleged existence of Internet folk devils was a well-established, "factual" component of the online pornography phenomenon. Cohen lists two factors that help explain why the print media regularly opt

Table 6.9
Placement of Canadian print media stories on Internet pornography by story rhetoric
January - December 1995
(227 valid cases)
(percentages = # of cases / total # of stories)

Story Placement	Story Rhetoric/Story References			Total number of articles
	Child Pornography %	Pedophiles luring children %	Protecting children %	
Cover	73	20	61	15
Cover, inside section	53	12	41	17
Inside newspaper	36	13	39	195
Overall	40	13	40	227

for this reporting style. First, it would have benefited their publications to be seen acting as moral/societal watchdogs, crusading for what is morally “right” and, second, it would have helped increase circulation and overall revenues (1972: 16-17).

Politicians endorsing government-sponsored prescriptions to curtail Internet pornography was a third actor group that was frequently cited by the print media during the first two quarters of 1995 (see table 6.7). While this elite-level, societal segment did not lay the panic’s initial foundation, moral entrepreneurs from this sector entered the debate at a critical juncture, thus contributing a key building block. In early 1995, with the apparent dangers of the online medium well established in the public eye, and police frustration over the apparent lack of enforcement resources gaining regular print media attention, it was perhaps inevitable that legislators would take notice. The proposed Communications Decency Act in the United States was the most notable manifestation of this reaction. For supporters of the CDA who were facing re-election in 1996, the issue was an ideal platform; however, for those against the Act, it created an awkward dilemma. How could one possibly oppose a bill designed to protect children without appearing callous or “soft” on pornography in the eyes of one’s constituents? For this reason, when Senator Bob Dole - who was expected to be the Republican’s presidential candidate - was seen championing the CDA’s cause through his co-sponsorship of “The Protection of Children from Computer Pornography Act of 1995,” many of his Democratic opponents, including President Bill Clinton, had little choice but to fall in line to protect their primary status interests: re-election. Moreover with so many other Senators and Representatives in similar positions, it is little wonder, then, as we noted in chapter IV, that the CDA

passed through Congress in January 1996 by a vote of 441-6 in the House of Representatives and 91-5 in the Senate.

But there was much more to the Communications Decency Act and its stated intent to outlaw the distribution of online pornography to young people than the material and status interests of American politicians seeking re-election. While less apparent for those observers whose understanding of the Internet pornography debate was constructed largely through print media accounts of key events, the CDA - and those government agents who supported it - was notably influenced by the agendas of particular anti-pornography activists. For example, this chapter's chronology of key events (as reported by the Canadian print media) noted that the Christian Coalition entered the debate upon their introduction of "The Contract with American Families" near mid-1995; however, a little-known fact uncovered by Jonathan Wallace, an online activist who participated in the Internet resistance movement, offers additional insights. Bruce Taylor, a lawyer with the National Law Center for Children and Families, who is also affiliated with the Christian Coalition, helped draft the CDA. In doing so, notes Wallace (1995), Taylor worked behind the scenes to advise Senator James Exon, the conservative Democrat who first introduced the CDA in February 1995. Had the present analysis focused exclusively on the mainstream media's characterization of the Internet pornography debate, these dealings would not have surfaced. However, by having included relevant online sources stemming from the Internet resistance, the role certain activists played in guiding political interests has been extensively illuminated. This finding underscores the need for moral panic theorists to consider the inter-relationship between actors from different societal

levels within a unified analytical framework. Moreover, it shows how the online medium can upstage the traditional media's interpretative agenda and give a stronger voice to those actors who have been marginalized or excluded. Furthermore, it highlights the communicative potential of the online realm, a societal segment/analytic unit previously unobserved by moral panic theorists.

Aside from the apparent moral interests of particular activists, it is apparent that actors from middle and élite-level societal sectors also played off their respective positions for political reasons during the early stages of the panic. To borrow from Ben-Yehuda's qualification of drug abuse (1986), online pornography was an "easy enemy" that could be used in the moral panic as a boundary maintenance vehicle in a clash between opposing moral universes. In this instance, politicians seeking re-election used the negative moral overtones and rhetoric of the online pornography debate to advance their own political objectives. Concurrently, these same overtones were an effective mechanism for agents of the religious right to promote their various organizations on the national stage and advance their political interests, namely, traditional family values. Thus, like the middle-level interests represented by the print media and the police, the interests of politicians and the religious right in the moral panic over Internet pornography had far less to do with a sense of moral outrage or righteousness than with particular material interests and desired status gains. As such, it may be argued that the focus on Internet pornography was not a random choice. The timing of the moral panic benefitted certain middle- and élite-level political interests.

Not all interests in the moral panic over Internet pornography, however, were political. For example, the content analysis of Canadian print media articles revealed that Internet “experts” were regularly represented throughout 1995. Initially, some of these agents, particularly Internet service providers, futurists, scholars and authors, were used to counter some of the alarmist rhetoric that was fuelling the panic. However, given the prominence of credible and authoritative voices from government, judicial and enforcement sectors who were dominating the mainstream media’s characterization of issues and events on the public stage, these opinions did very little to change the overall substance of the debate. By mid-1995, however, as the panic reached its pinnacle, authoritative voices advocating government regulation started to drop out of the media spotlight (see table 6.6). Timing helps explain this thematic shift. Governments were in summer recess, but the debate over Internet pornography was, like the season itself, getting hotter with each day that passed. Therefore, with an absence of as many credible/authoritative voices, the door was open for other voices of “reason” - particularly middle-level actors - to stake a claim in the debate.

The middle-level actors who gained the greatest print media attention during the second half of 1995 were computer industry experts such as software developers, business leaders and technology consultants, who advocated an array of self-regulatory alternatives (e.g., screening and filtering software). These agents claimed that their innovations would protect free expression and pre-empt the U.S. Congress’ “draconian” and unconstitutional legislation. However, upon closer examination, the transparency of these seemingly benevolent assertions comes clear. Most self-regulatory alternatives require the purchase

of a computer program as well monthly subscriptions fees, and none, despite the software industry's long history of "freeware" and "shareware," were released for free, or at a low cost, into the public domain.⁷³ Thus, these middle-level agents' apparent oppositional moral outlook and altruistic disposition was in fact a shrewdly designed means to not only to profit from grassroots concerns and fears over online pornography, but to counter legislative efforts to regulate the online medium. In effect, these agents were playing both sides of the same coin. Indeed, maintaining a public perception that online pornography was rampant was as much in their interests as it was to prevent legislators from implementing new laws that might curtail potentially lucrative, and long-term, economic gains from an unregulated communications market.

While police, government and particular expert voices were regularly represented by the print media at various stages of the debate over Internet pornography, this chapter's content analysis has also revealed that several other actor groups - such as users of the online medium and anti-pornography activists - were far less frequently included in the debate. But this does not necessarily mean that these actors were inactive or entirely excluded. On the contrary, as this chapter's reconstruction of the Internet resistance movement has illustrated, certain grassroots agents were extensively involved and many worked side-by-side with influential middle-level actors - such as anti-censorship activists, online journalists and academics - to devise strategies to counter sensationalistic rhetoric that was fuelling the moral panic over online pornography. In the process, these actors

⁷³ For example, when computer viruses became a widespread issue in the late 1980s, several screening programs were released at little, or no cost, into the public domain.

successfully discredited Martin Rimm, his study and the *Time* magazine article that it inspired. In turn, this unified online resistance forcefully compelled *Time* to print a partial retraction and led to a series of public embarrassments for Rimm, including the revocation of an invitation to testify as an expert at the U.S. Senate's judicial committee on Internet pornography.

The study of the Internet resistance movement against the mounting moral panic over online pornography has also revealed that it was, to some extent, a small-scale counter-panic. During the months prior to the panic's full-blown outbreak, online users generally discounted sensationalistic media coverage and summarily dismissed such reports with little consideration for their far-reaching implications. The online context was their private domain, situated outside traditional notions of territoriality, space and time; therefore, its regulation seemed to be an unrealistic and improbable eventuality. However, as the media-fuelled rhetoric surrounding the apparent dangers of Internet pornography evolved between the early 1990s and mid-1995, activist groups, such as the American Civil Liberties Union and the Electronic Frontier Foundation, cautioned that the issue was starting to negatively impact poorly informed agents across the societal spectrum. But these warnings were largely ignored by most online users until *Time*'s "Cyberporn" cover story hit North American newsstands in late June 1995. Thereafter, in the same sense that the *Time* story was the flashpoint for a large-scale, moral panic over the alleged availability of online pornography, it was a catalyst for a smaller-scale counter-panic, which, in turn, gave rise to the Internet resistance movement.

The online resistance to the media-fuelled mainstream panic, however, was not in itself a “moral” panic. While it did have its own folk devils, such as Martin Rimm, Philip Elmer-DeWitt, particular government legislators and outspoken anti-pornography advocates from the religious right, it was primarily a movement that served to sharply delineate the moral boundaries between the universes of those in favor, or against, strict regulation of the online medium. Moreover, it was also a wake-up call which forced users of online contexts across North America and around the world to admit that their medium - despite its extraterritoriality - was hardly immune to the disparate interests and agendas of various moral watchdogs, moral entrepreneurs, agents of social control and policy makers. And, finally, it was a natural focal point that could be used to justify, mobilize and unify a concerted and well-organized online resistance movement.

