Chapter 10
Public Policy, Censorship, and First Amendment Issues

Whether or not concerns about media influences on adolescents are accurate, they have commonly led to legislative efforts to censor or regulate the distribution of media with offensive content, particularly to minors. This issue is particularly true for adolescents who may often have both the financial resources and gumption to purchase media without their parents' knowledge or consent. Thus, legislative efforts, particularly those focused on youth, have typically been faced with balancing several competing interests. First, does the state have a compelling interest in protecting adolescence for potentially "dangerous" media content? Second, do adolescents have free speech rights including the right to consume media of their choosing? Third, how are adolescents' free speech rights to be balanced with parents' rights to be informed of the content of media their children are consuming? Fourth, do efforts to curtail the access of minors to objectionable content inadvertently also curtail adults' access to the same material?

This chapter concerns itself with public policy, legislative and court efforts as they pertain to the access of adolescents to media. This chapter focuses particularly on public policy within the USA and other industrialized, democratic nations. This chapter also focuses mainly on efforts beginning in the latter half of the twentieth century, as earlier efforts have been covered in Chap. 2. As such, we examine how industrialized democracies attempt to balance purported public health concerns (whether real or imaginary) against free speech rights.

It is important to understand upfront that even industrialized democracies differ in their approach to media censorship. Although some degree of free speech protections are assumed under the democratic process, democratic nations often struggle with the balance between free speech and the need to "protect" certain citizens seen as "vulnerable" (which currently means youth, mainly, although once was thought to include women and non-whites). The result is considerable variation in permissible censorship between nations. In some nations, such as Austria, reprehensible political speech such as denial of the Holocaust is illegal. In other nations, such speech may be seen as equally reprehensible, although protected. Advocates of free

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speech often state that it is not possible to truly protect free speech unless one is willing to protect repugnant, reprehensible speech with which one fully disagrees.

That having been said, the first Amendment of the USA is probably among the most comprehensive free-speech protections offered even among democratic nations. Americans are often surprised to find government censorship in other democratic nations, having taken their own free speech protections for granted. This does not mean that this always translates to more liberal media. For instance, a viewer is more likely to come across profanity or nudity in broadcast television in the UK than in the United States, despite the former country having a government sanctioned censorship bureau. Nor does it mean that all speech is protected in the USA. For instance, child pornography is illegal for rather obvious reasons, as is speech intended to directly incite violence, fraudulent communications, false advertisement, the dissemination of classified government information, perjury, and defamation of character.

Those used to the first Amendment protections in the USA might be surprised by illegal speech in other democratic nations. For instance hate speech directed at ethnic or religious groups, while deplored but tolerated in the USA, is illegal in some other democracies. As noted, denial of the Holocaust in Germany or Austria is one such example. Many democratic nations have laws on the books making it a crime to "insult" the national flag or anthem or public officials ranging from monarchs and prime ministers through police and bus drivers. In some nations such as France it is illegal to present drug use as positive, laws which potentially could be used against legalization movements. Some nations such as Greece or Malta make insults toward Christianity or other religions illegal. In other nations, such as the UK, it is technically illegal to use profanity in public, although these laws are typically enforced in the context of public disturbances with arrests made only after a warning to desist. It pays to understand the local laws before one opens their yap.

Discussions and debates and free speech and media content tend to focus on the push and pull between speech rights and the perceived need to protect society or certain members of society (i.e., youth) from certain kinds of media. This involves multiple issues including community standards as well as research data. Given that research data on media effects tends to be, at best, muddled, often discussions fall back on community standards and "common sense."

10.1 Media Regulation in the USA

As noted in Chap. 2, the USA has experienced repetitive cycles of concerns over new media, which typically fade with time. However, during the early stages of the introduction of new media, the industry and government often face off regarding content and potential regulation. With the constitutionality of media regulation by government not always clear, government and industry may face off in a kind of game of chicken. Most often this has resulted in some form of compromise in which the industry agrees to monitor and regulate itself, either specifically restricting certain content or providing warning labels or ratings for more mature content.

In several cases such as the Hays Code and the Comics Code Authority, this involved industry self-imposed censorship.

