Yolanda Jones
Indiana University School of Law

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Censorship of the Internet

A professor’s question about the Communications Decency act of 1995 shapes the majority of this issue. The Act (S. 314), would make transmittal of sexually oriented communications a crime. Attached along with this issue is a file which includes the text of the House and Senate bills, the bill tracking records, and several articles downloaded from Lexis. There are several web pages which deal with this act specifically and with the issue of censorship in general. I am currently updating the Indiana Civil Liberties Rights in Cyberspace home page, but in the meantime, the following URLs should be helpful.

Appendix A is a packet of materials put together for a course at MIT titled “Political Economy of Digital Infrastructure,” (http://mas962-www.media.mit.edu/courses/mas962). The package includes the text of S. 314 as downloaded from the Library of Congress Thomas Service (http://thomas.loc.gov), and analysis of the bill by several organizations such as the ACLU and the Electronic Frontier Foundation. It is worthwhile to explore the rest of the archive to see how the course materials were presented on the Net.

A good place to look for information on S. 314 is the March 1 1995 PC.WEEK issue which can be found in the Ziff-Davis Web site (http://www.ziff.com/pcweek/columns/jiml/jiml.html). It has pointers to the bill and analysis from organizations such as Voters Telecommunications Watch (gopher://gopher.panix.com/11/vtw). Many law and cyberspace issues are also discussed in WIRED magazine (http://www.wired.com). Wired is free, but you have to register to get full access to the service ( ironic for the people who regularly print features about privacy!)

Other courses on the Net related to law and cyberspace issues include: “Perspectives on the law of Cyberspace” -- also known as the Internet Law Hypercourse -- from University of Massachusetts at Amherst (http://www.umass.edu/legal/HYPERCOU.HTML); “Taming the Electronic Frontier” from George Mason University (http://repository.gmu.edu/bcox/LRNG57200/Syllabus572.html); “Ethics and Law on the Electronic Frontier” (MIT -- http://www-swiss.ai.mit/6095); “Netsurf: Social Implications of Information Technologies”, University of Pennsylvania (http://www.seas.upenn.edu/~mengwong/netsurf/contents.html); and “Computers, Ethics, and Society”, University of Pennsylvania (http://icg.stwing.upenn.edu/cis590); and “Digital Communities”, MIT, (http://alteri.mit.edu/arch/4.207/homepage.html). I suggest saving or printing many of these pages, since as course archives, there is no guarantee how long they will be available.

Large civil liberties in Cyberspace are provided by the ACLU (gopher://aclu.org), the Electronic Frontier Foundation (EFF -- http://www.eff.org), and Computer Professionals for Social Responsibility (http://cpsr.org). You can also find a lot of good information at the Richmond Law and Technology

One current "hot issue" in the EFF archives concerns the Church of Scientology and how it instigated a police raid of an individual's home to obtain copies of its church writings which the person had posted to the Internet. The Church claimed that the man infringed upon its copyrights (see http://www.eff.org/pub/EFF/Legal/Cases/CoS_v_the_Net).

There are several web pages which deal with censorship in particular. Frank Quinn's censorship page (http://bronze.ucs.indiana.edu/~quinnjf/censor.html) has links to the American Communications Association (http://carvern.uark.edu/comminfo/www/ACA.html), a massive site which includes many links to free speech, telecom, and intellectual property issues. Don't miss the record of one person's attempt to register the Internet domain name F**K.COM -- it is under "Free Speech."

Quinn's page also links to the Electronic Frontier Foundation, the American Library Association Intellectual Freedom Committee, the File Room (http://fileroom.aaup.uic.edu/HOMEPAGE.html - includes many case histories and definitions of censorship), and the MIT Student Association for Freedom of Expression (SAFE --http://http://www.mit.edu:8001/activities/safe/home.html). Don't miss SAFE's "censor bait: what they don't want you to see, " it is a great archive of "forbidden fruit." One of the highlights of the page is PLAYBOY (http://www.playboy.com). If you are persistent, you can even download nude photos.

Visit the Bondage, Domination, Submission, Sadism, & Masochism home page (http://elbow.cs.brown.edu:8001/dcr/bdsm/bdsm.html), to see a case of successful censorship. Brown University officials pressured this one off the net.

Carnegie Mellon has been the center of controversy lately because it required the removal of "sexually explicit or obscene material" from campus Usenet newsgroups (electronic discussion groups). For example, the newsgroup "alt.binaries.pictures.tasteless" was censored. An excellent overview of the controversy is at http://www.cs.cmu.edu:8001/afs/cs/user/kcf/www/censor/index.html.

The Sex, Censorship, and the Internet web page (http://www.eff.org/CAF/cafiuic.html) is truly innovative. An HTML (hypertext markup language) version of a presentation, it provides many real and hypothetical fact situations, along with sample documents and links to information resources on Internet censorship. Funny though, when I tried to get to the examples of four letter words in messages, I kept receiving "error" messages. This is an excellent example of how a Web document can be a source of information itself as well as a link to many other sources.

Not related to censorship, but still worth a look is the "A Note About Web Browsers and Security" (http://www.uiuc.edu/~jejk/www-privacy-html). It points out that you might be leaving behind an alarming amount of information about yourself when you access web pages, which could lead to excessive junk mail.

Speaking of junk mail, I couldn't leave out our favorite "greencard lawyers", Canter & Siegel. This is the team which "spammed" (sent excessive junk mail) about help to enter a greencard lottery to thousands of Usenet newsgroup users. Their exploits are now immortalized, along with several others, on the "Black List of Internet Advertisers" (http://math-www.uni-paderborn.de/~axel/blacklist.html). The list includes the original "offensive" messages, the postal and email address of the offending parties, and a summary of their "crime."

A version of the entire United States Code is available at http://www.law.cornell.edu/uscode

An International Affairs web page is available at http://www.pitt.edu/~ian/ianres.html

"The Rodent", an underground newsletter for associates in law firms is now available at http://bankrupt.com/rodent.html. An article on client development notes that "...the club is also a great place to start rumors about the collapse of rival firms..."

WANT TO LEAVE CAUTION TO THE WINDS? TRY UROULETTE!

A click on the "wheel" takes you to a totally random place on the Web. I usually find something of interest in five to ten tries.

http://kuhttp.cc.ukans.edu/cwis/organizations/kucia/urolette/urolette.html

AIE moving to World Wide Web

The following is a memo from the University Libraries

University Computing Services will replace the AIE with World Wide Web (often referred to as "WWW" or simply "the Web"), on the Bloomington campus.

WHAT WILL OR HAS HAPPENED:

March 1: Users who logon to VAX computers (gold, aqua, jade, etc.,) will see a "$" instead of the AIE menu. To use the AIE, type aie at the $ sign. To use mail, type mail at the $ sign.