The long-term repercussions of the Internet resistance movement are difficult to gauge. It is clear that these agents were effective in their initial efforts to discredit key actors in the debate. At the same time, though, their overall impact on print media representations and grassroots perceptions of the medium is questionable, at best. While it is true that there was a measurable shift in print media coverage toward self-regulatory strategies during the second half of 1995 (see table 6.8), stories relating sensationalistic aspects of police or government enforcement initiatives continued to dominate most cover stories. Thus, even in the months after the panic’s outbreak, and despite the concerted efforts of the online resistance movement to counter alarmist media rhetoric, the print media were still prioritizing stories involving actors seeking state-sanctioned legislation above articles offering self-regulatory alternatives (see table 6.5).

Further evidence lending support to the apparent damaging impact of the print media's representation of sexually explicit content in the online medium is not hard to find. In the months following the publication of *Time's* "Cyberporn" article, the print media regularly made direct or indirect references to Rimm's questionable survey findings (e.g., 14 of 40 Canadian print media stories in July 1995). Some journalists did cite experts who critiqued their validity, but many others tabled the survey results - often in a decontextualized manner - to reaffirm or bolster arguments regarding the apparent pervasiveness of online pornography. Even more troubling is that Rimm's fallacious survey results are still being repeated well over two years after they were first discredited. For example, the October 1997 British edition of *Cosmopolitan*, a magazine aimed at young women, notes in an article on Internet activities that "It's estimated that 80 percent of the World Wide Web is devoted to porn - a virtual sleaze fest" (Gill & Slater: 178). This particular citation highlights one of the most damaging and lasting consequences of misinformation that fuelled the Internet pornography debate. In addition, it demonstrates the way in which particular media rhetoric has been distanced from its original source through its gradual spread from the national to the international stage.

The spread of the moral panic to the international stage has also been extensively illuminated through this chapter's use of Canadian print media news sources. While it is clear that the panic arose in parallel in the United States and Canada between 1993 and 1996 (see table 6.1), it is equally apparent that the sensationalistic rhetoric that shaped early American print media coverage and policy debates flowed freely into the Canadian

context and extensively influenced its own debate.⁷⁴ For example, prior to the panic's full-blown outbreak, Canadian police officials, government spokespeople and the print media regularly cited alleged online criminal acts committed in the American context to justify their own calls for new laws or more sophisticated enforcement resources. Moreover, in the wake of key American events, such as the introduction of the CDA in early February, Jake Baker's indictment in late February and the publication of *Time's* "Cyberporn" cover story in late June, not only did Canadian coverage of the online pornography phenomenon show notable increases (see table 6.2), but particular stakeholders in the Canadian debate started echoing the perspectives of certain American policy-makers, interest groups and anti-pornography activists. Thus, to a great extent, this chapter's focus on the Canadian print media's coverage of key events has been a useful way to recontextualize the Internet pornography debate. Furthermore, it has facilitated a more textured examination of the extent to which agents from the American scene impacted actors, ranging from the grassroots to the elite level, as the moral panic over the apparent dangers of Internet pornography spread to the international stage.

Despite this chapter's discouraging findings with respect to the print media's role in fuelling public fears and concerns over Internet pornography, it is evident that the online resistance movement that it spawned also played a key role in restructuring the debate's media-fuelled interpretive agenda. Since mid-1995, Internet activists have worked diligently to ensure that their perspectives be included in the debate. For example,

⁷⁴ Nearly 25% of all Canadian print sources used for the present analysis were from American wire services. See Appendix C, Part B, for a summary of story sources.

representatives of the American Civil Liberties Union and the Electronic Frontier Foundation, two activist groups involved in the initial resistance movement, testified before the Senate's subcommittee hearing on Internet pornography in July 1995. In addition, as detailed in chapter IV's review of the CDA's aftermath, these, and other, online activists and users, have since been involved in court cases launched to challenge the CDA and similar state-level legislation. And, finally, numerous online activists groups (e.g., The Center for Democracy and Technology; Peacefire), journalists (e.g., Steven Levy; Brock Meeks; Jon Katz) and online users (e.g., Jonathan Wallace of The Ethical Spectacle, an online free speech publication; Joe Shea, Editor of The American Journal, an online newspaper) continue to make a concerted effort to advance their perspectives to a wider audience via Internet-based publications, mailing lists and the mainstream media.

Overall, this chapter's case study of the Internet pornography panic of 1995 has shed light on how the interests and ideologies of specific societal sectors and actors have impacted the development of regulatory policies for the online sphere. In particular, it has demonstrated that - unlike previous new communications platforms - the online medium contains a hitherto unseen communicative dimension which enables its users to congregate and engage in self-reflective, multidirectional and multinational debates. This suggests that the online medium, by its very nature, affords its users the capacity to extensively challenge traditional regulatory mechanisms and processes. Moreover, this implies that legislators will not be able to sidestep or ignore the collective force, perspectives and opinions of online users. Indeed, as noted in chapter IV's review of present-day efforts by governments around the world to regulate the Internet, given the facility with which they

have been able to bypass state legislation by relocating their Web pages and Internet servers to sites in other jurisdictions, countries such as Singapore and China have so far had limited success in their efforts to fully control their citizens' uses of the medium. Thus, in the much the same sense that many sexually explicit telephone chat lines relocated to the Caribbean islands following the implementation of American "dial-a-porn" legislation in mid-1980s, it is highly likely that "data havens" for "illegal" online content will be created should governments in the United States, Canada or any other country decide to implement restrictive legislation for the online sphere.

While it is true that particular legislators are still attempting to introduce CDA-inspired legislation in the United States (see chapter IV), its government, as a whole, is no longer a leading advocate of government regulation for the online medium. Instead, it has been working with representatives from public interest, family advocacy, education, industry and law enforcement groups to develop self-regulatory strategies and standards for the online realm that would accommodate each of these groups' disparate moral, ideological, economic and status interests. For example, in early December 1997 an "Internet/Online Summit" was held in Washington D.C. Sponsored by a long list of public and private interest groups,⁷⁵ this conference included speakers, panels, workshops and an

⁷⁵ Summit sponsors include: American Library Association, Center for Democracy and Technology, Center for Media Education, Children Now, The Children's Partnership, CompuServe, The Direct Marketing Association, Disney Online, Digital Equipment/Alta Vista, Enough is Enough, Family Education Company, IBM, The Learning Company/Cyber Patrol, Microsoft Corporation, MCI Communication Corporation, NETCOM, Net Nanny, National Association of Secondary School Principals, National Center for Missing & Exploited Children, National Consumers League, National Education Association, National Law Center, Surfwatch and Time Warner.

exhibition of technological tools and educational resources available to help parents manage their children's online activities. In addition, its organizers issued a series of initiatives advocated by the summit and its participants. Most notably, was the announced creation of *Netparents.org*, a Web-based resources designed to provide informative "Resources for Internet Parents."⁷⁶

Of course, while it is unrealistic to expect that all participants were satisfied with the Internet Summit's outcome, it is clear that its overall tenor was markedly less alarmist than the media-fuelled rhetoric that has informed previous online regulation debates. This suggests that public attitudes toward the online medium are evolving rapidly, forcing oppositional interests - particularly the mainstream media, and conservative politicians and activists - to rethink their positions on Internet regulation. Moreover, it reaffirms our finding that the online medium is serving as a site through which actors from the grassroots, middle and elite societal levels may effectively counter the meaning-making and agenda-setting influences of the traditional media. This is a new phenomenon, previously unobserved by moral panic theorists and communications scholars alike. As such, this chapter's exploration of specific media rhetoric that has shaped new communications policies and public perceptions of the online medium has made an important contribution to sociological and communications discourse and has, by extension, illustrated the need for these theorists to consider the inter-relationship between actors situated across the societal spectrum within a unified framework when examining the moral panic phenomenon.

⁷⁶ See [<http://www.netparents.org>].

Given the above considerations, it is clear that policy makers and lawmakers would be well advised to continue involving representatives of the online medium in present-day debates over new communications policies for the online context. Moreover, in light of the Internet's rapid growth since the mid-1990s, it is apparent that the development of suitable regulatory strategies for the online realm will be even more difficult than it was with previous communications technologies, which, as we saw in chapter II, were - at least initially - impeded by structural or scarce spectrum limitations. Thus, with these challenges in mind, the next chapter turns to a critical examination of self-regulatory strategies that are presently being proposed, developed and used for the online sphere. Following from this chapter's findings, the array of self-regulatory prescriptions that have emerged in the wake of government efforts to regulate online communication will be described. Thereafter, the merits and drawbacks of these approaches will be discussed. In particular, it will be argued that it is premature to assume that self-regulation will in fact pre-empt government efforts to regulate the online medium. Moreover, based on this dissertation's overview of past and present-day regulatory trends, it will be contended that it is overly simplistic to assume that self-regulation will be the panacea that will preserve today's online users' apparent capacity to engage in free and unfettered expression.