More recently, however, the trend has been for industry to volunteer to provide content or ratings labels to inform media consumers about potentially objectionable content. The movie industry's move from the Hays Code to the MPAA ratings system (the familiar, G, PG, PG-13, R, NC-17), as well as new ratings systems or warning labels for music, television, and video games fall in this category. It is important to emphasize that these are all *voluntary* industry ratings systems. In the USA they carry no actual force of law, but rather are voluntarily enforced by theater owners, video game retailers, etc. Or put more simply, if a police officer happens to notice an 8-year-old child alone in an R-rated movie, there is nothing the police officer can do. The police officer has no legal right to ask the child to leave, or to arrest or fine either the parents or theater owner. This is an important point many in the general public do not realize.

Probably the epitome of the ratings systems remains the MPAA system, which represented a voluntary replacement of the Hay's Code. The MPAA system has gone through several iterations. For instance, in 1984 the PG-13 rating was added in response to films like *Indiana Jones and the Temple of Doom* which many felt was too violent for young children but not violent enough to get an R rating. In 1990 the NC-17 rating was added to replace the X rating which had become associated with pornography. Most mainstream release films voluntarily submit to the MPAA ratings, although it is not, strictly speaking, required (although a film without an MPAA rating is unlikely to be distributed to mainstream theaters).

The MPAA system is one of the more faithfully used ratings systems to date (FTC, 2009). However, it is sometimes criticized on several grounds. Long-time movie critic Roger Ebert, for instance, suggests that MPAA system is obsolete, focusing too much on sex and too little on violence and failing to distinguish between films which are and are not offensive (Tassi, 2010). Ebert also notes that R ratings may actually attract rather than detract youth viewers, something known as the *forbidden fruit* effect, a well known psychological phenomenon in which denying someone something only makes them want it more. Of course any rating system used to restrict access would be equally prone to the forbidden fruit effect.

A further concern about the MPAA is *ratings creep* in which more and more objectionable material is allowed into lower rated films over time. Thompson and Yakota (2004), for instance, found a higher incidence of objectionable material in films rated G (for general audiences including young kids) across the 1990s through 2003. However, although this plays into the culture wars, it is less clear this is necessarily a bad thing. For instance, in the 1950s even depicting married couples sleeping in the same bed was considered so objectionable that the lead characters in *I Love Lucy* a married couple both in real life and on television were depicted sleeping in separate twin beds. Such depictions today seem comical. Community standards change over time and ratings change with them. However, each generation experiences what I call the *Goldilocks Effect*. Essentially each generation thinks the generation before were too rigid and conservative in their approach to media, where as the youth that come after them are too loose and liberal. Each generation thinks it got media *just right.*

10.1.1 The Parents Music Resource Center

By the 1980s the loosening of restrictions on media content was all too clear and worried some activists and cultural conservatives. Music and rock music in particular had long been criticized for sexual innuendo and pushing limits, but by the 1980s all pretenses had ended and many lyrics included profanity and explicit sexual references. A group called the Parents Music Resource Center (PMRC) began an effort to regulate the sale of explicit music to minors.

The PMRC included many well-connected Washington women such as Tippy Gore the wife of future vice president Al Gore. The PMRC were concerned with a wide range of content in music lyrics, ranging from sexual and violent content to profanity and occult references. The PMRC wished to create a ratings system similar to the MPAA system for music. In the mid 1980s they attracted considerable attention to their cause, particularly given their connections to Washington DC elite. They published a list of the "Filthy Fifteen" songs they considered most offensive which included "She Bop" by Cyndi Lauper (for masturbation references), "We're Not Going to Take It" by Twisted Sister (for violence) and "Into the Coven" by Mercyful Fate (for occult references).

The recording industry (the RIAA) agreed to include explicit lyrics warning labels (the Parental Advisory Label) on albums and CDs. Nonetheless, the PMRC moved forward with Senate hearings in 1985 to begin public discussion of the issue. Witnesses were called on both sides of the debates regarding the potential influence of music on listeners. Typical concerns regarding the "glorification" of sex and violence were raised. However, musicians called to testify including Frank Zappa, Dee Synder of Twisted Sister, and John Denver (who the PMRC may have thought would be on their side) all eloquently argued against censorship and the potential for media to be misinterpreted by moral crusaders.

The explicit lyrics warning label was the only result of the PMRC's efforts, and it remains a voluntary system of the RIAA. However, the effectiveness of the Parental Advisory Label remains in doubt. The Federal Trade Commission found that, although display of the warning label was present, it was not very well enforced by music retailers (FTC, 2009). Particularly as music moves increasingly online, even voluntary enforcement of the ratings system may prove difficult.

