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INTERNET RED LIGHT DISTRICTS: A DOMAIN NAME PROPOSAL FOR REGULATORY ZONING OF OBSCENE CONTENT

by APRIL MARA MAJOR

I. INTRODUCTION

The Internet has a relatively short, yet rich history of free speech and independence from governance. While this independence is an important part of the Internet's past, it has become increasingly clear that the Internet must somehow be regulated in order to ensure stability to the Internet community and viability as a communications medium. Without regulation the Internet will eventually nullify its own legitimacy as an effective and reputable mode of communication. It is this negative effect which serves as the impetus for Internet governance that is proposed in this article.

The Internet is recognized as a legitimate communication medium due to several factors, the most important of which is a strong commitment to dissemination of information. A symbiosis exists between the rule of law, free press, and public legitimacy.[1] The Internet is a commu-

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1. Henry H. Perritt, Jr. has studied the symbiosis between a Rule of Law, free press and public legitimacy stemming from his leadership of a program called "Project Bosnia." Henry H. Perritt, Jr. & Christopher J. Lhulier, *Information Access Rights Based on International Human Rights Law*, 45 BUFF. L. REV. (forthcoming Nov. 1997); *see generally* Henry H. Perritt, Jr., *Sources of Rights to Access Public Information*, 4 WM. & MARY BILL OF RTS. J. 179, 184-85 (1995) (explaining and criticizing agency temptations to set up state monopolies over government information). *An Internet-Based Legal Information Infrastructure for Bosnia* (last visited Aug. 19, 1997)<http://www.project-bosnia.org/vcilp/bosnia/theplan.html>. Project Bosnia is premised on the following logic:

> Peace can last in Bosnia only if there is a rule of law and a civil society. A rule of law requires functioning legal institutions that are perceived as legitimate. Legal institutions must exchange information to function and must disseminate information to be perceived as legitimate. The war in Bosnia destroyed the physical artifacts of a paper information infrastructure such as law libraries, printing

nications infrastructure that is perceived as legitimate due to the free dissemination of information at the core of Internet philosophy.[2] But, critical to the continuation and strengthening of the Internet's legitimacy, the Internet community must accept and apply a rule of law.

This article offers two proposals. First, the "secondary effect" of destroying the Internet's legitimacy satisfies a "substantial governmental need" for a zoning regulation as set forth in *City of Renton v. Playtime Theaters, Inc.*,[3] *Young v. American Mini Theaters*,[4] and most recently

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presses, and physical distribution systems. Waiting until these physical elements can be restored will delay a rule of law too long; building a legal information infrastructure through modern information technology can hasten the existence of a [R]ule of [L]aw. The Internet and its World Wide Web are the most appropriate uses of modern information technology for this purpose . . . .

While putting legal institutions on the Internet is the central focus of Project Bosnia, the benefits of Internet accessibility are not limited to the legal system, narrowly understood. The same Internet databases and access points that permit legislators and judges to exchange information also permit journalists to obtain information and to publish it to the world at large. As a Rule of Law is a prerequisite to Peace, so also is a free press. The Internet facilitates both. As independent judicial decisionmaking and effective legal representation are necessary to a Rule of Law, so also is sympathetic world opinion necessary to Independence. The Internet promotes both.

But technology alone is not enough to transform a legal system. Substantive law and legal culture also must be hospitable to a rule of law. In the legal information context, this means that legal institutions must recognize the right of citizens to have access to public information, and must fulfill their duties to disseminate basic public information. It also means that telecommunications, competition, and company law must be hospitable to establishment of new kinds of intermediaries such as Internet service providers. Information access and open telecommunications markets both are prominent features of norms embraces by the European Union and the Council of Europe. The same legal environment that facilitates putting Bosnia on the Information Superhighway also moves it closer to European models for Rule of Law. Project Bosnia has undertaken to further that movement with respect to access and dissemination law and telecommunications law and policy.

Id.

See http://www.ceecil.org/. Project Bosnia has lead to efforts in other former Communist countries, under the name "Eastern and Central European Legal Network" ("ECEULnet"). *Id.* The objective of ECEULnet is connecting each constitutional court to the Internet allowing the free exchange of information, opinions, human rights documents, and ideas. *Id.*

2. The Internet in the United States provides access to information from functioning legal institutions promoting a public perception of legitimacy. For instance, court opinions, announcements from the White House, congressional proposals, enactments, and information from nearly every governmental agency is available via the Internet.