VII

Conclusion

A. **Historically Situating New Communications Policy Debates**

This dissertation began by stressing the importance of situating academic inquiry within a relevant socio-historical framework. The virtue of this approach is that it has clarified the extent to which particular communicative meaning-making practices are socially constructed phenomena. Indeed, by looking at how past and present policy actors have socially constructed meaning around emergent communications technologies, we have been able to illuminate the disparate ways in which today's computer-mediated communications contexts have been conceptualized by social actors and groups seeking to advance, or reinforce, specific political, social, economic and moral interests and agendas. Moreover, we have been able to demonstrate the extent to which metaphors symbolic of past communications policies have been exploited as a means to justify repressive regulatory proposals for the online sphere. As such, a significant contribution to communications scholarship has been made.

In chapter III, using a historical method derived from the perspectives of Ithiel de Sola Pool (1983) and Dan Lacy (1996), the rise of print, common carrier and broadcast-based modes of communication was undertaken. Its purpose was to overview the development and implementation of regulatory regimes that emerged in the wake of the mainstream introduction of earlier communications technologies. To begin, the fifteenth century origins of the printing press and the subsequent evolution of print-based

regulatory policies and controls were reviewed. Although initially viewed as a positive innovation by European church and Western state authorities, it was noted that this enthusiasm soon faded as it became apparent that the mass circulation of unsanctioned biblical and political perspectives was threatening traditional power structures. This helped illustrate the print medium's capacity to disrupt dominant ideological and political frameworks. At the same time, it also served to sensitize us to the extent to which many actors and groups have sought, and continue to seek, to control the medium to benefit, or reinforce, particular ideological, moral, political or economic interests. Nevertheless, despite countless instances of print matter censorship in jurisdictions throughout the Western world, it was noted that publishing has gradually evolved from being a medium accessible and controlled by a small ruling elite, into a ubiquitous mode of mass communication, largely free from, or with the capacity to circumvent, oppressive, state-sanctioned regulatory controls.

Chapter III next turned to the rise of common carrier communications technologies. Through a review of the mid-nineteenth century introduction of telegraphic communications technologies in the North American and European contexts, it was observed that this new medium's structural properties prompted the evolution of common carrier regulatory regimes that were markedly different from those devised for print. In Europe, most nations nationalized the medium and folded it under the administrative control of their post offices; whereas in the United States, it evolved in parallel as a private sector, quasi-monopolistic enterprise. Consequently, despite their evolutionary differences, telegraphic communication matured in both contexts into services available to

all comers, with limited discrimination or content controls. This stress on the principle of nondiscrimination of service provision was highlighted as one of the most important characteristics of common carrier communication.

Along a similar vein, it was observed that the late nineteenth century introduction of telephonic communications technologies borrowed from the communicative principles established for telegraphy. Indeed, mirroring telegraphy's pre-established regulatory precedents, it was noted that European telephone services were nationalized as part of each nation's respective postal and telegraphy offices; whereas in the United States, telephony was immediately accepted as a quasi-monopolistic, private sector service. Furthermore, since legislators and courts consistently treated the medium as an extension of telegraphy, a review of numerous precedents helped us understand how common carrier principles were reaffirmed, with notable impacts on the industry's growth and structure. Yet despite this seemingly open mode of mass communication, it was also observed that state-sanctioned, common carrier regulatory regimes still implicitly endanger free expression due to the fact that such models, until recently, have ignored the implications of these communicative contexts' monopolistic or oligopolistic controls.

Finally, chapter III examined the advent of broadcast communications technologies. As with earlier communications innovations, it was observed that radio was often portrayed as a societal equalizer with the capacity to unite people across vast distances upon its mainstream introduction in the early 1920s. However, as with its earlier communicational cousins, we saw that it too did not escape government-sanctioned regulatory measures for very long. As a result, most European states nationalized radio,

either as arm's-length government enterprises, or as part of pre-existing postal, telegraph and telephone authorities; whereas in the United States, the medium was accessible to any private citizen who had the means to take advantage of the technology's communicative potential. However, due to an apparent scarcity of spectrum space, it was noted that it was not long before the American government also opted to regulate radio. This resulted in the passage of ambiguous and at times contradictory licensing legislation, that not only sanctioned specific forms of content restrictions and censorship, but paved the way for the denial of licenses on the basis of the moral and ideological visions held by particular government-appointed commissioners. Thus, unlike more recent print and common carrier regulatory models, radio's earliest structural limitations were seen to implicitly legitimate the interests of particular elite-level actors, over and above the protection of free expression rights.

Echoing telephony's collapse under the general regulatory rubric of telegraphy, the mainstream introduction of television following World War II was also seen to inherit a pre-established network of economic interests, regulatory regimes and legal precedents. As a result, whereas European television emerged as a state-controlled medium, prospective American television broadcasters were impeded by nearly three decades of federal regulatory principles devised for radio. Moreover, because television was imagined to be a technology that might profoundly impact its audience, the industry's earliest economic players widely endorsed self-regulatory content control measures to prevent telecasts which might be have been deemed offensive or immoral by particular viewing audiences. Consequently, from its very outset, American television was bound by

a political and ideological conservatism stemming from post-War, cold war societal attitudes. As such, we observed that it was only a gradual shifting of societal behaviors, values and norms, coupled with innovations in communications technologies, that disrupted this regulatory model. Yet at the same time, despite the gradual dismantling of radio and television licensing requirements, it was nevertheless concluded that the broadcast medium endures as one of the most restrictive modes of communication ever witnessed.

With the identification of three distinct regulatory models - print, common carrier and broadcasting - stemming from the introduction of previous communications technologies, chapter IV shifted this dissertation's attention to present-day government efforts to regulate computer mediated communications spaces. To begin, the genesis of the Communications Decency Act of 1996 (CDA) - bipartisan American legislation designed to strictly regulate online communication - was reviewed. It was observed that the CDA was in part triggered by alarmist media rhetoric that caught the attention of particular American legislators. This process set in motion a year-long debate between disparate political and ideological interest groups, which culminated in overwhelming political support for the Act. However, because the Act was modelled on the basis of broadcast-based regulatory metaphors, the final version was seen unfavorably by millions of online users across the United States and around the world. This encouraged its opponents to launch a series of court challenges and contributed to its rejection by the Supreme Court in June 1997.

Despite the CDA's eventual dismissal at the highest court level, chapter IV noted that the debate over government regulation of the online context has only just begun. This is because American state and federal governments are still introducing modified versions of the CDA. At the same time, it is also because the debate's extensive media exposure has sensitized law and policy makers in other jurisdictions. Given these circumstances, chapter IV also examined some other contexts in which government efforts have been undertaken to regulate the online medium. In the process, it was seen that some jurisdictions, such as Canada, have been disappointingly non-committal as they have awaited the outcome of the American debate; whereas others, such as the European Community and France, have taken a proactive, yet cautionary, stance through the formation of committees and the release of position papers. Meanwhile, through the introduction or passage of new legislative measures inspired by older print-based publication bans, to highly restrictive broadcast-based metaphors, other countries, such as the United Kingdom, Germany, Singapore and China were seen to be much more aggressive in their stances against unwanted forms of computer-mediated communication. Finally, given that it has consistently rejected traditional broadcast and print-based metaphors in favor of arm's-length self-regulation, the Australian federal government was presented as one of the most innovative actors in the debate. As such, despite the fact Australia has more recently proposed a federally-mandated online rating system shaped by conservative, American religious values, it was noted that some of its earlier positions on self-regulation could nevertheless guide other jurisdictions in the creation of new

regulatory measures that simultaneously protect national interests without stifling the online medium's transnational communicative potential.

Chapter IV concluded by asking at what point we should set aside legislative and legal lessons derived from past initiatives in our quest to develop new regulatory policies for online communications technologies. More specifically, it asked whether it was even realistic, or necessary, to derive a controlling metaphor based on past communications media. With this in mind, it argued that the online sphere, given the manner in which it represents a convergence of all communicative modes and contexts ever conceived, defies a single regulatory analogy. As such, although metaphors from the past are a valuable asset and should not be dismissed, it was recommended that they be set aside. In doing so, it was posited that we would be better positioned to make sense of the online context's ever-evolving and disparate communicative possibilities. Moreover, it was argued that this would enable us to devise innovative regulatory measures that not only protect individual interests, but simultaneously enhance the ways in which new communications media are transcending traditional notions of space and time.

B. Locating Social Actors and Groups in New Communications Policy Debates

With a historical framework in place, this dissertation next turned to a more textured consideration of the ways in which particular social actors and groups have impacted recent new communications policy debates. To accommodate this new direction, it was noted that the socio-historical methods of the communications scholar, Carolyn Marvin (1989), could provide us with some useful insights. In the process, this

reinforced our earlier observation that new communications technologies have consistently been sites of societal struggle and negotiation. In addition, it pointed us to a mode of textual analysis whereby we would be able to undertake a more considered exploration of the ways in which particular societal actors have attempted to reinforce the dominant societal order.