10.2 Violent Video Game Legislation

Despite concerns about media violence, relatively little movement occurred in the latter half of the twentieth century to impose government regulation on violent media. Issues with violence on television (as well as sex) led mainly to the television V-chip (which allows for parental filtering of objectionable media) and another voluntary ratings system. Manufacture of televisions with the V-chip was mandated under the Telecommunications Act of 1996. However, for all the furor over television content, consumers themselves appear to have been relatively unconcerned.

Subsequent analysis of the V-chip has revealed that few parents use it (Federal Communications Commission, 2007; Kaiser Family Foundation, 2004). The unpopularity of the V-chip is speculated to be due to multiple factors: unfamiliarity with it, frustration over difficulty in using it; and disinterest in what it could do. By the time the V-chip was fully implemented, violent crime in the USA had already begun its downswing and the notion that violent media and societal violence went hand in hand began to come into doubt (Freedman, 2002).

Video games introduced new technology and new fears. Unlike television, video games were interactive which led to beliefs among some that they might be more likely to have harmful influences. The culmination was a test case for the regulation of violent content that saw a California law seeking to restrict the sale of video games with violent content tested before the US Supreme Court.

California's attempt to regulate the sale of violent video games to minors followed a line of similar failed attempts in other states (Georgia, Illinois, Louisiana, Maryland, Michigan, Minnesota, Oklahoma, and Washington) and cities in Indiana and Missouri. Each time such legislation was proposed it was challenged on both constitutional and evidentiary grounds and ultimately struck down by the courts. Concerns were raised by the courts not only with the selective attention of the legislators but also the scholarly community as in one case (ESA, VSDA and IRMA v. Blagojevich, Madigan and Devine, 2005) the court found that even scientists were selective in ignoring work contrary to their personal views:

> With regard to their conclusions, Dr. Goldstein and Dr. Williams noted that Dr. Anderson not only had failed to cite any peer-reviewed studies that had shown a definitive causal link between violent video game play and aggression, but had also ignored research that reached conflicting conclusions. Dr. Goldstein and Dr. Williams noted that several studies concluded that there was no relationship between these two variables. They also cited studies concluding that in certain instances, there was a *negative* relationship between violent video game play and aggressive thoughts and behavior (e.g., initial increases in aggression wore off if the individual was allowed to play violent video game for longer period). (ESA, VSDA and IRMA v. Blagojevich, Madigan and Devine, 2005, pp. 14–15)

This was similar to the bias the court found among legislators weighing the regulation of video game violence (ESA, VSDA and IRMA v. Blagojevich, Madigan and Devine, 2005, p. 16):

> Finally, the Court is concerned that the legislative record does not indicate that the Illinois General Assembly considered any of the evidence that showed no relationship or a negative relationship between violent video game play and increases in aggressive thoughts and behavior. The legislative record included none of the articles cited by Dr. Goldstein or Dr. Williams. It included no data whatsoever that was critical of research finding a causal link between violent video game play and aggression. These omissions further undermine defendants' claim that the legislature made "reasonable inferences" from the scientific literature based on "substantial evidence."

As such, biased reporting of research evidence has been a problem among both scholarly and legislative proponents of censorship.

State assemblyman (later State Senator) Leland Yee, a child psychologist was the individual who first proposed California's law banning the sale of the most violent video games to minors. State advocacy associations for the pediatrics and

psychological professions joined in supporting the law as did some anti-media "watchdog" groups. The state and the groups supporting it did not merely argue that video game violence might lead to minor forms of aggression, but rather that violent behavior and even damage to the brain could result from playing violent video games. The law passed through the state legislature and was signed into law by then-governor Arnold Schwarzenegger in 2005. Stores violating the law by selling violent games to minors would have faced a $1,000 fine for each occurrence. Violent video games were required to place a clearly marked sticker above and beyond the exiting ESRB ratings on their covers. Not surprisingly, the software industry immediately filed a lawsuit to block implementation of the law. US District Judge Ronald Whyte agreed to a preliminary injunction. In his ruling, like previous court decisions, he again questioning the research evidence. He eventually ruled for the software industry, granting a permanent injunction in 2007. The state of California appealed the decision to the ninth Circuit Court of Appeals. A panel of judges ruled for the software industry in 2009 (VSDA, ESA v Schwarzenegger, 2009). Once again, the court was extremely critical of the existing research, noting most came from a single scholar (Anderson) and stated:

> In sum, the evidence presented by the State does not support the Legislature's purported interest in preventing psychological or neurological harm. Nearly all of the research is based on correlation, not evidence of causation, and most of the studies suffer from significant, admitted flaws in methodology as they relate to the State's claimed interest. None of the research establishes or suggests a causal link between minors playing violent video games and actual psychological or neurological harm, and inferences to that effect would not be reasonable.

To this point, none of the states had been successful in pushing the issue to the Supreme Court of the United States (SCOTUS). However, in 2009 then-governor Schwarzenegger made the decision to appeal the case to SCOTUS, despite doubts the court would even consent to hear the case, given agreements among the lower courts. However, SCOTUS agreed to hear the case in 2010. This decision by SCOTUS to hear the case surprised many. The unanimity of the lower courts as well as the decision by SCOTUS not to carve out violence as an exception to free speech in the earlier United States v Stevens case pertaining to animal "crush" videos (2010; These involved sexual fetish videos of women crushing small live animals to death under stiletto heels) fueled speculation that SCOTUS may have been signaling a willingness to carve out violence, at least in video games, as a new category of unprotected speech (Denniston, 2010a).

The SCOTUS case attracted considerable attention, including numerous amicus briefs on both sides. In addition to supporting briefs from two activist groups, California was supported by 11 other states as well as a brief authored by State Senator Yee and cosigned by the California chapter of the American Academy of Pediatrics, the California Psychological Association and approximately 100 psychologists and medical scholars. The EMA was supported by approximately 27 separate briefs. Many of these were from media industries (ranging from movies to comic books) but also included briefs from groups concerned with the first amendment, legal scholars, the American Civil Liberties Union and National Youth Rights

Association, the Entertainment Consumers Association (representing video game consumers), the Chamber of Commerce of the USA, and the Cato Institute. Nine states and Puerto Rico sided against California in an amicus brief as did a group of 82 social and medical scientists who felt that California had misrepresented the research in supporting the law.

Arguments were held on November 2, 2010, and although opinions appeared divided among the justices, the court appeared to question the notion violent games "harmed" minors. They also expressed skepticism that games were different from other media, and whether the California law was properly worded, narrowly tailored or least restrictive. Several of the justices did appear concerned about violence in video games, particularly Justices Roberts, Alito and Breyer, which led some speculators to suggest that SCOTUS might strike down the California law but leave an open door for a more narrowly tailored law (Denniston, 2010b).

The degree of tension within the scientific community over these issues attracted notice when two signers of State Senator Yee's amicus brief supporting California joined with a lawyer to publish an essay in a law review critical of the other amicus brief of scholars (Pollard Sacks, Bushman, & Anderson, 2011) claiming that the scholars supporting California had published more research on the topic and thus were the true experts. However, this analysis did not deal with the substance of the two briefs. The Pollard-Sacks, Bushman, and Anderson paper amounted mainly to ad-hominem attacks and appeals to authority, not a comprehensive review of data. Furthermore the Pollard-Sacks paper was subsequently reviewed by scholars who were not involved in either amicus brief (Hall, Day, & Hall, 2011). Hall et al. concluded that the methodology of Pollard-Sacks et al. underestimated the expertise of the scholars on the Millet brief, and otherwise ran counter to proper scientific inquiry. However, this unfortunately incident documents how even scholars can become emotionally enraptured with a moral issue to the point they deviate from normal scientific discourse and procedure.

SCOTUS announced their decision on Brown v EMA on June 27, 2011. In a 7-2 decision (Justices Alito and Roberts concurring, but appearing more open to a narrower law than the majority; Justices Breyer and Thomas dissenting), the majority opinion written by Justice Scalia stated that video games enjoyed full First Amendment protections, that youth enjoyed considerable First Amendment protections that could not be legislated away easily, that the research on video game violence was "unpersuasive" and could not reach strict scrutiny, and that attempts to regulate violence would have to meet strict scrutiny. No door was left open for a narrower law.