3. 475 U.S. 41 (1986). In *Renton*, the Supreme Court upheld a zoning ordinance enacted to keep adult movie theaters out of residential neighborhoods. The ordinance was aimed, not at the content of the films shown in the theaters, but rather at the "secondary effects"—such as crime and deteriorating property values—that these theaters fostered: "[I]t is th[e] secondary effect which these zoning ordinances attempt to avoid, not the dissemination of 'offensive' speech.'" 475 U.S. at 49 (quoting Young v. American Mini Theatres, Inc., 427 U.S. 50, 71 n.34 (1976)).

4. 427 U.S. 50, 71 n.34 (1976).

Reno v. American Civil Liberties Union.[5] Second, the most effective way to implement such zoning regulation is to reinforce accepted Internet standards, specifically the domain naming system.[6] In other words, use the standards and the technology of the Internet itself for regulatory enforcement.[7] This paper explores a possible solution to regulating pornography not only as an exercise in academia but also as a model of Internet self-governance.

II. BACKGROUND

A. THE INTERNET: IN A CLASS OF ITS OWN

It is well recognized that the Internet cannot be pigeonholed into a single traditional communications medium in which legislators are familiar with the implementation of regulation. Neither radio nor television fully captures the extent and manner in which information is disseminated via the Internet. "[T]he Internet is not as 'invasive' as radio and television" and has never been "subject to the type of government supervision and regulation that has attended the broadcast industry."[8] The Supreme Court also recently acknowledged that the Internet is "a unique and wholly new medium of worldwide human communication."[9]

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5. 117 S. Ct. 2329 (1997).

6. The Domain Name System ("DNS") is the network information service provided by the Internet for TCP/IP networks. In other words, it is the method of identifying computers, or "nodes" on the Internet. Computers know these nodes by a numeric Internet Protocol ("IP") address. DNS was developed so that nodes on the network could be identified with common names instead of numeric IP addresses. For example, www.vcilp.org is the domain name for the Villanova Center for Information Law and Policy's server with the IP address 153.104.15.253. SUN MICROSYSTEMS, INC., SUNOS 5.3—ADMINISTERING NIS+ AND DNS 12 (1993).

7. David R. Johnson & David Post, *Law and Borders—The Rise of Law in Cyberspace*, 48 STAN. L. REV. 1367, 1401 (1996). An article by David Post and David Johnson makes this point in a slightly different way:

> The law of any given place must take into account the special characteristics of the space it regulates and the types of persons, places, and things found there. Just as a country's jurisprudence reflects its unique historical experience and culture, the law of Cyberspace will reflect its special character, which differs markedly from anything found in the physical world. For example, the law of the Net must deal with persons who "exist" in Cyberspace only in the form of an e-mail address and whose purported identity may or may not accurately correspond to physical characteristics in the real world. In fact, an e-mail address might not even belong to a single person. Accordingly, if Cyberspace law is to recognize the nature of its "subjects," it cannot rest on the same doctrines that give geographically based sovereigns jurisdiction over "whole," locatable, physical persons. The law of the Net must be prepared to deal with persons who manifest themselves only by means of particular ID, user account, or domain name.

Id.

8. *Reno*, 117 S. Ct. at 2343.

9. *Id.*

Even a comparison to traditional print media raises several important differences. The Internet vastly increases the ability of users to obtain information.[10] The World Wide Web's (the "Web")[11] downloadable and manipulatable formats, larger immediate audiences,[12] and dynamic pages far surpass the advantages of traditional print media.[13] In addition, much of the material on the Web is non-commercial. This aspect is wholly distinct from most other areas of information dissemination.[14] However, business has begun chipping away at the Internet's complete, non-commercial foundation since a potential avenue for profit has been discovered in the Web.[15]

Although several levels of added value on the Web may parallel traditional print publishing, electronic publishing has many branches of its own. A particularly interesting aspect is that the user may add a certain amount of value by the order in which the hypertext links are selected.[16] This characteristic differs from most print publishing where

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10. Jane C. Ginsburg, *Putting Cars on the "Information Superhighway": Authors, Exploiters, and Copyright in Cyberspace*, 95 COLUM. L. REV. 1466, 1467 (1995).

11. It is important initially to distinguish the World Wide Web from the Internet. A popular misunderstanding is that the Web *is* the Internet. Rather, the Web is one of many information services on the Internet. One of the primary advantages of the Web is that it encompasses most of the other protocols of the Internet, such as electronic mail ("e-mail"), file transfer protocol ("FTP"), Gopher, and newsgroups. Due to its user-friendly interface, the Web empowers non-technical people to obtain information available on the Internet that in the past was accessible only by those with working knowledge of the Internet. Henry H. Perritt & April M. Major, *Technical Note: Electronic Publishing*, (last modified Feb. 2, 1997) <http://www.law.vill.edu/vcilp/technotes/epub.htm>.