At the same time, however, it was observed that the anecdotal nature of Marvin's source material, coupled with the narrowness of her focus on particular technological actors, to some extent, bypasses potentially useful insights that could be gained if one examined the perspectives and communicative roles of other key societal actors and groups. Thus, with these limitations in mind, chapter V introduced the sociological literature on moral panics. Stemming from a range of sociological disciplines, including deviance, collective behavior, social problems and social movements, it was argued that this approach would help us shore up the methodological weaknesses of Marvin's analyses of new communications media. In addition, it was noted that this theoretical framework would provide us with a rigorous microanalytic formula for exploring some of the ways in which the particular interests and agendas of actors from a range of societal sectors have been represented by certain media sectors in the wake of the mainstream introduction of new communications technologies.

To justify the selection of moral panic theory, chapter V began by reminding us that our review of the histories of past and present-day communications media revealed that oppositional moral outcries or crusades have consistently emerged in parallel with such phenomena. With this in mind, it was noted that a better understanding of these

patterns might help us get a firmer grasp on how and why particular present-day regulatory regimes for the online realm have taken shape. Moreover, it was posited that this would help us illuminate the dominant role the mainstream media have played in socially constructing public fears and concerns regarding the apparent risks of today's computer-mediated communications contexts. And, finally, it was argued that this approach would provide an ideal theoretical foundation for bridging the regulatory histories of past communications technologies with some of the socio-cultural interests driving and shaping new communications policies for the online sphere.

Thus, to prepare us for a subsequent exploration of an international moral panic over online/Internet pornography that operated in parallel with and, to a great extent, fuelled many of the new communications policy debates that were described in chapter IV, chapter V reviewed relevant theoretical and methodological considerations stemming from the moral panic literature. In the process, it was asserted that the most applicable moral panic perspective for our purposes was one which could coalesce relevant methodological and theoretical lessons stemming from a set of prominent moral panic scholars. As such, Stanley Cohen's (1972) pioneering analysis of the moral panic phenomenon, which locates the mass media as a central focal point through which a cast of key agents and groups disseminate information, was introduced. In addition, the work of Nachman Ben-Yehuda (1986), who theoretically synthesizes a range of moral panic approaches, was advanced as a flexible method for exploring and interpreting competing and, at times, contradictory agendas of particular communicative actors. And, finally, the theoretical merits of Ben-Yehuda's more recent collaborative work with Erich Goode (1994), which maps notions

of morality/ideology and materiality/status across one dimension and posits a second continuum comprised of elite, middle-level and grassroots origins, was endorsed. If used in accordance with their relative applicability, it was asserted that this unified model would offer an ideal framework for mapping a moral panic's origins against a disparate array of underlying motivations and agendas.

Informed by theoretical and methodological insights gained from chapter V's review and assessment of moral panic theory, chapter VI undertook a case study of the circumstances surrounding the outbreak of a moral panic over the alleged pervasive availability of online/Internet pornographic materials in mid-1995. Using relevant Canadian print media and Internet sources, this study's primary concern was to (1) illuminate the roles particular media sectors played in the construction of the panic and (2) provide us with a better understanding of how particular interests and agendas have impacted policy-makers and lawmakers in the formulation of new regulatory policies for the online communications context. To this end, two separate chronologies of key events were constructed. The first, using Canadian print media sources from 1992 through 1996, integrated the results of a content analysis to show us how the mainstream media, in conjunction with key societal actors, such as the police, politicians, activists and online/Internet "experts," socially constructed a public perception that online pornography is a pervasive phenomenon, which presents severe dangers to online users, particularly the young. In addition, this analysis showed us how the publication of an alarmist *Time* magazine cover story on "Cyberporn" in mid-1995 was the flashpoint that not only

bolstered the interests of government regulation advocates, but triggered a widespread international panic over the alleged dangers of the online realm.

But identifying the Internet pornography panic's flashpoint was just the beginning. By building a secondary chronology based on the activities of key online activists and users, chapter VI was also able to demonstrate the way users of the online medium fought back to resist the alarmist media rhetoric that triggered the panic's outbreak. In the process, we saw that online activists successfully countered much of the misinformation that was fuelling mainstream media representations of the online pornography phenomenon. In addition, we saw how users of the online medium, an actor group that was largely excluded from mass media representations of the online pornography debate, were able to gain a stronger voice and, by extension, reshape the overall nature of the global debate over new regulatory regimes for the online medium. As such, we were able to argue that the online medium represents a communicative context of considerable force - in which actors from disparate societal sectors may converge to discuss and effectively combat the rhetoric of the traditional media. Thus, since this is an actor group that has never before been observed by moral panic theorists, it was argued that our exploration of the Internet pornography debate makes a substantive contribution to both sociological and communications scholarship.

Chapter VI's case study also successfully shed light on how the interests, agendas and ideologies of specific online actors have, to some extent, contributed to a general shift away from government-sponsored legislative prescriptions, toward self-regulatory regimes for the online sphere. On this note, this chapter concluded by noting that government

regulators, policy makers and communications scholars alike would be remiss if they did not take into consideration the perspectives of online users in their quest for new, and flexible, communications policy alternatives. With this in mind, this dissertation concludes with a short review of emergent self-regulatory alternatives. In addition, it offers some thoughts on the challenges that lie ahead for those individuals seeking to devise effective regulatory prescriptions for the online medium.

C. New Communications Policy Considerations: Watching the Watchers

At this point, it is worth returning to our original dissertation question; that is,

Can the online medium be regulated in an age of transnational communications and, if yes, how?

Based on our discussion so far, it is apparent that this question cannot be answered in simple terms. On the one hand, yes, it is entirely possible that most governments will eventually implement regulatory policies or laws for new communications spaces; in fact, as seen in chapter IV, there is no shortage of proposed legislation or initiatives. At the same time, however, it is equally likely that Internet self-regulation technologies - as they are presently being conceptualized by particular private sector interests - will sufficiently redirect the online regulation movement that most government-sponsored initiatives will either be set aside, or significantly restructured, to take these new technological alternatives into account. But is this in fact good news? Wallace and Mangan have previously argued that self-regulation would harm no-one's rights, thus making it the most suitable alternative to government regulation (1996: 259). Ironically, though, in the wake

of the U.S. Supreme Court's declaration that the online medium merits the same levels of protection afforded to books and other print matter, many of the same people who fought so hard to secure this decision have been dismayed to discover that the self-regulation technologies that they were so enthusiastically endorsing pose an equal threat to free and unfettered online communication.

Still, it is not hard to see why opponents of the CDA hailed self-regulation as the best solution at the height of the debate over legality. After all, for these actors, this position was by far the most sensible strategy to convince the courts to reject the U.S. Congress' proposed legislation. Furthermore, at first glance, such technologies do seem to effectively screen out a certain proportion of materials that particular individuals might deem offensive. However, although blocking and filtering technologies may well represent an excellent regulatory alternative for people intent on screening out apparently "undesirable" online materials, such methods do not come without their consequences. Indeed, as will be seen over the course of the following pages, the drawbacks and limitations of self-regulatory communications technologies may well outweigh any potential benefits.

As noted in chapter VI, Internet screening and self-rating services were first introduced by corporate interests in the months leading up to the full-blown outbreak of the Internet pornography panic of 1995. Such products were purportedly in response to parents' and governments' concerns about children gaining access to adult-oriented online content, particularly via the USENET and the World Wide Web. The first generation of such blocking programs have been relatively simple. Some software, such as *NetNanny*,

denies user access to sexually explicit USENET newsgroups by screening out titles that indicate that such subject matter or materials are allowed (e.g., *alt.sex*). Meanwhile, others, such as *CyberPatrol* and *CYBERSitter*, block access to undesirable Web content on the basis of a list of banned sites, or by screening for, or filtering out, key terms.

But screening for so-called undesirable Web sites has proven far more difficult than first imagined. This is because the Web is growing at a rate that defies the needed resources to view each new page. Moreover, since such a small fraction of Web pages in fact contain sexually explicit, or potentially undesirable materials, identifying alleged unwanted pages has become extremely difficult. To address these screening challenges, some programs have been designed to block page access on the basis of its URL (Web address) and/or content. Indeed, since some URLs offer content clues (e.g., www.hotsex.com) and many others include key terms advertising their content (e.g., “sex”; “XXX”; “porn”), locating potentially sexually explicit pages has been greatly facilitated. At the same time, though, numerous critics have observed that many so-called undesirable pages are still being missed via such screening methods, while other pages - which one would expect to fall outside such programs’ screening criteria - are also being blocked. For example, *CyberPatrol*, the largest and most extensive screening program, contains a pre-programmed list of 4,800 Web sites and 250 newsgroups. This list is subdivided into a series of categories that range from “violence/profanity” to “sexual acts,” “drugs and drug culture” and “gross depictions.” However, because these categories are so broadly defined, particular Web sites, such as Envirolink, an environmental and animal right groups, have been tossed into the data bit junk heap,

simply because they include images of syphilis infected monkeys (Meeks & McCullagh, 1997). Similarly, the Queer Resources Directory and several gay and lesbian USENET newsgroups, including *alt.journalism.gay-press* and *soc.support.youth.gay-lesbian-bi*, cannot be accessed by *CyberPatrol* users.