Echoing concerns among some researchers regarding the poor quality of aggression measures used in many studies SCOTUS noted the disconnect between "aggression" as used in many of the studies and how it is perceived in the general public:

> One study, for example, found that children who had just finished playing violent video games were more likely to fill in the blank letter in "explo_e" with a "d" (so that it reads "explode") than with an "r" ("explore"). App. 496, 506 (internal quotation marks omitted). The prevention of this phenomenon, which might have been anticipated with common sense, is not a compelling state interest.

This further demonstrates how "aggression" measures commonly used in laboratory studies may sound impressive in the abstract when non-scholars are only told that the outcome is "aggression." Upon seeing the actual aggression measures used, many individuals in the general public are actually not impressed.

By contrast Justices Alito and Roberts assented, but did express concerns about violence in video games and were willing to consider less restrictive means to control such content. Justice Breyer also appeared convinced by causal arguments regarding video game violence but expressed frustration regarding what to do with conflicting social science data. Justice Breyer appeared convinced by California's argument that interactivity of video games makes them different from other media stating "the closer a child's behavior comes, not to *watching*, but to *acting out* horrific violence, the greater the potential psychological harm" despite there is no consensus view on this even among scholarly advocates of the causal position. Justice Breyer's conclusion appears to have been based upon his efforts to assemble lists of supporting and non-supporting research studies. The majority opinion were dismissive of Justice Breyer's efforts stating "we do not see how it could lead to Justice Breyer's conclusion, since he admits he cannot say whether the studies on his side are right or wrong."

The upshot of the Brown v EMA case is that the US Supreme Court declined to open up violent media to potential government regulation. Thus, it is firmly established that the government cannot regulate violence in the media, at least in the USA.

10.3 The Regulation of Sexual Content

Brown v EMA undoubtedly ranks as a considerable win for advocates of free speech, for the first time making it clear that government regulation of violent content in media would be unconstitutional. But what about sexual material or profanity? The USA has considerably more tradition of limiting sexual media. Bans on pornography were only declared unconstitutional in the 1970s (with the exception of obscenity and child pornography). Before the 1990s nudity or profanity on US television was almost unheard of. But by the 1990s this began to change.

One of the progenitors of this trend was the crime drama *NYPD: Blue* which featured much more profanity and occasional nudity than had been the case previously on US television. This show is sometimes credited as being one of the reasons for the creation of the anti-media advocacy group *Parents Television Council* (Poniewozak, 2008). Perhaps most famous was a nude scene occurring in an episode called *Nude Awakening* in 2003 in which a female actresse's buttocks were visible. The FCC, responding to complaints by the Parents Television Council fined ABC, the network that produced the show, $1.4 million in 2008, although this decision was subsequently thrown out by the Second Circuit court in 2011 for constitutional reasons.

Other issues that emerged had to do with "fleeting expletives" as well as unscripted nudity. Several celebrities such as Bono, Cher, Nicole Richie, and even Vice President Joe Biden have uttered variations of the word "fuck" either in live awards shows or on live broadcast news channels (in Biden's case). Once again, the FCC moved to fine stations for fleeting expletives and this was struck down by the

circuit courts. This was ultimately heard by the US Supreme Court in Federal Communications Commission v Fox Televisions Stations (2009). In this case SCOTUS sided with the FCC, although it did not decide the constitutional issues. In effect, SCOTUS kicked this issue back to the circuit appeals courts.

This returned the issue back to the Second Circuit Court which once again ruled in 2010 that the FCC's policies were too vague and chilling to speech. The FCC appealed to SCOTUS who readdressed the issue in Federal Communications Commission v Fox Televisions Stations (2012). Choosing something of a middle ground, SCOTUS agreed with the second Circuit Court that the FCC's guidelines were too vague and hadn't explicitly covered the "fleeting expletives" at the center of the case. The FCC also seemed to be selective in implementing its own rules, not levying fines for expletives or nudity in Stephen Spielburg movies such as *Saving Private Ryan* and *Schindler's List* which had been shown on broadcast TV without editing. Nonetheless, SCOTUS affirmed the FCC's ability to regulate, at least in principle, sex and profanity on broadcast airwaves. However, the rules for such regulation needed to be clearer than they had in the past.