12. Since the Internet is built on a collection of networks that cover the world, information is carried around the world almost instantaneously through the Internet.

13. Ginsburg, *supra* note 10, at 1467.

14. One may compare the non-commercialism of the information available on the Internet to the distribution of free pamphlets.

15. Many users believe that freely available information will always exist, since business over the Internet has been met with criticism. The Internet has such strong roots in non-commercialism that a complete evolution will have to take place to completely replace the notion. In addition, consumers must become comfortable with the technology and, more importantly, confident that there is privacy and security.

16. Deborah Reilly, *The National Information Infrastructure and Copyright: Intersections and Tensions*, 76 J. PAT. & TRADEMARK OFF. SOC'Y 903, 913 (1994).

> Information and knowledge in digital form, on the other hand are not sequential. They are linked rather than contained. Digital information, the defining structure of which is the database, has a boundarylessness about it that invites users, . . . to impose their own organizing principles in searching for information . . . . In addition, no sense of artifactual permanence exists in digital works which exist today on a network and may be revised or gone entirely tomorrow . . . . The digitalization of information serves as a leveler, encouraging the mixing and matching of what were previously discrete formats.

Id.

the reader has a set path of how to proceed in a self-contained package.[17] Because of this departure from traditional media, the strengths and weaknesses of the technology itself must be recognized and used in regulation of the Internet while also embracing the standards that are intertwined in its roots.

B. Domain Name System ("DNS") Past and Future

Any size network can join the Internet by applying for membership in two domain hierarchies, organizational and geographical.[18] The organizational hierarchy divides its namespace into seven top-level domains.[19] Widely accepted Internet policy already mandates that content belong in one of these top-level domains.[20] For instance, commercial sites are required to register with Network Solutions, Inc.[21] in the ".com" top-level domain, and educational institutions must register in the ".edu" top-level domain. Other top-level domains are .net, .gov, .mil, .int, and .org, which represent network, government, military, international, and organization respectively. The Domain Name System enables each domain to be administered by a different organization.[22] Each organization can then break its domain into a number of "subdomains" and dole out responsibility for those subdomains to other organizations.[23]

The addition of several new top-level domain names is currently under consideration and set forth in the International Ad Hoc Commit-

17. With Web pages there is usually no static path that must be taken. In general, the user is presented with either text that can be read or indexes that may be searched. Indexes provide links to other sources and the user may choose what interests her most.

18. Every country in the world is assigned a two or three digit identifier and the geographical hierarchy provides official names for the geographic regions within each country. A site using DNS can use any top-level names it prefers, but if it wants to connect to the Internet, it cannot use any of the organizational or geographic names reserved by the Internet's top-level domains. Sun Microsystems, Inc., SunOS 5.3—Administering NIS+ and DNS 12 (1993).

19. *Id.*

20. The existing Internet Domain Name space, however, has some self-imposed structure to it. Especially in the upper-level domains, the domain names follow certain traditions (not rules, really since they can and have been broken). This helps domain names from appearing totally chaotic. Paul Albitz & Cricket Liu, DNS and BIND 17 (1997). *See supra* note 6.

21. Since 1993, Network Solutions has been the global registrar for the international Top Level Domains ("TLDs") of .com, .org, .net, .gov, and .edu, and has also served as one of three world-wide allocation authorities for Internet Protocol ("IP") addresses. *Network Solutions, Inc.: Company Information* (last modified March 12, 1997) <http://www.netsol.com/history.html>.

22. Albitz & Liu, *supra* note 20, at 17.

23. *Id.*

tee ("IAHC")[24] domain name system registries proposal.[25] A completely

24. IAHC Internet International Ad Hoc Committee, *What is IAHC?* (last visited Aug. 19, 1997) <http://www.iahc.org>. "The IAHC is a coalition of participants from the broad Internet community, working to satisfy the requirement for enhancements to the Internet's global Domain Name System ("DNS"). Organizations naming members to the committee include: Internet Society ("ISOC"), Internet Assigned Numbers Authority ("IANA"), Internet Architecture Board ("IAB"), Federal Networking Council ("FNC"), International Telecommunication Union ("ITU"), International Trademark Association ("INTA"), and the World Intellectual Property Organization ("WIPO")." *Id. See Structure Defined for Self-Governance of Internet Domain Name Space; Maher Named to Chair Interim Group* (visited Aug. 6, 1997) <http://www.iahc.org/press/press-ipoc.html>. The IAHC was created in response to a growing amount of concern regarding the current DNS. Essentially Network Solutions, Inc., in cooperation with InterNIC and the National Science Foundation ("NSF") hold a monopoly in the DNS. Additionally, International institutions questioned the concentration of power in a single U.S. organization even though the Internet began as a U.S. military network ("ARPAnet"). *Id. See also* IAHC Internet International Ad Hoc Committee, *Current Composition of the Interim Policy Oversight Committee* (last modified May 19, 1997) <http://www.iahc.org/docs/ipoc-members.html>. Upon the signing of the gTLD-MoU, the IAHC dissolved and was replaced by the interim Policy Oversight Committee ("iPOC"). The Policy Oversight Committee ("POC") will not be officially convened until the new registrars are selected and the Council of Registrars ("CORE") is established. The iPOC, which includes most of the members of the IAHC, will serve through a transition period during which new POC appointees will assume the responsibility. *Id.*