And *CyberPatrol* is not the only culprit. *NetNanny* blocks feminist newsgroups; *CYBERSitter* denies user access to DejaNews (a USENET search engine), the National Organization of Women and any newsgroup or Web page that addresses bisexual or lesbian issues; while *X-Stop* blocks access to sites such as: The National Journal of Sexual Orientation Law, The Aids Quilt, The Religious Society of Friends (ie., the Quakers) and the University of Chicago's Fileroom project, which tracks acts of censorship around the world (Wallace, 1998). Even more disturbing is the corporate screening program *CyberSentry* (produced by Microsystems Software of Framingham, Mass, the makers of *CyberPatrol*), which enables employers to secretly track their employees' online viewing habits. Indeed, for particular workplace Web users, *CyberSentry* has already had far-reaching consequences. For example, a two-week audit at the Pacific Northwest National Laboratory in Richland, Washington in January 1996, caught 98 employees (men and women) accessing so-called adult sites "when they were supposed to be working." Of those caught, 21 were suspended and 77 were reprimanded (Retkawa, 1996). Similarly, three lab assistants at Roche's pharmaceutical division in Basel Switzerland were "summarily dismissed" when it was found that they were accessing pornographic materials (Retkawa, 1996).

Privately administered rating systems can also be used to screen Web pages. However, as observed in chapter III, such systems can seriously disrupt particular communicational practices. For example, between the early 1950s and well into the 1980s, the United States' National Association of Radio and Television Broadcasters' Television Code reinforced particular conservative visions of what was considered morally and socially acceptable televisual programming. Along a similar vein, many countries' motion-picture industries have been bound by privately administered or government-endorsed ratings systems since the early half of this century. As a result, many film producers are, to this day, still forced to eliminate so-called "objectionable" content to obtain a desired rating (i.e., a lower rating garners wider distribution, a larger audience and, by extension, higher profits). And, finally, in one of the most notable illustrations of self-regulation gone awry, the United States' 1954 Comics Code, purportedly designed to eliminate graphic depictions of horror in comic books, stipulated that "Policemen, judges, government officials, and respected institutions shall never be presented in such a way as to create disrespect for established authority" (Daniels, 1971). Thus, although these types of self-rating systems represent what Finkelstein (1997) aptly terms "a horror of a different kind," they nevertheless reinforce for us the fact that historical lessons can again be used to shed light on the social impacts and implications of ill-conceived new communications policies. As such, it is clear that we must be extremely wary of any proposed Internet rating system, even if it is advanced by private interests who are ostensibly "protecting" us from repressive, government-sponsored regulatory measures.

To date, the most widely publicized Internet rating system has been the Platform for Internet Content Selection (PICS), a project pioneered by a group of American computer scientists and software manufacturers (see chapter VI for a list of groups involved). When introduced in 1995, PICS was widely touted as the best alternative to government regulation. In fact, its developers described it as a technological alternative that would permit "Internet Access Controls without Censorship" (Haselton, 1998). As such, PICS seemed like a natural fit for free-speech advocates and online regulation opponents. Not only did it promise to "empower Net users to control their own access to Net content and that of their children," but it appeared that it would, by extension, negate the need for government regulation. Furthermore, because it was not a rating system per se, but a framework for a user-defined rating system, it seemed, at least at first glance, that it would be online users - not governments - who would control the means of censorship.

Of course, as previously noted, the introduction of PICS coincided with a focus on stopping the CDA at any cost. As a result, few could see that this rating system would, in practice, open an entirely new can of worms. Indeed, it was only when Australia and the United Kingdom announced in early 1997 that they were planning to "enforce or coerce the use of PICS facilitated systems" that its full dangers came to the fore (EFA, 1998). These governments were mandating that PICS be built into their respective network and service provider infrastructures; moreover, to control which information was acceptable and which would be screened out, they were advocating the use of the Recreational Software Advisory Council's (RSACi) rating standards. As noted in chapter IV, however, RSACi is an American standard that defines profanity on the basis of conservative,

Christian values (EFA, 1997). As such, this proposed application of PICS, not only creates the spectre of prosecutions for individuals who mis-label, fail to label, or refuse to label Web pages, but simultaneously institutionalizes a form of religious and cultural imperialism.

Given what we learned from chapter VI's review of the Internet resistance mounted to combat alarmist media rhetoric regarding the alleged dangers of the online medium, it should come as no surprise that a new movement - this time against ill-conceived self-regulatory systems - has emerged in the wake of growing opposition to PICS and other forms of rating and screening technologies. One of the best illustrations of this movement is Peacefire, a Web-based organization designed to protect and advance the rights of adolescent online users. Founded by Bennett Haselton, an 18 year-old student at Vanderbilt University, Peacefire has evolved into one of the most vocal online anti-censorship organizations.⁷⁷ His Web site offers dozens of informational resources and reviews that survey and critique a wide range of online screening technologies.⁷⁸ Along a similar vein, author and lawyer Jonathan Wallace has established a Web resource site with

⁷⁷ This new direction was brought about when Haselton discovered in December 1996 that the screening program *CYBERSitter* was listing his Web page as a "pornographic" site. In response, he collected and posted a list of other sites that he felt were being inappropriately blocked by *CYBERSitter* software. Since that time, *CYBERSitter* has purportedly rewritten their installation software to abort if it detects evidence that a prospective new user has *ever* visited Peacefire! This information, however, has only strengthened Haselton's resolve, making Peacefire one of the most useful Web resources for online anti-censorship advocates.

⁷⁸ See [<http://www.peacefire.org>].

links to dozens of articles that decry the dangers of what he terms "Censorware."⁷⁹ Thus, in much the same way certain activists exploited the online medium's communicative potential to counter some of the media rhetoric underlying the online pornography panic, it appears that it is again being used to mobilize grassroots opposition to ill-conceived online screening and self-rating systems.

It seems that every year brings with it a new angle on the issue of Internet regulation. In early 1997, it was public libraries that suddenly found themselves caught in the crossfire. The American Civil Liberties Union notes that "Libraries have traditionally promoted free speech values by providing free books and information resources regardless of their age and income" (Beeson & Hansen, 1997). In keeping with this tenet, more than 20% of all libraries in the United States now offer free Internet access. Moreover, the American Library Association (ALA) has stated recently that "Libraries are places of inclusion rather than exclusion" (Beeson & Hansen, 1997). Therefore, screening software is not endorsed by the ALA since "Current software prevents not only access to what some may consider "objectionable" material, but also blocks off information protected by the [U.S. Constitution]" (Beeson & Hansen, 1997). Notwithstanding this policy, however, many libraries across the United States have been installing blocking software. This means that many libraries are now imposing particular software producers' moral and ideological agendas on entire communities. As such, we can once again see how self-regulation technologies are threatening free and unfettered access to new communicative contexts and, by extension, to particular sets of knowledge.

⁷⁹ See [<http://www.spectacle.org/cs>].

Based on the above review of emergent self-regulatory solutions for the online medium it is clear that such technologies, if accepted uncritically, are hardly the panacea that will preserve an online user's desire to engage in free and unfettered communication. Indeed, because so many of today's online screening programs do not offer a list of "unsuitable" sites or subjects, we are unwittingly placing an undue reliance on unknown private sector interests to act as gatekeepers of knowledge on our behalf. A telling illustration of this risk is an experiment that was conducted by Peacefire's Bennett Haselton.⁸⁰ Out of curiosity, Haselton created a Web page which contained the following statement:

Gary Bauer is a staunch anti-homosexual conservative. He sees the gay movement as absolutely pure fascism, and he probably thinks watching gay movies is the greatest terror.⁸¹

Haselton then installed *CYBERSitter* and configured the program to filter "objectionable" text. This is the output that he received:

Gary Bauer is a staunch anti-conservative. He sees the gay movement as absolutely pure, and he probably thinks watching gay movies is the greatest.

Thus, as we can see, filtering technologies can have some astounding impacts on the meaning of information obtained. As a result, any uncritical reliance upon such resources to screen information for us, seems, even under the best of circumstances, to be unwise.

⁸⁰ See Webstein (1998), [<http://www.pcworld.com/annex/columns/rose>].

⁸¹ Bauer is the president of the Family Research Council (FRC), an American organization that purports to defend, family faith and freedom. See [<http://www.townhall.com/frc/>] for more on the FRC.

What, then, is the most appropriate solution? Rick O'Donnell, a spokesperson with the Progress and Freedom Foundation, argues that "Filtering software firms have the right to choose whatever site they want to block since it's voluntary. Government-imposed [blocking] is censorship. Privately chosen is editing, discernment, freedom of choice" (Meeks & McCullagh, 1997). And, of course, his perspective is not misplaced. Yes, screening technologies do protect us from government censorship, however, if they continue to be designed and implemented without our awareness of the ideologies, values and interests of the actors and groups who are marketing such products, then we are no better off than if we allow the government to implement new communications laws on our behalf. Thus, with this in mind, this dissertation concludes with a few thoughts and proposals for coming to terms with today's emergent new communications challenges.