May 95: The AIE will no longer function as a menu system. (VAX Mail and VAX Notes will continue to be available.) After May 1995, users who type "aie" at the $ prompt will see instructions on how to access World Wide Web.

Fall 95: Most VAX computers will have been retooled to run specialized functions. Remaining VAX machines will support only VAX mail, VAX notes, and, we hope, library e-mail applications such as Interlibrary Loan.

WHAT YOU SHOULD DO:

- SUBSCRIBE to the UCS's electronic newsletter, THE UCS
MONITOR, to keep up on UCS' plans. To subscribe, send an e-mail message to:

listserv@iubvm.indiana.edu
Leave the subject line blank.
In the body of the message, type:
SUBSCRIBE UCSMON yourfirstname yourlastname

- GET A NETWORK ID. It will be your key to the new IUB computing network. If you do not yet have one, type joinnet at the VAX $ prompt and follow the instructions. Contact UCSHELP with questions, 855-6789.

- USE INFOGATE FOR ACCESS TO LIBRARY DATABASES. If you use the AIE to connect to library databases such as RLIN or FirstSearch, make an easy switch now. Connect to "infogate" instead of gold or jade for all remote library databases.

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STATUS OF AIE LIBRARY SERVICES AVAILABLE VIA WWW:

- All AIE library services except interactive applications are currently available via gopher, and are thus available via World Wide Web.

- Library applications that require e-mail interactions will soon be available on World Wide Web. These include: ask a librarian, requests for interlibrary loan, bds, boorenewals, reserves, and suggest a purchase.

- All databases to which the IU Libraries subscribe are now available through Infogate.

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Appendix A: Communications Decency Act Materials

The following is from the course readings for Political Economy of Digital Infrastructure (MIT):

Context:

Pool observes that the law has evolved separately in each of the three domains of communication - print, common carriage, and broadcast. Digital media, like those of the Internet, become the locus of convergence of previously separate technology platforms and media. How does the law react when platforms converge? We will look at S.314 as a case study of this phenomenon. We will also look at these source documents to learn about the day-to-day political process in these matters.

Things to observe and think about:

Computer bulletin boards and the like are construed, for the purposes of the legislation, as telecommunications services, bringing
them under the rubric of common carriage regulation of telephony. Is this technologically justified? Is it justified or not on other grounds?

How useful are on-line sources of legislative information, like the Thomas system? Item 1 represents the form the legislative text available on the Internet from the U.S. government. Item 3 consists of the legislative text as prepared by a human intermediary.

Implications?

The Center for Democracy and Technology (CDT) is a public interest organization whose analysis is contained in item 5. The Electronic Mail Association (EMA) is an industry trade group of companies involved with electronic mail services. Their analysis of the bill is contained in item 6. Note differences in tone and focus of the analyses? What is relatively emphasized or de-emphasized in each? What does this tell us?

If the supposition of item 10 that much of the negative implications of the bill as seen by industry and civil liberties groups is unintentional, as judged by the intent of the drafter, what does it tell us? Can unintended consequences really arise this easily?

Contents:

Item 1: S.314 as downloaded from thomas.loc.gov
Item 2: An email comment
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Item 4: EFF ALERT: S314 Online "Decency Act" Threatens All Online Providers
Item 5: CENTER FOR DEMOCRACY AND TECHNOLOGY ANALYSIS OF ONLINE INDECENCY LEGISLATION
Item 6: Electronic Mail Association Analysis of S.314
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Item 10: Private, edited message discussing some of the "inside the beltway" politics of this issue

Item 1: S.314 as downloaded from thomas.loc.gov

Communications Decency Act of 1995 (Introduced in the Senate)

S 314 IS

104th CONGRESS
1st Session
S. 314
(D) by striking out subparagraph (D) and inserting the following:

"(D) makes repeated telephone calls or repeatedly initiates communication with a telecommunications device, during which conversation or communication ensues, solely to harass any person at the called number or who receives the communication; or';

(2) in subsection (a)(2), by striking "telephone facility" and inserting "telecommunications facility";

(3) in subsection (b)(1)--

(A) in subparagraph (A)--

(i) by striking "telephone" and inserting "telecommunications device"; and

(ii) inserting "or initiated the communication" and "placed the call", and

(B) in subparagraph (B), by striking "telephone facility" and inserting "telecommunications facility"; and

(4) in subsection (b)(2)--

(A) in subparagraph (A)--

(i) by striking "by means of telephone, makes' and inserting "by means of telephone or telecommunications device, makes, knowingly transmits, or knowingly makes available'; and

(ii) by inserting "or initiated the communication' after "placed the call", and

(B) in subparagraph (B), by striking "telephone facility" and inserting in lieu thereof "telecommunications facility'.

(b) Penalties: Section 223 of such Act (47 U.S.C. 223) is amended--

(1) by striking out "$50,000' each place it appears and inserting "$100,000'; and

(2) by striking "six months' each place it appears and inserting "2 years'.

(c) Prohibition on Provision of Access: Subsection (c)(1) of such section (47 U.S.C. 223(c)) is amended
by striking 'telephone' and inserting 'telecommunications device.'

(d) Conforming Amendment: The section heading for such section is amended to read as follows:

'obscene or harassing utilization of telecommunications devices and facilities in the district of Columbia or in interstate or foreign communications'.

SEC. 3. OBSCENE PROGRAMMING ON CABLE TELEVISION.

Section 639 of the Communications Act of 1934 (47 U.S.C. 559) is amended by striking `$10,000' and inserting `$100,000'.

SEC. 4. BROADCASTING OBSCENE LANGUAGE ON RADIO.

Section 1464 of title 18, United States Code, is amended by striking out `$10,000' and inserting `$100,000'.

SEC. 5. INTERCEPTION AND DISCLOSURE OF ELECTRONIC COMMUNICATIONS.

Section 2511 of title 18, United States Code, is amended--

(1) in paragraph (1)--

(A) by striking 'wire, oral, or electronic communication' each place it appears and inserting 'wire, oral, electronic, or digital communication', and

(B) in the matter designated as '(b)', by striking 'oral communication' in the matter above clause (i) and inserting 'communication'; and

(2) in paragraph (2)(a), by striking 'wire or electronic communication service' each place it appears (other than in the second sentence) and inserting 'wire, electronic, or digital communication service'.

SEC. 6. ADDITIONAL PROHIBITION ON BILLING FOR TOLL-FREE TELEPHONE CALLS.

Section 228(c)(6) of the Communications Act of 1934 (47 U.S.C. 228(c)(6)) is amended--

(1) by striking 'or' at the end of subparagraph (C);

(2) by striking the period at the end of subparagraph (D) and inserting a semicolon and 'or'; and

(3) by adding at the end thereof the following:

'(E) the calling party being assessed, by virtue of being
asked to connect or otherwise transfer to a pay-per-call service, a charge for the call.'.