25. *See Establishment of a Memorandum of Understanding on the Generic Top Level Domain Name Space of the Internet Domain Name System (gTLD-MoU)* (last visited Aug., 19, 1997) <http://www.gtld-mou.org/gTLD-MoU.html>. *See* International Telecommunication Union, *80 Organizations Sign MoU to Restructure the Internet*, (May 1, 1997) <http://www.itu.int/PPI/press/releases/1997/itu-08.html>.

In order to respond to a growing demand for Internet addresses in the generic top level domains, the generic Top Level Domain Memorandum of Understanding ("gTLD-MoU") calls for the establishment of seven new generic top level domains in addition to the existing scheme. *Id.* The proposed domains are .firm, .store, .web, .arts, .rec, .nom, and .info. *Id.* Moreover, the MoU recommends the establishment of a greater and more diversified number of registrars in order to promote competition. *Id.* Registrars will compete on a global basis, and users will be able shop around for the registrars which offers them the best arrangement and price. *Id.* Users will also be able to change registrar at any time while retaining the same domain address, thus ensuring global portability. *Id. See also The Internet Domain Name System Generic Top Level Domain Memorandum of Understanding (gTLD-MoU)* (last modified July 18, 1997) <http://www.gtld-mou.org/>. The gTLD-MoU is the international governance framework in which policies for the administration and enhancement of the Internet's global Domain Name System are developed and deployed. *Id.* This includes, inter alia, the addition of new generic Top Level Domains ("gTLDs") to the root of the DNS (the "."), selection of new domain name registrars, and development of equitable dispute resolution mechanisms over conflicts between parties concerning rights to domain names. *Id.* These policies are developed in cooperation with Internet Assigned Numbers Authority, which manages the root of the Domain Name System to promote stability and robustness. *Id.* The gTLD-MoU attempts to balance the many (and often disparate) interests of the many stakeholders in the Internet DNS. *Id.* Toward that goal, the MoU is intentionally designed to be open-ended and will be adapted to evolving requirements. *Id.* The MoU was developed as part of a DNS administration plan from the now-dissolved International Ad Hoc Committee. *Id.* The MoU is an explicit

restructured administration of Internet domain names is an important component of the IAHC strategy. The IAHC recommendations propose an independent system of self-governance in which rules created by Internet-based establishments are utilized by Internet-based adjudicators, and are enforced by revoking Internet-based property, namely domain names.[26]

The need for Internet governance is critical. For instance, one controversial area that has been at the forefront of the news recently is pornography. The idea has been proposed by a comment submitted to the IAHC that a new domain name should be added to the existing scheme, for example ".sex," ".obs," or some similar indication that a domain contains obscene material.[27] Thus, all Internet sites that display indecent[28] material would be required to register with Network Solutions under the ".obs" domain. This scheme poses the problem of distinguishing for example, a commercial (.com) pornography site from an organizational (.org) pornography site. While it is likely that most pornography sites

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recognition of a need to formalize the consultative policy framework for continued evolution of the Internet DNS. *Id.*

26. Henry H. Perritt, Jr., Will the Internet Supplant Traditional Sovereigns? 34 (July 29, 1997) (unpublished manuscript, on file with the *John Marshall Journal of Computer & Information Law*). *See Establishment of a Memorandum of Understanding on the Generic Top Level Domain Name Space of the Internet Domain Name System (gTLD-MoU)* (last visited Aug. 19, 1997) <http://www.gtld-mou.org/gTLD-MoU.html>. Section eight of the gTLD-MoU authorizes administrative challenge panels ("ACPs") to implement intellectual property policies. *Id.* ACPs and the associated mediation and arbitration mechanism have jurisdiction under the gTLD-MoU. *Id.* Jurisdiction is limited to claims that a second-level domain name in any of the CORE-gTLDs which is identical or closely similar to an alphanumeric string that is deemed to be internationally known and for which demonstrable intellectual property rights exist, may be held or used only by, or with the authorization of, the owner of such demonstrable intellectual property rights. *Id. See also* Interim Policy Oversight Committee, *Substantive Guidelines Concerning Administrative Domain Name Challenge Panels* (May 23, 1997) <http://www.gtld-mou.org/docs/racps.htm>. *See Internet Domain Name System: Myths & Facts* (last modified July 25, 1997) <http://www.netsol.com./announcements/MYTHS4.html>. Network Solutions, Inc. responds to allegations that "[t]here's widespread consensus that the IAHC proposal is a 'done deal.'" *Id.*