As noted repeatedly throughout this dissertation, the justification for many new regulatory regimes designed to control new communications technologies has been to "protect the innocence of our children." However, as we have learned through the course of the present analysis of past and present day communications policy debates, most strategies have, at the same time, been duplicitous endeavours designed to reinforce or entrench particular actors' political, social, ideological, economic and moral interests and agendas. But because this reality has so often been lost in the shuffle, the lowest common denominator, that is, what Ben-Yehuda (1986) labels the "easiest enemy," has all too often been appropriated and reified by the mainstream media. Given this awareness, it is clear then, that communications scholars could play a special role in bringing these alternate interpretations to the fore. Indeed, if the general public could be given a more

sophisticated understanding of the media's agenda-setting role in creating meanings on the public stage, we would be far better equipped to resist ill-conceived regulatory regimes for new communications spaces. In turn, those individuals with a genuine desire to screen out particular "undesirable" materials would be able to do so in a more informed manner.

It has often been observed that if a parent objects to a child watching too much television, then he or she should pull the plug. While this may sound overly simplistic or reductionist and is - in practice - difficult to enforce, it nevertheless underscores a basic tenet underlying all communications technologies. That is,

If our new communications media are to remain free from repressive, state-sanctioned controls, we MUST assume greater responsibility in our private uses of such technologies.

Indeed, any person who brings a new communications technology into the home has a responsibility to make sense of its potential benefits and drawbacks before allowing their children to use it. As such, if one adheres to this principle, then the argument that one cannot "understand" a particular technology is necessarily invalidated. After all, one would never leave a chainsaw or toxic household cleaner in the hands of a child, yet, at the same time, one would never expect the government or any private interest group to protect us from such dangers on our behalf!

By extension, even if we are to call upon private citizens to assume greater responsibility, we must at the same time recognize that any individual or operator of a publicly-situated Internet computer terminal still has a right to install screening or blocking software. On this note,

It is proposed that the manufacturers of screening technologies be required to state explicitly their products' intended purpose(s) and the interests/affiliations of all actors who were involved in the design of any specific content controls.

Furthermore,

It is proposed that all publicly accessible computer terminals that are in any way configured to screen or block online content explicitly state, and make available, the terms of such filtering practices.

And, finally,

It is proposed that any workplace computer terminals that are in any manner configured to screen or block content - or track the online activities of particular users - state explicitly, and make available, the terms of such filtering and/or tracking practices.

In other words, since self-regulation software is without question a technological "fix" that is here to stay, then its designers and, by extension, any public or corporate users of such technologies, should be required to list their relevant "ingredients," in much the same manner that consumer administrations in most countries require all food and drug products be labelled. Thus, with these considerations in mind, the role of governments in this emergent era of transnational communications technologies comes clear:

Yes, new laws are required. Not to regulate new communications contexts on our behalf, but to protect us from the hidden interests and agendas of the actors involved in the design of self-regulatory screening and self-rating technologies.

Thus, if a particular Christian fundamentalist group funds a new software screening service, then we should be made aware of its involvement and mandate. Similarly, if a particular program promises to screen out salacious materials, then we should be informed

as to how its creators have subjectively conceptualized terms such as “pornography” and “inappropriate” language.

Overall, then, the moral of this discussion seems simple:

If you do not feel that your children are ready for the unsupervised use of computer-mediated communications contexts, DON'T give them the means to access such spaces.

By extension, do your research! That is:

If you feel compelled to use a particular screening technology, then be certain that you understand its potential benefits, risks and consequences. In other words, until you have developed a clear appreciation for the interests and agendas which have informed a particular new communications screening technology, DO NOT allow such products to screen or block information or knowledge on your behalf.

Indeed, if one takes a step back, this advice is, in fact, asking very little. Being cautious about new communications technologies is basic common sense. After all, it is no different than deciding when a child can first go out alone, ride a bicycle in the street, go to a party unsupervised, go out on a date, or drive the family car. The onus has always been on parents to make these decisions. Why, then, should such practices be any different in the context of new communications technologies?

D. Future Directions for the Analysis of the Online Medium

This dissertation has covered enormous ground in an effort to spell out the interrelated histories, social impacts and implications underlying the advent of particular new communications technologies. In closing, a few thoughts for future communications research are offered. It was noted in chapter II that Carolyn Marvin's (1988) study of

nineteenth-century electrical communications technologies examined the disparate social actors and groups who impacted these early innovations. In doing so, she was able to uncover a gamut of hidden and forgotten uses. By contrast, this dissertation has appropriated Marvin's microanalytic textual method as a means to frame a new method derived from the sociological literature on moral panics. As such, we have been able to illuminate some of the ways in which the interests and agendas of certain present-day actor groups have impacted the introduction of new communication technologies.

But this does not mean that the online medium is without its own share of hidden or forgotten uses. On the contrary, given the way in which the Internet has fast become the standard for present-day communicative practices, particular older uses and contexts have been very quietly falling by the wayside, with potentially far-reaching consequences. The demise of the local, stand-alone computer bulletin board service is the most notable illustration of this phenomenon. This is not to suggest that it will completely vanish, but it is clear that if present trends continue, the BBS and its unique communicative qualities could be lost. And this demise is not going unnoticed. Indeed, before the Internet's popularization, computer bulletin boards were the main contexts in which online communication was undertaken. In recent times, however, the use and availability of these communicational contexts, has declined significantly. For example, in 1989, the local bulletin board list for Montreal, Quebec, listed 175 known systems. As we entered the 1990s, these numbers grew steadily, with a peak of 482 in 1995. Since that time, however, this number has dropped to 221 (Stachiew, 1997). Thus, at its present rate of

decline, the local BBS could very well become a forgotten communicational context by the turn of the century.

Of course, while it is improbable that the local BBS will completely vanish, it is nevertheless apparent that only the most avid computer enthusiasts will continue to frequent local BBS systems as more and more online users migrate to the Internet. And if this happens, the most likely outcome will be a dissolution, or blurring, of the "local." Indeed, one of the greatest benefits of the stand-alone BBS has been its capacity to unify particular local communities and interest groups. For example, between 1987 and 1996, the Alberta Alcohol and Drug Abuse Commission operated Electronic Zoot (E-Zoot), a computer bulletin board system aimed at adolescents and young adults, in Edmonton, Alberta. E-Zoot's mission was to promote personal, family and community health, free from substance abuse. To this end, the BBS offered a safe and anonymous environment for interaction between its online members and a team of trained treatment counsellors. As such, it facilitated peer support, encouraged the formation of new friendships and, for some, relieved a sense of loneliness or isolation.⁸²

Most notable for the purposes of this discussion, however, was how E-Zoot's vibrant virtual community regularly organized face-to-face user meets, which sometimes attracted as many as 50 or 60 system users.⁸³ And therein lies one of the greatest benefits of the local BBS. When a computer network or system is locally based, it can encourage

⁸² See Jackson (1995) for the results of a survey that was conducted between 1993 and 1994 to measure E-Zoot's impact on its users.

⁸³ This author was Electronic Zoot's system operator between 1991 and 1996.

the formation of new communicative relationships that can be easily translated to the local, “real-life” sphere. By contrast, given the manner in which the Web tends to prioritize a mode of depersonalized, information retrieval, this same sense of “local” has been extensively undermined. This does not mean, of course, that online users cannot similarly benefit from the communicative potential of globally-situated, transnational communications contexts. On the contrary, there are countless examples of friendships, meetings and even marriages that have been made possible due to relationships that were formed across the virtual sphere. However, what is being reduced is that capacity to tap into the immediacy of a particular local community. Indeed, because our mainstream media have become so enamoured with notions of the “global,” far too many online users have been forgetting - or denied an awareness of - the potential benefits of being rooted in local, computer-mediated communicational spaces.

And being rooted in the local or, at the very least, being a user of a stand-alone BBS, brings us to one final observation for those individuals seeking out “safe” online contexts for their children. Electronic Zoot, by virtue of its independence, provided a space in which parents felt secure letting their children wander freely. Moreover, its adolescent users embraced this communicative context, not simply because it users were their peers, but because it offered a range of message groups, public domain software, informational resources, games and real-time chats. And, most importantly, it was operated by a team of adults who very discretely maintained a sense of decorum and order, and involved its users, without alienating its overall userbase. Thus, it would be regrettable if this particular form of computer-mediated communication is forgotten or

drowned out due to the mainstream appeal and popularization of new “global” communicative possibilities.

It seems, however, that some members of the online community are beginning to recognize the challenges of preserving the BBS as a communicative alternative. In fact, an international grassroots organization, The Council for Online Community Alternatives (COCA), has recently been formed to address this very issue.⁴⁴ COCA aims to promote BBSes as an Internet alternative and to build awareness among new computer users that many local BBSes present an exciting alternative to globally-based, online contexts. On this note, they maintain that the demise of the local BBS mostly stems from a lack of public awareness. That is, as millions of people have jumped on the Internet bandwagon, they have done so without realizing that countless alternatives can still be found locally. Thus, in much the same way that the Internet has served to mobilize actors to resist alarmist media rhetoric and the advent of ill-conceived screening technologies, we are now seeing that it is also serving to mobilize global support for the preservation of innovative modes of virtual interaction. This bodes well for the survival of the local BBS and, furthermore, points to yet another movement that communications scholars would be well advised to closely monitor.