SEC. 7. SCRAMBLING OF CABLE CHANNELS FOR NONSUBSCRIBERS.

Part IV of title VI of the Communications Act of 1934 (47 U.S.C. 551 et seq.) is amended by adding at the end the following:

'SEC. 640. SCRAMBLING OF CABLE CHANNELS FOR NONSUBSCRIBERS.

(a) Requirement: In providing video programming unsuitable for children to any subscriber through a cable system, a cable operator shall fully scramble or otherwise fully block the video and audio portion of each channel carrying such programming so that one not a subscriber does not receive it.

(b) Definition: As used in this section, the term 'scramble' means to rearrange the content of the signal of the programming so that the programming cannot be received by persons unauthorized to receive the programming.'.

SEC. 8. CABLE OPERATOR REFUSAL TO CARRY CERTAIN PROGRAMS.

(a) Public, Educational, and Governmental Channels: Section 611(e) of the Communications Act of 1934 (47 U.S.C. 531(e)) is amended by inserting before the period the following: ', except a cable operator may refuse to transmit any public access program or portion of a public access program which contains obscenity, indecency, or nudity'.

(b) Cable Channels for Commercial Use: Section 612(c)(2) of the Communications Act of 1934 (47 U.S.C. 532(c)(2)) is amended by striking 'an operator' and inserting 'a cable operator may refuse to transmit any leased access program or portion of a leased access program which contains obscenity, indecency, or nudity.

Item 2: An email comment

> The entire bill is available online at http://thomas.loc.gov by asking it to search by bill number for S.314.
> Douglas Barnes is right that the bill is completely written in "modify these seven words of that incomprehensible reference to a law we don't have" style. It was this technique that slipped the ban of radio receivers that "could be used to eavesdrop" past us in the Digital Telephony bill. This new bill could mean literally ANYTHING. If any of us applies the diffs and figures out what it all means, we should post the result to each other and to the net immediately.
**NOTE:** [] = deleted
ALL CAPS = additions

47 USC 223 (1992)

Sec. 223. [Obscene or harassing telephone calls in the District of Columbia or in interstate or foreign communications]

OBSCENE OR HARASSING UTILIZATION OF TELECOMMUNICATIONS DEVICES AND FACILITIES IN THE DISTRICT OF COLUMBIA OR IN INTERSTATE OR FOREIGN COMMUNICATIONS*

(a) Whoever--

(1) in the District of Columbia or in interstate or foreign communication by means of [telephone] TELECOMMUNICATIONS DEVICE--

(A) [makes any comment, request, suggestion or proposal] MAKES, TRANSMITS, OR OTHERWISE MAKES AVAILABLE ANY COMMENT, REQUEST, SUGGESTION, PROPOSAL, IMAGE, OR OTHER COMMUNICATION which is obscene, lewd, lascivious, filthy, or indecent;

(B) makes a telephone call, whether or not conversation ensues, without disclosing his identity and with intent to annoy, abuse, threaten, or harass any person at the called number;

*(B) MAKES A TELEPHONE CALL OR UTILIZES A TELECOMMUNICATIONS DEVICE, WHETHER OR NOT CONVERSATION OR COMMUNICATIONS ENSUES, WITHOUT DISCLOSING HIS IDENTITY AND WITH INTENT TO ANNOY, ABUSE, THREATEN, OR HARASS ANY PERSON AT THE CALLED NUMBER OR WHO RECEIVES THE COMMUNICATION;

(C) makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

(D) makes repeated telephone calls, during which conversation ensues, solely to harass any person at the called number; or

(D) MAKES REPEATED TELEPHONE CALLS OR REPEATEDLY INITIATES COMMUNICATION WITH A TELECOMMUNICATIONS DEVICE, DURING WHICH CONVERSATION OR COMMUNICATION ENSUES, SOLELY TO HARASS ANY PERSON AT THE CALLED NUMBER OR WHO RECEIVES THE COMMUNICATION,

(2) knowingly permits any [telephone facility]
TELECOMMUNICATIONS FACILITY under his control to be used for any purpose prohibited by this section, shall be fined not more than $150,000 or imprisoned not more than [six months] TWO YEARS, or both.

(b)(1) Whoever knowingly--

(A) within the United States, by means of [telephone] TELECOMMUNICATIONS DEVICE, makes (directly or by recording device) any obscene communication for commercial purposes to any person, regardless of whether the maker of such communication placed the call or INITIATED THE COMMUNICATION; or

(B) permits any [telephone facility] TELECOMMUNICATIONS FACILITY under such person's control to be used for an activity prohibited by subparagraph (A), shall be fined in accordance with title 18, United States Code, or imprisoned not more than two years, or both.

(2) Whoever knowingly--

(A) within the United States, [by means of telephone], makes BY MEANS OF TELEPHONE OR TELECOMMUNICATIONS DEVICE, MAKES, TRANSMITS, OR MAKES AVAILABLE(directly or by recording device) any indecent communication for commercial purposes which is available to any person under 18 years of age or to any other person without that person's consent, regardless of whether the maker of such communication placed the call OR INITIATED THE COMMUNICATION; or

(B) permits any [telephone facility] TELECOMMUNICATIONS FACILITY under such person's control to be used for an activity prohibited by subparagraph (A), shall be fined not more than $150,000 or imprisoned not more than [six months] TWO YEARS, or both.

(3) It is a defense to prosecution under paragraph (2) of this subsection that the defendant restrict access to the prohibited communication to persons 18 years of age or older in accordance with subsection (c) of this section and with such procedures as the Commission may prescribe by regulation.

(4) In addition to the penalties under paragraph (1), whoever, within the United States, intentionally violates paragraph (1) or (2) shall be subject to a fine of not more than $150,000 100,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

(5)(A) In addition to the penalties under paragraphs (1), (2), and (5), whoever, within the United States, violates paragraph (1) or (2) shall be subject to a civil fine of not more than $150,000 100,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.
(B) A fine under this paragraph may be assessed either--

(i) by a court, pursuant to civil action by the Commission or any attorney employed by the Commission who is designated by the Commission for such purposes, or

(ii) by the Commission after appropriate administrative proceedings.

(6) The Attorney General may bring a suit in the appropriate district court of the United States to enjoin any act or practice which violates paragraph (1) or (2). An injunction may be granted in accordance with the Federal Rules of Civil Procedure.

(c)(1) A common carrier within the District of Columbia or within any State, or in interstate or foreign commerce, shall not, to the extent technically feasible, provide access to a communication specified in subsection (b) from the telephone of any subscriber who has not previously requested in writing the carrier to provide access to such communication if the carrier collects from subscribers an identifiable charge for such communication that the carrier remits, in whole or in part, to the provider of such communication.