> The efforts of the IAHC to force their proposal on the Internet community has spurred a tremendous debate with little consensus. The White House, State Department, European Commission, CIX (the largest ISP organization with 170 members), and dozens of other commercial and international organizations outright reject or have serious concerns with the IAHC proposal to impose their authority over the Internet. Today there are an estimated 135,000 companies investing in Internet-related business or electronic commerce that have had no representation in the IAHC process. What is needed is active debate on the future of Internet administration and the active involvement of all stakeholders in formulating a policy that represents the widest interests.

Id.

27. A. Michael Salim, *Proposal to Reserve Restricted TLD's for Adult-Oriented Domains* (January 17, 1997) <http://www.iahc.org/contrib/draft-iahc-salim-restricted-tld.txt>.

28. See discussion *infra* section IV discussing the appropriate measure for indecency.

are commercial, this may not always be the case. Thus, if the preexisting top-level domain identification is necessary, a secondary level of identification is also equally sufficient.[29]

While in many instances users do not just stumble upon pornography, the suggested scheme would provide notice to the user that the browser[30] is about to link to a pornography web site.[31] Most browsers display the destination Universal Resource Locator ("URL")[32] when the user places the mouse over a hypertext link.[33] Thus, when the ".obs" extension becomes visible to the user *before* the hypertext link is chosen, the user has the decision whether or not to visit that site. A prior restraint argument would fail in this instance since prior restraint has been upheld primarily in the field of obscenity control.[34]

Due to the difficulty some products have presented,[35] such as the V-chip,[36] it is also important to consider the ease in which software could screen out the ".obs" domain for children. This proposed scheme is easily

29. *See infra* APPENDIX. The domain name "cilp.org.us" is part of the "org.us" domain as well as the "us" domain. ALBITZ & LIU, *supra* note 20, at 17. Perhaps .obs could break down into more descriptive domains such as soft.obs and hard.obs. *See also name.space,* (last modified Oct. 10, 1997) <http://namespace.pgmedia.net> (allowing users to register domain names in alternative top-level domains); Request for Comments on the Registration and Administration of Internet Domain Names, 62 Fed. Reg. 35,896 (1997) (seeking input on how the registration and administration of domain names can be improved); *Comments on the Registration and Administration of Internet Domain Names* (last modified Sept. 26, 1997) <http://www.ntia.doc.gov/ntiahome/domainname/domainname.htm> (summarizing the comments received).

30. A Web browser locates a Web document on the Internet and displays it to the user on his/her computer.

31. Information on the Web is commonly referred to as Web "sites" or "pages."

32. A Universal Resource Locator ("URL") acts as an address on the Web. Each document or file has its own unique URL for location and identification purposes.

33. Hypertext arranges information as an interconnected web of linked text. Hypertext permits a user to "jump" from a reference point in one document to the object of the reference in another document or in another place in the same document. Hyperlinks can be indicated by highlighted or underlined text.

34. JEROME A. BARRON ET AL., CONSTITUTIONAL LAW: PRINCIPLES AND POLICY 901 (4th ed. 1992).

35. This proposal is somewhat analogous to the "alt" newsgroups that as a whole were generally viewed as lacking of quality. "Once [the .obs top-level domain] is created and operational, it would be a simple matter for any software (be it a Web browser, e-mail reader, or any other such application program) to permit or block such sites based solely on the TLD extension. It would not be necessary for such software to search the content of the transmission, or perform any complex heuristics on the domain name to determine whether this is a restricted domain or not." Salim, *supra* note 27.

36. The V-chip is among the newest and most controversial technology for screening television content that protects children in ways that are consistent with First Amendment free speech standards. "Although parental control software currently can screen for certain suggestive words or for known sexually explicit sites, it cannot now screen for sexually explicit images." *Reno*, 117 S. Ct. at 2336.

enforceable and constitutionally sound as analogous to zoning laws and "red light" districts.