In closing, some general thoughts for future communications research are offered. As noted above, Carolyn Marvin was extremely successful in her exploration of the communicational practices that shaped early electronic communications technologies. At the same time, though, we have noted that due to particular methodological drawbacks,

⁴⁴ See [<http://coca.home.ml.org>].

the far-reaching implications of her findings were somewhat tempered. However, now that we have introduced and applied a more rigorous means whereby microanalytic investigations of the interests and agendas of key actors and groups can be undertaken, it is clear that a return to her socio-analytic approach is in order. Indeed, as noted in chapter II, Marvin was particularly adept at pointing out the ways in which new communications technologies shed light on notions of family, gender, race, class and nation. This dissertation, however, has been more concerned with illuminating the actions and communicative roles of the mainstream media, law enforcement, politicians, online activists and particular users of the online sphere. With this in mind, it is clear that an exploration of these other societal segments is task of pressing importance. Indeed, Judy Wajcman has previously demonstrated that new communications technologies are not neutral constructs, but sites that reinforce and perpetuate particular male-dominated notions of dominance and control (1991: 17). By extension, then, we can see how these and other socio-demographic sectors may be equally disempowered, or unfairly advantaged, by the advent of new communications technologies. For example, despite the fact Chinese dialects are by far the most spoken languages in the world, it has been estimated that 70% of the Internet is in English (Ravensbergen, 1998). And the far-reaching implications of this form of linguistic imperialism are immediately apparent. After all, if steps are not undertaken to encourage other linguistic interests, the cultural ideals of English-speaking nations could very well overwhelm and shape the evolution of global regulatory policies for the online realm. Similarly, if steps are not taken to gain a better appreciation for the range of groups and interests who are being impacted by the

unequal distribution of new communications resources, we run the risk of unwittingly endorsing and entrenching a technocratic hierarchy that reinforces dominant Anglo-Saxon ideals on the global stage. As such, it is clear that by making better sense of the online medium's potential implications and impacts on present and future communicative practices and relationships, we as communications scholars will be well positioned to play a lead role in the formulation of new and innovative communications policies for the online sphere.

Appendix A

Top 35 Newsgroups in Order by Popularity (July 1995)

(Source: Brian Reid, reid@decwrl.dec.com)

	+-- Estimated total number of people who read the group, worldwide.								
	+-- Actual number of readers in sampled population								
	+-- Propagation: how many sites receive this group at all								
	+-- Recent traffic (messages per month)								
	+-- Recent traffic (megabytes per month)								
	+-- Crossposting percentage								
	+-- Cost ratio: \$US/month/rdr								
	+-- Share: % of newsrdrs								
	+-- who read this group.								
	V	V	V	V	V	V	V	V	
1	510000	3373	91%	39	0.6	22%	0.00	5.7%	news.announce.newusers
2	260000	2759	57%	11408	11.5	46%	0.02	4.6%	alt.sex
3	240000	1796	80%	78	0.3	0%	0.00	3.0%	rec.humor.funny
4	220000	2508	51%	8307	58.7	34%	0.12	4.2%	alt.sex.stories
5	200000	1348	88%	2451	0.5	99%	0.00	2.3%	news.answers
6	180000	1205	87%	1	0.0	0%	0.00	2.0%	news.announce.important
7	170000	2218	47%	18619	829.6	25%	2.00	3.7%	alt.binaries.pictures.erotica
8	170000	1244	80%	34342	51.9	24%	0.22	2.1%	misc.jobs.offered
9	160000	1119	87%	8296	14.0	2%	0.07	1.9%	news.newusers.questions
10	150000	1104	83%	5161	7.0	21%	0.03	1.8%	comp.lang.c
11	150000	1064	84%	1718	2.9	20%	0.01	1.8%	comp.unix.questions
12	140000	1263	65%	39	0.4	0%	0.00	2.1%	rec.arts.erotica
13	140000	1070	78%	4752	7.1	14%	0.04	1.8%	rec.humor
14	120000	996	74%	146	0.7	16%	0.00	1.7%	rec.arts.movies.reviews
15	120000	888	81%	3	0.1	0%	0.00	1.5%	comp.risks
16	120000	798	87%	5998	10.6	21%	0.07	1.3%	news.groups
17	110000	1164	57%	5158	6.7	2%	0.03	2.0%	alt.tv.simpsons
18	110000	870	74%	399	1.3	1%	0.01	1.5%	rec.food.recipes
19	110000	719	89%	184	1.5	1%	0.01	1.2%	news.announce.newgroups
20	100000	754	82%	5875	8.3	22%	0.06	1.3%	comp.lang.c++
21	99000	1104	54%	6499	13.6	22%	0.07	1.8%	alt.sex.bondage
22	98000	812	72%	48	0.2	2%	0.00	1.4%	rec.arts.startrek.info
23	95000	722	78%	1928	2.4	37%	0.02	1.2%	misc.jobs.misc
24	93000	748	74%	2056	2.2	21%	0.02	1.3%	rec.video
25	92000	776	71%	5738	7.4	26%	0.05	1.3%	rec.arts.startrek.current
26	90000	708	76%	15736	20.3	33%	0.15	1.2%	misc.jobs.contract
27	89000	1063	50%	5543	10.0	12%	0.05	1.8%	alt.sex.movies
28	89000	834	63%	1687	3.2	20%	0.02	1.4%	alt.bbs
29	89000	698	76%	166	0.6	6%	0.00	1.2%	comp.os.linux.announce
30	88000	1325	40%	11218	375.9	46%	1.50	2.2%	alt.binaries.pictures.erotica.female
31	87000	724	72%	1423	2.4	43%	0.02	1.2%	misc.education
32	87000	645	81%	245	1.1	1%	0.01	1.1%	comp.dcom.telecom
33	86000	586	88%	66	1.8	6%	0.02	1.0%	news.lists
34	84000	705	71%	4582	7.3	3%	0.06	1.2%	rec.nude
35	82000	1016	48%	814	0.9	48%	0.00	1.7%	alt.sex.stories.d

Appendix B

Summary of Content Analysis Coding Categories

1. Source

- 01 The Daily News (Halifax)
- 02 The Gazette (Montreal)
- 03 The Toronto Star
- 04 The Financial Post
- 05 The Ottawa Citizen
- 06 The Spectator (Hamilton)
- 07 The Toronto Sun
- 08 Calgary Herald
- 09 The Edmonton Journal
- 10 The Province (Vancouver)
- 11 The Vancouver Sun
- 12 The Globe and Mail
- 13 Times Colonist (Victoria)
- 14 Winnipeg Free Press
- 15 The Lethbridge Herald
- 16 The Guardian (Charlottetown)
- 17 Financial Times of Canada
- 18 The Evening Telegram (St. John's)

2. Publication Month

- 01 January
- 02 February
- 03 March
- 04 April
- 05 May
- 06 June
- 07 July
- 08 August
- 09 September
- 10 October
- 11 November
- 12 December

3. Story Origin

- 1 Local
- 2 Canadian Press
- 3 American wire services
- 4 Canadian media reprint
- 5 American media reprint
- 6 International wire story
- 7 Syndicated column (media reporter)

4. Story Placement

- 1 Front cover
- 2 Cover, inner section
- 3 Inside
- 4 N/A

5. Story Format

- 1 Report
- 2 Description
- 3 Points of view (2 or more)
- 4 Opinion

6. Primary Story Focus/Theme

- 01 Example(s) of Internet crime
- 02 Internet regulation - government
- 03 Internet regulation - university
- 04 Internet reg. - police enforcement
- 05 Internet regulation - other efforts
- 06 Internet regulation - self-regulation
- 07 Internet dangers - protect children
- 08 Internet dangers - protect self/others
- 09 Internet options - activ. for children
- 98 Story unrelated to the Internet
- 99 Other

7. Story Focus/Theme (2)

8. Story Focus/Theme (3)

9. Story Rhetoric - Does story mention:

a) child pornography?

- 1 Yes
- 2 No

b) pedophiles?

- 1 Yes
- 2 No

c) a need to protect children?

- 1 Yes
- 2 No

10. Perspective on Online

Pornography

- 1 Pervasive
- 2 Not pervasive - very little exists
- 3 Neutral - a reality of the online medium

11. Story Prescriptions

- 1 Oppose regulation /not possible
- 2 Existing laws adequate
- 3 Government regulation (new laws)
- 4 Self-regulation
- 9 None

12. Story Prescription on Internet Reg (2)

13. Voices Represented:

a) police

- 1 yes
- 2 no

b) politicians/government spokespeople

- 1 yes
- 2 no

c) Internet/Online users

- 1 yes
- 2 no

d) Internet "experts"

- 1 yes
- 2 no

e) activists

- 1 yes
- 2 no

f) judicial/legal spokespeople

- 1 yes
- 2 no

g) general public

- 1 yes
- 2 no

Appendix C

Content Analysis Sampling Frame and Articles Characteristics

A. Sampling Frame

English-language Canadian print media articles from 1995 that made direct or indirect references to “Internet pornography” or “cyberporn” were used for this analysis. SPSS for Windows v6.0 (1993: SPSS Inc., Chicago, IL) was used to code and analyze the data set. The data set was obtained from CanDisc and GlobeDisc, two CD-ROM collections that provide full-text transcriptions of stories from two national⁸⁵ and 13 regional⁸⁶ major daily newspapers. In total, 276 articles that made reference to Internet pornography/cyberporn were gathered. Because CanDisc also includes transcriptions of CBC and CTV news stories, six items were eliminated. In addition, a further 34 articles were excluded because they were off-topic. Thus, this case study represents the findings from an analysis of 236 articles that appeared in 15 Canadian newspapers in 1995.