(2) Except as provided in paragraph (3), no cause of action may be brought in any court or administrative agency against any common carrier, or any of its affiliates, including their officers, directors, employees, agents, or authorized representatives on account of--

(A) any action which the carrier demonstrates was taken in good faith to restrict access pursuant to paragraph (1) of this subsection; or

(B) any access permitted--

(i) in good faith reliance upon the lack of any representation by a provider of communications that communications provided by that provider are communications specified in subsection (b), or

(ii) because a specific representation by the provider did not allow the carrier, acting in good faith, a sufficient period to restrict access to communications described in subsection (b).

(3) Notwithstanding paragraph (2) of this subsection, a provider of communications services to which subscribers are denied access pursuant to paragraph (1) of this subsection may bring an action for a declaratory judgment or similar action in a court. Any such action shall be limited to the question of whether the communications which the provider seeks to provide fall within the category of communications to which the carrier will provide access only to subscribers who have previously requested such access.
Item 4: EFF ALERT: S314 Online "Decency Act" Threatens All Online Providers

EFF is working with the Electronic Messaging Association and others to oppose the Exon bill, S314, the Communications Decency Act of 1995. We believe policymakers should take into account the ability of those using the net to avoid materials they find offensive. There will likely be increased use of labels and headers to help people avoid unwanted materials and guide their children's use of the net in the future. Meanwhile, it is simply a bad idea to make it a crime to "transmit" offensive material, especially when the "transmitter" is passive and not monitoring the content of "transmission".

This bill would perpetrate the online equivalent of making anyone who builds a street liable for the fact that you can go to the red light district on it. This bill if passed into law will gravely chill the free flow of information online and inappropriately criminalize sysops and sysadmins for wrongdoing over which they have no control.

It is clear from recent discussions with Sen. Exon and his staff that the sponsors of the bill were apparently unaware that the bill, as written, criminalizes essentially everyone involved in networking with the sole exception of govt.-decree common carriers like telephone companies. The possibility of a re-write was being considered as of Feb. 8.

Contact: David Johnson, Sr. Policy Fellow, djohnson@eff.org, +1 202 861 7700

Item 5: CENTER FOR DEMOCRACY AND TECHNOLOGY ANALYSIS OF ONLINE INDECENCY LEGISLATION

A briefing on public policy issues affecting civil liberties online

The Center for Democracy and Technology is a non-profit public interest organization. The Center's mission is to develop and advocate public policies that advance constitutional civil liberties and democratic values in new computer and communications technologies.

CDT POLICY POST 2/9/95

SUBJECT: SENATOR EXON INTRODUCES ONLINE INDECENCY LEGISLATION

A. OVERVIEW
Senators Exon (D-NE) and Senator Gorton (R-WA) have introduced legislation to expand current FCC regulations on obscene and indecent audiotext to cover "all" content carried over all forms of electronic communications networks. If enacted, the "Communications Decency Act of 1995" (S. 314) would place substantial criminal liability on telecommunications service providers (including telephone networks, commercial online services, the Internet, and independent BBS's) if their network is used in the transmission of any indecent, lewd, threatening or harassing messages. The legislation is identical to a proposal offered by Senator Exon last year which failed along with the Senate Telecommunications reform bill (S. 1822, 103rd Congress, Sections 801 - 804). The text the proposed statute, with proposed amendment, is appended at the end of this document.

The bill would compel service providers to choose between severely restricting the activities of their subscribers or completely shutting down their email, internet access, and conferencing services under the threat of criminal liability. Moreover, service providers would be forced to closely monitor every private communication, electronic mail message, public forum, mailing list, and file archive carried by or available on their network, a proposition which poses a substantial threat to the freedom of speech and privacy rights of all American citizens.

S. 314, if enacted, would represent a tremendous step backwards on the path to a free and open National Information Infrastructure. The bill raises fundamental questions about the ability of government to control content on communications networks, as well as the locus of liability for content carried in these new communications media.

To address this threat to the First Amendment in digital media, CDT is working to organize a broad coalition of public interest organizations including the ACLU, People For the American Way, and Media Access Project, along with representatives from the telecommunications, online services, and computer industries to oppose S. 314 and to explore alternative policy solutions that preserve the free flow of information and freedom of speech in the online world. CDT believes that technological alternatives which allow individual subscribers to control the content they receive represent a more appropriate approach to this issue.

B. SUMMARY AND ANALYSIS OF S. 314

S. 314 would expand current law restricting indecency and harassment on telephone services to all telecommunications providers and expand criminal liability to "all" content carried by "all" forms of telecommunications networks. The bill would amend Section 223 of the Communications Act (47 U.S.C. 223), which requires carriers to take steps to prevent
minors from gaining access to indecent audiotext and criminalizes harassment accomplished over interstate telephone lines. This section, commonly known as the Helms Amendment (having been championed by Senator Jesse Helms), has been the subject of extended constitutional litigation in recent years.

* CARRIERS LIABLE FOR CONDUCT OF ALL USERS ON THEIR NETWORKS

S. 314 would make telecommunication carriers (including telephone companies, commercial online services, the Internet, and BBS’s) liable for every message, file, or other content carried on its network – including the private conversations or messages exchanged between two consenting individuals.

Under S. 314, anyone who "makes, transmits, or otherwise makes available any comment, request, suggestion, proposal, image, or other communication" which is "obscene, lewd, lascivious, filthy, or indecent" using a "telecommunications device" would be subject to a fine of $100,000 or two years in prison (Section (2)(a)).

In order to avoid liability under this provision, carriers would be forced to pre-screen all messages, files, or other content before transmitting it to the intended recipient. Carriers would also be forced to prevent or severely restrict their subscribers from communicating with individuals and accessing content available on other networks.

Electronic communications networks do not contain discrete boundaries. Instead, users of one service can easily communicate with and access content available on other networks. Placing the onus, and criminal liability, on the carrier as opposed to the originator of the content, would make the carrier legally responsible not only for the conduct of its own subscribers, but also for content generated by subscribers of other services.

This regulatory scheme clearly poses serious threats to the free flow of information throughout the online world and the free speech and privacy rights of individual users. Forcing carriers to pre-screen content would not only be impossible due to the sheer volume of messages, it would also violate current legal protections.

* CARRIERS REQUIRED TO ACT AS PRIVATE CENSOR OF ALL PUBLIC FORUMS AND ARCHIVES

S. 314 would also expand current restrictions on access to indecent telephone audiotext services by minors under the age of 18 to cover similar content carried by telecommunications services (such as America Online and the Internet). (Sec
As amended by this provision, anyone who, "by means of telephone or telecommunications device, makes, transmits, or otherwise makes available (directly or by recording device) any indecent communication for commercial purposes which is available to any person under the age of 18 years of age or to any other person without that person's consent, regardless of whether the maker of such communication placed the call or initiated the communication" would be subject of a fine of $100,000 or two years in prison.