III. UNITED STATES CONSTITUTIONAL ANALYSIS

A. CONSTITUTIONAL ANALYSIS UNDER THE CDA

The recent Supreme Court decision of *Reno v. American Civil Liberties Union*[37] provides new precedent regarding Internet technology and a review of First Amendment[38] issues. While Justice Stevens' holding ultimately rested on overbreadth grounds,[39] zoning issues were discussed. At issue was the constitutionality of two statutory provisions of the Telecommunications Act of 1996.[40] Title V, commonly known as the Communications Decency Act of 1996 ("CDA") contains the two statutory provisions that were challenged in this case. The first provision prohibits the knowing transmission of obscene or indecent messages to any recipient under 18 years of age.[41] The second provision prohibits the knowing sending or displaying of patently offensive messages in a manner that is available to a person 18 years of age.[42]

The Government argued the constitutionality of the CDA as a sort of

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37. 117 S. Ct. at 2329.

38. U.S. CONST. amend I. The First Amendment provides, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right for the people peaceably to assemble and to petition the Government for a redress of grievances."

39. "While we discuss the vagueness of the CDA because of its relevance to the First Amendment overbreadth inquiry, we conclude that the judgment should be affirmed without reaching the Fifth Amendment issue." *Reno*, 117 S. Ct. at 2341.

40. Telecommunications Act of 1996, Pub. L. No. 104-104, § 652, 110 Stat. 56 (1996).

41. 47 U.S.C. § 223(a) (Supp. 1997) provides in pertinent part:

> (a) Whoever—
> (1) in interstate or foreign communications—
> . . .
> (B) by means of a telecommunications device knowingly—
> (i) makes, creates, or solicits, and
> (ii) initiates the transmission of, any comment, request, suggestion, proposal, image, or other communication which is obscene or indecent, knowing that the recipient of the communication is under 18 years of age, regardless of whether the maker of such communication placed the call or initiated the communication;
> . . .
> (2) knowingly permits any telecommunications facility under his control to be used for any activity prohibited by paragraph (1) with the intent that it be used for such activity, shall be fined under Title 18, or imprisoned not more than two years, or both."

Id.

42. 47 U.S.C. § 223(d) provides:

> (d) Whoever—
> (1) in interstate or foreign communications knowingly—
> (A) uses an interactive computer service to send to a specific person or persons under 18 years of age, or

"cyberzoning" on the Internet.[43] The Court rejected this argument since the CDA applies broadly to the Internet as a whole and the "purpose of the CDA is to protect children from the primary effects of 'indecent' and 'patently offensive' speech, rather than any secondary effect of such speech."[44] The Supreme Court went on to point out that the CDA is "thus a content based blanket restriction on speech," and as such cannot be properly subject to time, place, and manner regulation.[45]

While the Supreme Court appropriately decided that the CDA was unconstitutional, the domain name proposal introduced in section II of this paper is constitutional because of two very distinguishable features. First, the CDA effectively banned the indecent material since there is no other technologically feasible way to ensure that indecent messages or obscenity would not reach children. The domain name proposal allows all content to appear on the Internet and is not restricting the number of sites, the content or the access to content in any way. The organization of a new domain name for obscene Web sites, is a content-neutral time, place, and manner restriction which serves a substantial governmental interest and allows for reasonable alternative avenues of communication.

Second, the CDA was aimed at the primary effect of "indecent" speech on children and no secondary effect was offered or explored. The aim of the domain name proposal is to guard against the loss of legitimacy the Internet will encounter with a lack of regulation. This phenomena is a governmental concern due to the immense reliance the public has placed in the Internet as a communication and information medium. Similarly, in a previous article addressing authors' copyrights on Web material, this author pointed out that despite the apparent advantages of Web publishing, authors must be provided full protection of

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(B) uses any interactive computer service to display in a manner available to a person under 18 years of age, any comment, request, suggestion, proposal, image, or other communication that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs, regardless of whether the user of such service placed the call or initiated the communication; or

(2) knowingly permits any telecommunications facility under such person's control to be used for an activity prohibited by paragraph (1) with the intent that it be used for such activity, shall be fined under Title 18, or imprisoned not more than two years, or both.

Id.

43. *Reno*, 117 S. Ct. at 2342.

44. *Id.* (referring to *Renton*, 475 U.S. 41 (1986))

45. *Id.* (quoting *Young*, 475 U.S. at 46). *See also* Boos v. Barry, 485 U.S. 312, 321 (1988) (stating that "[r]egulations that focus on the direct impact of speech on its audience" are not properly analyzed under Renton"); Forsyth County v. Nationalist Movement, 505 U.S. 123, 134 (1992) (stating that "[l]isteners' reaction to speech is not a content neutral basis for regulation").

their copyrighted expression when it is published on the Web.[46] If authors are not assured of their copyrights when their material is published via the Web, the high quality of the information on the Web will rapidly diminish and the Web will be regarded as nothing more than a supermarket tabloid.