Table C.1 presents the data set’s overall distribution by newspaper and region represented.

[insert table C.1 about here]

⁸⁵ *The Globe and Mail* and *The Financial Post*.

⁸⁶ *The Calgary Herald*, *The Daily News* (Halifax), *The Edmonton Journal*, *The Gazette* (Montreal), *The Guardian* (Charlottetown), *The Ottawa Citizen*, *The Spectator* (Hamilton), *Times Colonist* (Victoria), *The Toronto Star*, *The Toronto Sun*, *Winnipeg Free Press*, *The Vancouver Sun* and *The Province* (Vancouver).

Table C.1
Canadian print media stories on Internet pornography: Newspapers represented
January - December 1995
(236 valid cases)

Newspaper	Number of articles	Overall %
The Ottawa Citizen	23	9.7
Calgary Herald	22	9.3
The Gazette (Montreal)	22	9.3
The Edmonton Journal	21	8.9
The Globe and Mail	19	8.1
The Toronto Star	18	7.6
The Toronto Sun	18	7.6
Winnipeg Free Press	18	7.6
The Spectator (Hamilton)	16	6.8
The Vancouver Sun	16	6.8
The Daily News (Halifax)	14	5.9
The Province (Vancouver)	11	4.7
Times Colonist (Victoria)	8	3.4
The Guardian (Charlottetown)	6	2.5
The Financial Post	4	1.7

The four regional newspapers which most frequently addressed the subject of Internet pornography in 1995 were: *The Ottawa Citizen* (9.7% of all stories); *The Calgary Herald* (9.3%); *The Gazette* (Montreal) (9.3%); and *The Edmonton Journal* (8.9%), while the top national newspaper was *The Globe and Mail* (8.1%). The two sources that made the fewest references to Internet pornography were: *The Guardian* (Charlottetown) (2.5%) and *The Financial Post* (1.7%).

Table C.2 summarizes the data set's overall distribution by regions represented.

[insert table C.2 about here]

In total, more than one-third of the data set's articles came from Ontario print-media sources (32% of all stories), while just over one-quarter were from the Prairie provinces (26%) and roughly one-tenth were from national sources (10%). Because this analysis did not include French-language newspapers, Quebec was one of the least well represented regions, with fewer than ten percent of all articles. The Maritimes were also poorly represented with just over eight percent of all stories.

Whether the above regional variations in articles on Internet pornography can be accounted for by (1) certain regions being less concerned with the topic, or (2) an under- or over-representation of newspapers from particular regions is outside the scope of this analysis. However, given that a cross-section of major newspapers from all Canadian regions can still be observed, it is felt that this limitation does not significantly impact the data set's overall usefulness and validity. As a result, it is believed that the present data set not only offers a reasonable representative sample of major English-language Canadian daily newspapers from the regional and national stage, but that it makes possible

Table C.2
Canadian print media stories on Internet pornography: Regions represented
January - December 1995
(236 valid cases)

Region represented	Number of articles	Overall %
Ontario	75	32
Prairies	61	26
British Columbia	35	15
National	23	10
Quebec	22	9
Maritimes	20	9

a unique and comprehensive thematic examination of the full **population** of articles from a representative sample of newspapers that addressed Internet pornography in 1995.

B. Article Characteristics

Nearly 45% of the articles surveyed for the case study were written by in-house journalists, 25% were from Canadian wire services (e.g., Canadian Press, Southam Newspapers), 22% were from American wire services (e.g., United Press International, Associated Press) and a further seven percent were from international wire sources (e.g., Reuters). Approximately one quarter were less than 300 words, 43% were between 300 and 700 words and 31% were feature-length pieces greater than 700 words. In addition, nine percent were news reports, 33% were descriptive items containing some discussion or clarification, 29% were features offering two or more points-of-view and 28% were opinion pieces (e.g., editorials, letters to the editor, op-ed articles).

Appendix D

Draft Abstract of "Marketing Pornography on the Information Superhighway"

(Source: *HotWired*; uploaded by Mike Godwin to The Well's Media Conference)
[<http://www.hotwired.com/special/pornscare/well/part02.html>]

Topic 1029 [media]: The Newsweeklies (Time, Newsweek, USN&WR),
continued #26 of 895: Avant Garde A Clue (mnemonic) [Mike Godwin]
Sat Jun 24 '95 (21:29) 92 lines

This is a draft of the ABSTRACT of the Martin Rimm study:

As Americans become increasingly computer literate, they are discovering an unusual and exploding repertoire of sexually explicit imagery on the Usenet and on "adult" computer bulletin board services (BBS). Every time they log on, their transactions assist pornographers in compiling databases of information about their buying habits and sexual tastes. The more sophisticated computer pornographers are using these databases to develop mathematical models to determine which images they should try to market aggressively. They are paying close attention to all forms of paraphilia, including pedophilic, bestiality, and urophilic images, believing these markets to be among the most lucrative. They are using the Usenet to advertise their products, and maintaining detailed records of which images are downloaded most frequently. Modem technology also enables researchers, for the first time, to use computers to acquire vast amounts of information about the distribution and consumption of pornography on a scale hundreds of times larger than previously established methods. Because BBS pornographers rely primarily upon verbal descriptions to market their images, researchers can develop computer programs that classify these descriptions according to category (e.g. oral, anal, vaginal, sadomasochism, etc.). The descriptions may be sorted by frequency of downloads (consumer demand), size, and the date on which each image was first posted onto the bulletin boards. What is even more useful, the data can be easily reanalyzed under many different sets of definitions and assumptions. This multidimensional characteristic of digital pornography enables researchers to provide unbiased information to those involved in the heated public policy debate over pornography. The research team at Carnegie Mellon University has undertaken the first systematic study of pornography on the Information Superhighway. The study is also the first ever - whether print media or electronic - to track detailed purchasing habits of consumers of sexually explicit materials. All prior studies have assumed that those surveyed about their sexual tastes would offer honest replies, while this study focuses entirely upon what people actually consume, not what they say they consume. This proved particularly important when analyzing such taboo imagery as incest, bestiality, coprophilia, urophilia, and torture. All available pornographic images from five popular Usenet boards were downloaded over a six month period. In

addition, descriptive listings were obtained from 68 commercial "adult" BBS located in 32 states. These lists described 450,620 pornographic images, animations, and text files which had been downloaded by consumers 6,432,297 times, from 35 "adult" BBS; (approximately) 75,000 for which only partial download information was available, from six "adult" BBS; and another 391,790 for which no consumer download information was available, from 27 "adult" BBS. Finally, approximately 10,000 actual images were randomly downloaded or obtained via the Usenet or CD-ROM. These were used to verify the accuracy of the written descriptions provided in the listings. This article analyzes only the 450,620 images and descriptions for which complete download information was available. A survey of the remaining images and descriptions suggests no substantive differences between the two datasets. At least 36% of the images studied were identified as having been distributed by two or more "adult" BBS. These "duplicates" enable researchers to compare how identical imagery is consumed on commercial BBS in different regions of the country. Part II of the study outlines the methods used to obtain and analyze the data gathered. Two important aspects of reliability and validity were carefully considered: 1) How well do the verbal descriptions correspond to the Carnegie Mellon study's categories? and 2) How well do the verbal descriptions marketed by pornographers correspond to the actual images? Part III.A addresses three issues concerning pornography on the Usenet: 1) the origins of such imagery; 2) the percentage of all images available on the Usenet that are pornographic on any given day; 3) the popularity of pornographic boards in comparison to non-pornographic boards. Part III.B comprises the major portion of this study. It examines 1) the image portfolio and marketing strategies of the Amateur Action BBS; 2) the concentration of market leaders among "adult" BBS; 3) the availability and demand for hard-core, soft-core, paraphilic and pedophile imagery; 4) market forces common to all "adult" BBS. Part IV presents a more informal discussion of the data, including a) the appeal of digital pornography; b) the relationship between images and the words that describe them; c) the wide circulation of paraphilic imagery; d) the importance of descriptive lists; e) the sophistication of pornographers. Part V offers a summary of the significant findings of this study; Part VI offers suggestions for further research. Appendix A lists the categories of imagery according to the Dietz-Sears and Carnegie Mellon models. Appendix B offers the reader an indication of the power of the linguistic parsing software developed for this study. Appendix C presents the data in the form of pie charts, bar graphs, and scatterplots. It is assumed that the reader has a basic understanding of the Usenet and BBS. Only the technical aspects of BBS which relate to pornography will be explained in detail.

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