This would force carriers to act as private censors of all content available in public forums or file archives on their networks. Moreover, because there is no clear definition of indecency, carriers would have to restrict access to any content that could be possibly construed as indecent or obscene under the broadest interpretation of the term. Public forums, discussion lists, file archives, and content available for commercial purposes would have to be meticulously screened and censored in order to avoid potential liability for the carrier.

Such a scenario would severely limit the diversity of content available on online networks, and limit the editorial freedom of independent forum operators.

ADDITIONAL NOTABLE PROVISIONS

* AMENDMENT TO ECPA

Section (6) of the bill would amend the Electronic Communications Privacy Act (18 USC 2511) to prevent the unauthorized interception and disclosure of "digital communications" (Sec. 6). However, because the term "digital communication" is not defined and 18 USC 2511 currently prevents unauthorized interception and disclosure of "electronic communications" (which includes electronic mail and other forms of communications in digital form), the effect of this provision has no clear importance.

* CABLE OPERATORS MAY REFUSE INDECENT PUBLIC ACCESS PROGRAMMING

Finally, section (8) would amend sections 611 and 612 of the Communications Act (47 USC 611 - 612) to allow any cable operator to refuse to carry any public access or leased access programming which contains "obscenity, indecency, or nudity".

C. ALTERNATIVES TO EXON: RECOGNIZE THE UNIQUE USER CONTROL CAPABILITIES OF INTERACTIVE MEDIA

Government regulation of content in the mass media has always been considered essential to protect children from access to
sexually-explicit material, and to prevent unwitting listeners/views from being exposed to material that might be considered extremely distasteful. The choice to protect children has historically been made at the expense of the First Amendment ban on government censorship. As Congress moves to regulate new interactive media, it is essential that it understand that interactive media is different than mass media. The power and flexibility of interactive media offers a unique opportunity to enable parents to control what content their kids have access to, and leave the flow of information free for those adults who want it. Government control regulation is simply not needed to achieve the desired purpose.

Most interactive technology, such as Internet browsers and the software used to access online services such as America Online and CompuServe, already has the capability to limit access to certain types of services and selected information. Moreover, the electronic program guides being developed for interactive cable TV networks also provide users the capability to screen out certain channels or even certain types of programming. Moreover, in the online world, most content (with the exception of private communications initiated by consenting individuals) is transmitted by request. In other words, users must seek out the content they receive, whether it is by joining a discussion or accessing a file archive. By its nature, this technology provides ample control at the user level. Carriers (such as commercial online services, Internet service providers) in most cases act only as "carriers" of electronic transmissions initiated by individual subscribers.

CDT believes that the First Amendment will be better served by giving parents and other users the tools to select which information they (and their children) should have access to. In the case of criminal content the originator of the content, not the carriers, should be responsible for their crimes. And, users (especially parents) should be empowered to determine what information they and their children have access to. If all carriers of electronic communications are forced restrict content in order to avoid criminal liability proposed by S. 314, the First Amendment would be threatened and the usefulness of digital media for communications and information dissemination would be drastically limited.

D. NEXT STEPS

The bill has been introduced and will next move to the Senate Commerce Committee, although no Committee action has been scheduled. Last year, a similar proposal by Senator Exon was approved by the Senate Commerce committee as an amendment to the Senate Telecommunications Bill (S. 1822, which died at the end of the 103rd Congress). CDT will be working with a wide range of other interest groups to assure that Congress
does not restrict the free flow of information in interactive media.

For more information contact:

Jerry Berman, CDT Executive Director <jberman@cdt.org>
Daniel Weitzner, CDT Deputy Director <djw@cdt.org>
+1.202.637.9800

Item 6 Electronic Mail Association Analysis of S.314

ANALYSIS

S.314, The Communications Decency Act of 1995
Introduced by Sen. Jim Exon (D.-NE)

Prepared for the
ELECTRONIC MESSAGING ASSOCIATION
by
James T. Bruce and Richard T. Pfohl
Wiley, Rein & Fielding

February 7, 1995

I. Summary

On February 2, Sen. Jim Exon (D.-NE) introduced S. 314, The Communications Decency Act of 1995. Sen. Exon's bill, which contains provisions intended to curtail transmission of obscene, indecent, or harassing telecommunications, is identical to an amendment to the Senate telecommunications deregulation legislation which died last fall with the conclusion of the 103rd Congress. Although ostensibly extending existing federal prohibitions on obscene or harassing telephone calls to other telecommunications devices, these provisions could greatly expand prohibited conduct and would potentially make employers, service providers, and carriers liable for transmission of restricted communications. The likelihood of passage of the telecommunications deregulation legislation in the current Congress and the likelihood that Sen. Exon will attempt to again attach his language to such a vehicle makes the potential passage of the Exon language quite plausible.

II. Analysis

Sen. Exon's interest in the issues addressed in S. 314 was reportedly spurred by reports of electronic stalking on the Internet. Sen. Exon stated upon introduction of the legislation on February 2, "I want to keep the Information Superhighway from resembling a red light district. This legislation will help stop those who electronically cruise the digital universe to engage children in inappropriate communications . . . or electronically stalk users of computer networks." The Exon bill would address obscenity on radio and cable television, but of particular interest to EMA members are Section 2, on obscene or harassing use of
telecommunications facilities, and Section 5, which extends the Electronic Communications Privacy Act (ECPA) to include digital communications.

According to Sen. Exon's introductory statement, his legislation is intended to "extend and strengthen" the anti-harassment, decency, and anti-obscenity restrictions on telephone calls in current law to all telecommunications devices. The Exon bill would not, however, simply apply existing law to new telecommunications devices.

Because of differences between existing telephone technology and telecommunications technology such as electronic messaging, the Exon bill would potentially prohibit a wide array of currently allowed electronic communications. Furthermore, the Exon bill would broaden existing law by subjecting transmitters, as well as the individuals who send obscene or harassing communications, to criminal liability.

A. Restrictions on Nonconsensual Indecency and Harassment

Current law, as codified in Sec. 223(a) of the Communications Act of 1934, prohibits any "obscene, lewd, lascivious, filthy, or indecent" communications by telephone.0 (Communications Act of 1934, Sec. 223(a) (47 U.S.C. 223(a))). Sec. 223(a) also prohibits intentional harassment by telephone, including by anonymous calls, repeated hang-ups, or repeated harassing calls. (47 U.S.C. 223(a)(1)(A - D)). Finally, Sec. 223(a)(2) prohibits knowingly permitting a telephone facility under one's control to be used for such purposes. The courts have interpreted Sec. 223(a) narrowly to apply only to non-consensual or unsolicited telephone calls.