Another distinguishable feature, although not associated with the constitutionality issue, is that the CDA is a purely legislative assertion of control without regard for existing Internet standards. The domain name proposal is different because it is firmly rooted in existing Internet policy of domain name regulations.

B. THE TEST: REASONABLE TIME, PLACE, AND MANNER

In an earlier opinion delivered by Justice Stevens, the Supreme Court upheld two 1972 Detroit zoning ordinances providing that an adult theater may not be located within 1,000 feet of any two other "regulated uses"[47] or within 500 feet of a residential area.[48] A theater was deemed to be an "adult" theater if it was used to present "material distinguished or characterized by an emphasis on matter depicting 'Specific Sexual Activities' or 'Specified Anatomical Areas.'"[49] The court noted that "[e]ven though the First Amendment protects communication in this area from total suppression, we hold that the State may legitimately use the content of these materials as the basis for placing them in different classification from the other motion pictures."[50] The city argued that the secondary effect of disintegration of the character of its neighborhood justified the ordinances, to which the court replied:

> Since what is ultimately at stake is nothing more than a limitation on the place where adult films may be exhibited, even though the determination of whether a particular film fits that characterization turns on the nature of its content, we conclude that the city's interest in the present and future character of its neighborhoods adequately supports its classification of motion pictures.[51]

In *City of Renton v. Playtime Theaters, Inc.*,[52] the Supreme Court held that a city zoning ordinance which prohibited adult motion picture theaters from locating within 1,000 feet of any residential zone, single or multiple family dwelling, church, park, or school was constitutional. The

46. April M. Major, *Copyright Law Tackles Yet Another Challenge: The Electronic Frontier of the World Wide Web*, 24.1 RUTGERS COMPUTER & TECH. L.J. (forthcoming 1997).

47. The term "regulated uses" covered adult theaters, adult bookstores, cabarets, bars, taxis, dance halls, and hotels. *Young*, 427 U.S. at 50.

48. *Id.*

49. *Id.*

50. *Id.* at 70-71.

51. *Id.* at 71-72.

52. 475 U.S. 41 (1986).

city ordinance was found to be content neutral and a valid time, place, and manner regulation.[53] The court noted that the ordinance is directed at the secondary effects of the adult theaters on the community, not at the content of the films.[54] It is important to inquire as to whether the Renton ordinance serves a substantial governmental interest and whether reasonable alternative avenues of communication are available.[55]

The domain name proposal is consistent with the findings in the preceding cases and, as such, is constitutional. The placing of obscene material in a single domain does not prevent the publication of pornography and adequately allows the communication of the content. However, zoning ordinances have always been created by state law. Thus, sovereignty issues necessarily arise. Additionally, is it sufficient to stop at issues between state and nation?[56] While the scope of this paper does not address sovereignty issues, perhaps implementation of international regulations replaces the need for traditional sovereigns.[57]

C. Vagueness and Overbreadth

Although power of local governments to zone and control land use is broad and within their fundamental police powers, when zoning law infringes upon protected liberty it must be narrowly drawn and must further sufficiently substantial government interests.[58] In *Reno*, the CDA was struck down because of its overbreadth. The Supreme Court stated:

> In contrast to Miller and our other previous cases, the CDA thus presents a greater threat of censoring speech that, in fact, falls outside the statute's scope. Given the vague contours of the coverage of the statute, it unquestionably silences some speakers whose messages would be entitled to constitutional protection. That danger provides further reason for insisting that the statute not be overly broad. The CDA's burden on protected speech cannot be justified if it could be avoided by a more carefully drafted statute.[59]

A zoning ordinance such as the one proposed does not create problems of overbreadth and vagueness under the First Amendment since it is narrowly drawn and does not affect more speech than necessary to further a substantial governmental interest. However any famil-

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53. *Id.* at 47.

54. *Id.* at 56.

55. *Id.* at 41.

56. See *infra* text section IV.

57. *See* Perritt, *supra* note 26. Henry H. Perritt, Jr., *Jurisdiction in Cyberspace*, 41 Vill. L. Rev. 1 (1996) (evaluation of traditional bases of personal jurisdiction over Internet-based conduct giving rise to civil and criminal proceedings); Henry H. Perritt, Jr., *Cyberspace and State Sovereignty*, 3.2 Geo. Mason Int'l Law Review (forthcoming Feb. 1998).