The Exon bill would make two fundamental changes in existing Sec. 223(a), with potentially wide-ranging, and possibly unintended, consequences. First, the Exon bill expands the prohibitions on obscene or indecent or harassing telephone calls to communication by all telecommunications devices. Second, the Exon bill extends the prohibition against making obscene or indecent communications to "transmit[ting] or otherwise mak[ing] available" any such communication. (S. 314 Sec. 2(a) (emphasis added)). In addition, the Exon bill would raise the penalty for such violations from the current up to $50,000 or six months in prison, to up to $100,000 or two years in prison. (S. 314 Sec. 2(b)).

The Exon bill provisions would have a number of consequences for electronic messaging. First, unless the court-created limitation on the scope of the Sec. 223(a) anti-obscenity and indecency provisions to nonconsensual telephone calls is applied as well to all telecommunications, the provision would prohibit all "obscene, lewd, lascivious, filthy, or indecent" telecommunications, whether or not consensual. Services or carriers that transmit "or otherwise make[] available" such communications would be liable. Thus, the amended Communications Act would, on its face, prohibit indecent communications between consenting adults. This provision, unless limited to nonconsensual communications as the courts have done with regard to the existing prohibition on such telephone calls, is most likely unconstitutional. Nevertheless, the legislative history of this provision should clarify that the amended language is intended to apply only to nonconsensual communications.1
Second, the Exon bill restricts anyone from transmitting, "or otherwise making available," "obscene, lewd, lascivious, filthy, or indecent" communications. (S. 314 Sec. 2(a)(1)(B)). This goes beyond and is in addition to the existing prohibition on knowingly permitting a telephone facility under one's control to be used for purposes prohibited by Sec. 223(a). The Exon bill expands the prohibition on knowing use of telephone facilities to knowing use of telecommunications facilities. (S. 314 Sec. 2(a)(2)). The latter provision may prove troublesome if service providers are deemed to "know" about the use of Bulletin Boards for or Electronic Mail for harassment or indecent remarks.

These provisions could have a chilling effect on electronic message services, providers, carriers, or anyone else who could be deemed to "transmit[] or otherwise make[] available" prohibited electronic communications. Thus, for example, if someone sent an indecent electronic comment from a workstation, the employer, the e-mail service provider, and the carrier could all potentially be held liable, and subject to up to $100,000 in fines or up to 2 years in prison. This provision also has potentially chilling effects on electronic bulletin boards, discussion groups, and basic electronic mail communications. Although some service providers regularly screen bulletin boards to ensure that no obscene or indecent remarks appear upon them, the incredible proliferation of such bulletin boards makes comprehensive screening practically impossible.2 Bulletin Boards on the Internet, and, potentially, electronic messages, include numerous postings making racist remarks, arguing that the Holocaust never occurred, etc. All of these could conceivably be considered "indecent," or annoying, abusive or harassing, any of which could subject employers, services, and carriers to liability.

It is questionable whether the prohibition on obscene or indecent communications, even if limited to nonconsensual communications, can be accomplished in electronic communications without chilling the First Amendment. Electronic bulletin boards and discussion groups blur the concept of intent: anyone perusing bulletin boards or discussion groups on the Internet has the potential to stumble, as if accidentally stumbling into an X-rated movie theater, upon indecent material.3 Such an encounter may not be "consensual." The Internet practice of "flaming" fellow users very frequently involves use of indecency. Any such flame, which is by definition nonconsensual,4 would subject anyone who "makes available" the communication (again, potentially including an employer, service provider, common carrier, etc.) to full liability under this section.

B. Restrictions on Commercial Obscenity

The Exon bill would amend current law which is intended to restrict consensual obscene or indecent telephone calls, such as dial-a-porn. Current law prohibits use of the telephone to make obscene communications for commercial purposes, regardless of whether the maker of such communications placed the call (i.e., regardless of consent). (47 U.S.C. 223(b)(1)). Current law also prohibits making indecent communications available to persons under age 18. (47 U.S.C. 223(b)(2)). Current law allows common carriers to avoid liability under the provision limiting indecent material to persons over 18 by complying with F.C.C. rules and by offering subscribers the right to block access to indecent material. The Exon bill would extend these prohibitions to all telecommunications. (S. 314 Sec. 2(a)(3)).
By simply applying existing telephone provisions to telecommunications, the Exon bill would again create problems due to the unique nature of non-telephone telecommunications. For example, may a service or provider be liable if it does not check the ages of all members of a household, and allow a family to block access to members under the age of 18? Numerous electronic bulletin boards on line contain indecent material,6 and indecent material may spring up in any discussion group, or even when a rap artist discusses his lyrics, or a record company puts a new release on line, as has been done in recent months. Because subscribers are required to pay a commercial fee (beyond their basic subscription fee, which would presumably be analogous to a telephone common carrier fee) to access these services, indecent material on these services may subject providers to liability.7

C. Expansion of ECPA

The Electronic Communications Privacy Act (ECPA), codified in the U.S. Code at Title 18, generally prohibits unauthorized electronic surveillance, such as wiretapping of employees. (18 U.S.C. 2511. See Alderman v. U.S., 394 U.S. 185 (1969)). The Exon bill would add conforming language which amends the prohibition on surveillance to ensure that it covers all electronic communications, including digital communications. (S. 314 Sec. 5).

ECPA has been amended before to account for the evolution of technology. When passed in 1968, ECPA prohibited surveillance only of wire or oral communications. ECPA was amended in 1986 to prohibit as well surveillance of electronic communications. Sec. 5 of S. 314 would ensure that all electronic communications, including digital communications, are covered.

III. Status

The Exon language is substantively identical to the amendment to S. 1822, Senate telecommunications deregulation legislation in the last congress. It is anticipated that Sen. Exon will again offer his language as an amendment to telecommunications deregulation legislation which is expected to be introduced by mid-February. Sen. Pressler, Chairman of the Senate Commerce Committee, has indicated his eagerness to address the legislation. Sen. Exon is a member of the Senate Commerce Committee.

IV. Prognosis

Last year, Sen. Exon’s language was adopted as an amendment to the telecommunications deregulation legislation even though many thought it hastily drafted and poorly thought out. Nevertheless, this language could be adopted as part of the telecommunications bill in a matter of weeks or potentially added to any legislation pending on the Senate floor.

A coalition of groups assembled last fall to address the threat to online services created by the Exon provisions. The coalition included representatives of the ACLU, the Electronic Frontier Foundation (EFF), America Online, Prodigy, ANS, CompuServe, and the Interactive Services Association.

The will of Senators to oppose such "morality" legislation, regardless of how technically flawed, is always in short supply; in the more
conservative atmosphere of the 104th Congress, such legislation stands an even greater chance of passage.

ENDNOTES

0 Courts have not defined precisely what constitutes indecency, although they have held that mere offensiveness is insufficient.
1 Sec. 7 of Sen. Exon's bill, which requires that cable channels "unsuitable for children" be fully scrambled for nonsubscribers, suggests that he does not intend to prohibit indecent, non-obscene, consensual communications. Sec. 7 does not prohibit such "indecent" programming as the Playboy Channel, but merely ensures that it will be limited to consenting adults.
2 This problem is compounded by the indefiniteness of the definition of indecency.
3 The proliferation of such material on the Internet is evident in the proliferation of bulletin boards devoted solely to sexual topics. According to a newsgroup list compiled by Digital Equipment Corp., the most popular bulletin board on the Internet, after a bulletin board providing rules for new users, is alt.sex.stories, which half a million Internet users log on to each month. The next most popular category is alt.binaries.pictures.erotica, followed by the alt.sex discussion group.
4 One could argue, however, that the practices of logging on to the Internet or entering a discussion group or bulletin board, constitutes "consent," or waiver of the right to object, to whatever communications may ensue. The unresolved issue of consent demonstrates the difficulty of simply applying existing obscenity or anti-harassment law governing telephones to all telecommunications.
5 For example, F.C.C. rules require that companies require a credit card for provision of services.
6 See supra note 4.
7 Although it might be argued that the basic subscription fee of on-line services is analogous to a telephone common carrier fee, in this case the carrier (the service provider) is providing both the basic communications and the information services (i.e., the Bulletin Board). Thus the electronic telecommunications carrier is analogous to both the telephone company and the dial-a-porn operator for enforcement purposes.

Item 7 **ACLU CYBER-LIBERTIES ALERT**

FIGHT ONLINE CENSORSHIP!

AXE THE EXON BILL!

The American Civil Liberties Union urges you to contact the members of the U.S. Senate Commerce Committee and your own Senators to ask them to oppose the efforts to turn online communications into the most heavily censored form of American media.

In a clumsy effort to purge sexual expression from the Internet and other online networks, the self-described "Communications Decency Act of 1995"
(S.314, introduced by Senator Exon on 2/2/95) would make ALL telecommunications service providers liable for every message, file, or other content carried on their networks. Senator Exon is planning to attach the bill to Senator Pressler's new telecommunications legislation, which is targeted for action in early March.

The Exon proposal would severely restrict the flow of online information by requiring service providers to act as private censors of e-mail messages, public forums, mailing lists, and archives to avoid criminal liability. The ACLU believes that online users should be the only censors of the content of the information they receive.

**The Exon proposal broadens existing law by subjecting service providers, as well as the individuals who actually send messages, to criminal liability for any "obscene, lewd, lascivious, filthy, or indecent" message transmitted over their networks.**

If enacted into law, this vague and overly broad legislation could have the following draconian effects:

- The Exon proposal would prohibit communications with sexual content through private e-mail between consenting adults, and would inhibit people from making comments that might or might not be prohibited.

- Under the Exon proposal, service providers would pay up to $100,000 or spend up to 2 years in jail for prohibited content produced by subscribers on other networks, over which they had no control.

- The Exon proposal would expand current restrictions on telephone access by minors to dial-a-porn services to include online access to indecent material, requiring service providers to purge "indecent" material from public bulletin boards and discussion groups to avoid accidental viewing by a minor.

In effect, online providers would be forced to offer to adults only that content that is "suitable for minors."

S. 314 is nearly identical to an amendment Senator Exon successfully attached to last year's Senate version of the telecommunications law overhaul. Last year's bill died for unrelated reasons, but the Senate Commerce Committee is determined to pass new telecommunications legislation this year that could easily include the Exon proposal.

The ACLU opposes the restrictions on speech imposed by this legislation because they violate the First Amendment's guarantee of free expression. Forcing carriers to pre-screen content violates the Constitution and threatens the free and robust expression that is the promise of the Net. The Constitution requires that any abridgement of speech use the least restrictive means available -- the language of the Exon proposal is clearly the most restrictive because it sweeps broadly against a wide array of protected material involving sexual expression.

Stop the information superhighway from becoming the most censored segment
of communications media!

ACT NOW:

Urge members of the Senate Committee on Commerce, Science, and Transportation:

* To oppose the Exon proposal, or any Senate or House variation.
* To drop the Exon proposal BEFORE it goes to the Senate floor.
* To hold full hearings on the Exon proposal and to review it thoroughly before it goes to the Senate floor.
* To reject any effort to attach the Exon proposal to the Senate telecommunications legislation.

THE EXON PROPOSAL COULD BE LAW WITHIN WEEKS IF WE DON'T ACT TODAY.

Item 8: Stop S.314 Petition

> From: slowdog <slowdog@wookie.net>
> To: a-colbya@microsoft.com
> Subject: PETITION to Stop S.314
> Date: Thursday, February 16, 1995 10:47

*** PROTECT THE INTERNET. READ THIS MESSAGE ***

This document is an electronic Petition Statement to the U.S. Congress regarding pending legislation, the "Communications Decency Act of 1995" (S. 314) which will have, if passed, very serious negative ramifications for freedom of expression on Usenet, the Internet, and all electronic networks. The proposed legislation would remove guarantees of privacy and free speech on all electronic networks, including the Internet, and may even effectively close them down as a medium to exchange ideas and information.

For an excellent analysis of this Bill by the Center for Democracy and Technology (CDT), refer to the Appendix attached at the end of this document. The text to S. 314 is also included in this Appendix.

This document is somewhat long, but the length is necessary to give you sufficient information to make an informed decision. Time is of the essence, we are going to turn this petition and the signatures in on 3/16/95, so if you are going to sign this please do so ASAP or at least before midnight Wednesday, March 15, 1995.

Even if you read this petition after the due date, please submit your signature anyway as we expect Congress to
continue debating these issues in the foreseeable future and the more signatures we get, the more influence the petition will have on discussion. And even if Congress rejects S. 314 while signatures are being gathered, do submit your signature anyway for the same reason.

Please do upload this petition statement as soon as possible to any BBS and on-line service in your area. If you have access to one of the major national on-line services such as CompuServe, Prodigy, AOL, etc., do try to upload it there. We are trying to get at least 5000 signatures. Even more signatures are entirely possible if we each put in a little effort to inform others, such as friends and coworkers, about the importance of this petition to electronic freedom of expression.