58. Int'l Eateries of Am., Inc. v. Broward County, 726 F. Supp. 1556, 1562 (1987).

59. *Reno*, 117 S. Ct. at 2346.

iar governance scheme awkwardly imposed on the Internet runs the risk of violating the overbreadth doctrine because of the nature of the medium. Again, unlike print or broadcasting media, the Internet necessarily implicates a broader audience and requires a different means of regulation. Borders do not exist in cyberspace. For instance, a "local" ordinance immediately affects the entire world community of Internet users and publishers. State and federal borders no longer have tangible meaning. The Internet infrastructure lends itself to international regulation and perhaps the "community" idea proposed by Post and Johnson.[60]

Using domain names as a regulation tool immediately becomes an international issue. Also, unlike buying a magazine in a convenience store, age verification is not yet possible via the Internet since there is no face to face contact. Thus, responsibility is shifted to parents and guardians to ensure that their children are not accessing this material. In order to ease the difficult parental burden of constant monitoring, technologically sophisticated screening devices are available. The screening devices such as the V-chip can be made much more efficient by imposing zoning regulations.

IV. RESULTANT ISSUES THAT REMAIN

The previous analysis has only touched the tip of a very large international iceberg. Many issues emerge from the recommended zoning proposal. For example, how does one measure what content belongs in the .obs domain? What test should apply? Who decides where content should be? Where does a potential plaintiff file a complaint or dispute an improper zoning determination? Even though the proposal is Constitutional, what international ramifications must we address? Should an Internet treaty be signed? The IAHC recommendations purport to address many of these issues, however a governance scheme is far from being agreed upon.

If the Internet abided by traditional geographical jurisdiction rules, one could stop at a U.S. constitutional law analysis and the answers would be simple. For instance, under U.S. law, nudity alone does not place otherwise protected material outside protection of First Amendment, although obscenity is not protected by First Amendment.[61] In *Miller v. California*,[62] the Supreme Court framed the modern test for obscenity rejecting the earlier *Memoirs*[63] test.[64] The *Miller* court stated:

60. Post & Johnson, *supra* note 7.

61. *Int'l Eateries*, 726 F. Supp. at 1562.

62. 413 U.S. at 15.

63. A Book Named "John Cleland's Memoirs of a Woman of Pleasure" v. Attorney General, 383 U.S. 413 (1966).

> [t]he basic guidelines for the trier of fact must be: (a) whether the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest, (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and (c) whether the work, taken as a whole lacks serious literary, artistic, political, or scientific value. The test of "utterly without redeeming social value" articulated in *Memoirs*, is rejected as a constitutional standard.[65]

The court then stated:

> [i]n sum we (a) reaffirm the Roth[66] holding that obscene material is not protected by the First Amendment, (b) hold that such material can be regulated by the States, subject to the specific safeguards enunciated above, without a showing that the material is "utterly without redeeming social value," and (c) hold that obscenity is to be determined by applying "contemporary community standards," not "national standards."[67]

Although this is an acceptable U.S. scheme, the Internet infrastructure does not recognize state and federal borders and necessarily implies study of an international perspective. These issues are ripe for consideration and must be addressed in the near future.

V. CONCLUSION

The previous discussion serves as a model of Internet governance while examining the crisis the Internet community faces. Without a Rule of Law, the Internet may continue to supply information; however, without public legitimacy the Internet runs the risk of ceasing to remain a credible information resource. This article raises many issues that the international community must address as a result of the decentralized and global nature of the Internet.

While novel ideas are introduced and explored in this article, the importance of governance is the focal point. The Internet will not remain viable unless governance, self or otherwise, is accepted and imple-

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64. *Id.* In order for content to be obscene, the Supreme Court states:

> [T]hree elements must coalesce: it must be established that (a) the dominant theme of the material taken as a whole appeals to a prurient interest in sex; (b) the material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and (c) the material is utterly without redeeming social value.

Id. at 418.

65. 413 U.S. at 15 (citations omitted).

66. Roth v. United States, 354 U.S. 476 (1957). The court in this case pointed out, perhaps for the first time, that "sex and obscenity are not synonymous." *Id.* at 487. "Obscene material is material which deals with sex in a manner appealing to prurient interest." *Id.*

67. *Miller*, 413 U.S. at 36 (citations omitted).

mented. Lack of governance will only lead to destruction of the reliability of the information contained within the Global Information Infrastructure.

APPENDIX: DOMAIN NAME SPACE DIAGRAM—ADAPTED FROM DNS AND BIND

A. Domain names work on an inverted tree structure:

1. Black—CILP.ORG.US node
2. White—ORG.US domain
3. Grey—US domain