Here is a brief table of contents:

(1) Introduction (this section)
(2) The Petition Statement
(3) Instructions for signing this petition
(4) Credits
(Appendix) Analysis and text of S. 314 (LONG but excellent)

*****

(2) The Petition Statement

In united voice, we sign this petition against passage of S. 314 (the "Communications Decency Act of 1995") for these reasons:

S. 314 would prohibit not only individual speech that is "obscene, lewd, lascivious, filthy, or indecent", but would prohibit any provider of telecommunications service from carrying such traffic, under threat of stiff penalty. Even aside from the implications for free speech, this would cause an undue - and unjust - burden upon operators of the various telecommunications services. In a time when the citizenry and their lawmakers alike are calling for and passing "no unfunded mandates" laws to the benefit of the states, it is unfortunate that Congress might seek to impose unfunded mandates upon businesses that provide the framework for the information age.

An additional and important consideration is the technical feasibility of requiring the sort of monitoring this bill would necessitate. The financial burden in and of itself - in either manpower or technology to handle such monitoring (if even legal under the Electronic Communications Privacy Act) - would likely cause many smaller providers to go out of business, and most larger providers to seriously curtail their services.

The threat of such penalty alone would result in a chilling effect in the telecommunications service community, not only restricting the types of speech expressly forbidden by the bill, but creating an environment contrary to the Constitutional principles of free speech, press, and assembly - principles which entities such as the Internet embody as nothing has before.
By comparison, placing the burden for content control upon each individual user is surprisingly simple in the online and interactive world, and there is no legitimate reason to shift that burden to providers who carry that content. Unlike traditional broadcast media, networked media is comparatively easy to screen on the user end - giving the reader, viewer, or participant unparalleled control over his or her own information environment. All without impacting or restricting what any other user wishes to access. This makes regulation such as that threatened by this S. 314 simply unnecessary.

In addition, during a period of ever-increasing commercial interest in arenas such as the Internet, restriction and regulation of content or the flow of traffic across the various telecommunications services would have serious negative economic effects. The sort of regulation proposed by this bill would slow the explosive growth the Internet has seen, giving the business community reason to doubt the medium's commercial appeal.

We ask that the Senate halt any further progress of this bill. We ask that the Senate be an example to Congress as a whole, and to the nation at large - to promote the general welfare as stated in the Preamble to the Constitution by protecting the free flow of information and ideas across all of our telecommunications services.

******(3) Instructions for signing the petition

It must first be noted that this is a petition, not a vote. By "signing" it you agree with *all* the requests made in the petition. If you do not agree with everything in this petition, then your only recourse is to not sign it.

In addition, all e-mail signatures will be submitted to Congress, the President of the United States, and the news media.

Including your full name is optional, but *very highly encouraged* as that would add to the effectiveness of the petition. Signing via an anonymous remailer is highly discouraged, but not forbidden, as an attempt will be made to separately tally signatures from anonymous remailers.

Because this is a Petition to the U.S. Congress, we ask that you state, as instructed below, whether or not you are a U.S. citizen. We do encourage non-U.S. citizens to sign, but their signatures will be tallied separately.

Signing this petition is not hard, but to make sure your signature is not lost or miscounted, please follow these directions EXACTLY:
1) Prepare an e-mail message. In the main body (NOT the Subject line) of your e-mail include the ONE-LINE statement:

SIGNED <Internet e-mail address> <Full name> <US Citizen>

You need not include the "<" and ">" characters. 'SIGNED' should be capitalized. As stated above, your full name is optional, but highly recommended. If you do supply your name, please don't use a pseudonym or nickname, or your first name -- it's better to just leave it blank if it's not your full and real name. If you are a U.S. citizen, please include at the end of the signature line a 'YES', and if you are not, a 'NO'. All signatures will be tallied whether or not you are a U.S. Citizen

Example: My e-mail signature would be:

SIGNED dave@kachina.altadena.ca.us Dave C. Hayes YES

2) Please DON'T include a copy of this petition, nor any other text, in your e-mail message. If you have comments to make, send e-mail to me personally, and NOT to the special petition e-mail signature address.

3) Send your e-mail message containing your signature to the following Internet e-mail address and NOT to me:

s314-petition@netcom.com

4) Within a few days of receipt of your signature, an automated acknowledgment will be e-mailed to you for e-mail address verification purposes. You do not need to respond or reply to this acknowledgement when you receive it. We may also contact you again in the future should we need more information, such as who your House Representative and Senators are, which is not asked here as it is unclear whether such information is needed.

Thank you for signing this petition!

*****(4) Credits

The petition statement was written by slowdog <slowdog@wookie.net>, super.net.freedom.fighter.

The rest of this document mostly collated from the net by Dave Hayes, net.freedom.fighter.

Much help came from Jon Noring, INFJ and self.proclaimed.net.activist who made a few
suggestions and will be tallying the signatures.

Thanks to the EFF and CDT for the excellent analysis of the bill.

(p.s., send your signature to s314-petition@netcom.com)

Item 9: Comment on the Petition

> From: lpd@aladdin.com (L. Peter Deutsch)
> To: antryg@cs.nmt.edu
> Subject: Re: FW: PETITION to Stop S.314 (fwd)

I'm disappointed that the petition is couched primarily in terms of economic burden. S.314 is so blatantly at odds with (among other things) the First Amendment and existing principles of "common carrier" licensing and of freedom of the press that this would have been a great opportunity to make an argument based on principle too, not just an economic argument that I'm afraid could be nickel-and-dimed to death.

I'll sign the petition, because I don't disagree with anything in it and it's important. I just wish it said more than it does.

L. Peter Deutsch

Item 10: Private, edited message discussing some of the "inside the beltway" politics of this issue

[identities of sender, recipients have been masked]

McLean [Exon's staff] says that all they want to do is make it clear that someone who is unambiguously a "bad guy" can be caught even if using email rather than a telephone to send, for example, a non-consensual and otherwise illegal message.

We might actually have an issue whether to take the position that no form of obscenity law applies in cyberspace. I guess there may be some who think that. I don't think that is a wise position to take. Rather, I think we should focus on the proposition that the wrongdoer is the one who should be liable (and, of course, should be entitled to any protections provided by the constitution or the more general doctrines favoring the free flow of ideas over the net). Since Exon says he doesn't want to shoot the postman, we have the leverage to convert the language of the bill so it doesn't create the chilling effect.

I expect a two track process. Some will just try to make sure the bill doesn't get attached to the big communications bill. Others will try to arrange large hearings on the "access to indecent materials" issue, generally. Others will work on any markup to take out any requirements that sysops monitor messages or that impose criminal
risk on sysops. (I suppose some will also argue that there ought to be no US law against intentional infliction on an unwilling other person of obscene or stalking-types of messages.

One interesting and perhaps useful fault line between a pure "civil liberties" position and a "health of the net" position is that the latter can stress that any given online community should be given very broad latitude to define its own values.