It is worth noting that the issue at heart for the SCOTUS cases involving sex and profanity is in regard to the FCC's ability to regulate such content on *broadcast* airwaves. That is to say, airwaves owned by the government itself. Media which is provided through private distribution, ranging from cable TV to Internet streaming to movies, cannot be regulated by the FCC. Thus, it is not uncommon to see everything to full-frontal nudity to considerable profanity on cable TV or the movies. Ironically, the FCC's insistence on regulating broadcast airwaves may simply hasten the push for content to be delivered through alternate pathways such as cable and, increasingly, the Internet.

The SCOTUS decisions in Brown v EMA and final FCC v Fox cases also set up an odd distinction between violence and sex/profanity. SCOTUS has essentially declared violence off limits to regulation, but allowed for regulation of sex/profanity albeit only on government broadcast airwaves. Why such a distinction has been made is not always clear. Although the research evidence was central to the Brown v EMA case, it does not appear to have mattered much in FCC v FOX. In that case even the federal government acknowledged they could not provide research evidence that exposure to sexual situations or profanity *harmed* young viewers. Rather the decision seems to have hinged, as much as anything, on tradition. No tradition for regulating violent content exists in the USA, but we do have a tradition of regulating sex and profanity, even if standards have been gradually liberalizing over the past few generations.

10.4 Regulation of Media in Other Liberal Democracies

Naturally, different nations have differing approaches to freedom of speech. Nations under some form of authoritarian control may simply censor whatever they wish, and I will spend less time on these nations accordingly. More interesting is to examine how freedom of speech and media regulation is addressed in other liberal democracies given that some degree of freedom of speech is at the heart of democracy.

Students from the USA are often surprised to learn that many, perhaps most, other liberal democracies have some form of institutionalized government censorship or regulation of media. In some cases such as the British Board of Film Classification, an independent body may be given statutory authority for the regulation of media. By contrast the Australian Classification Board is more closely linked to the government. However, most liberal democracies have some form of regulation authority given statutory authority by the government.

That having been said, this does not always mean that other nations are more conservative in what they allow in their media. For instance, Americans are often surprised by the amount of sex and nudity allowed on European television, even broadcast channels. Even in the staid UK, you can see occasional nudity on commercials, let alone television shows, although such nudity is typically played for laughs rather than sexual stimulation.

By contrast, other nations have regulations governing content that may seem shocking to Americans. For instance, some countries such as Germany or Australia have outright banned some of the most violent video games. That is to say even adults have not been allowed access to such games, let alone children. In Australia, the government has recently edged toward fixing this, introducing a new R18+ rating for the most violent games so adults can access them, although as of this writing, implementation has been slow and strained. Germany, by contrast, appears resolute on its exceptional censorship regime. These examples highlight how fragile free speech rights can be even in liberal democracies.

10.5 What Free Speech Rights to Adolescents Have?

One issue at the heart of many of the efforts to restrict access of minors to objectionable content is that of what free speech rights minors enjoy. Do adolescents have the right both to say whatever they wish and consume whatever media they wish, at least within the bounds applied to adults? Or do youth have fewer free speech rights than adults? Obviously, in many respects adolescents are treated differently under the law. Although laws vary by country, restrictions on adolescent smoking, drinking, voting, and even curfews are not uncommon. Can the free speech rights of adolescents be curtailed to a greater degree than for adults?

Here again, the issues are complex. Some adolescent behaviors have been restricted due to perceived public health concerns. In the case of smoking and alcohol use, for instance, the public health issues are well documented, but that has not been the case for media effects. Or, put in US legal terms, the issue of media effects has not been able to pass *strict scrutiny* which means that a compelling public health interest has not been documented.

The courts do recognize that adolescents' speech rights may be curtailed under some circumstances, however. For instance, in the case of Morse v Frederick (2007) SCOTUS ruled that schools had a compelling interest in restricting students' speech rights at campus events, particularly when such speech could be

reasonably interpreted as supporting behaviors that would go against public health. In this case a high school student, Joseph Frederick, had unfurled a banner reading "Bong hits 4 Jesus" at a school event watching the Olympic torch go by. The principle of the school seized the banner and suspended Frederick. Frederick filed a civil rights lawsuit that went to SCOTUS. In a split 5-4 decision SCOTUS ruled that, because the speech occurred in the context of a school event, the school had legal right and compelling interest to restrict this speech, particularly given its drug use implications.

However, in Brown v EMA, SCOTUS ruled that adolescents did indeed have broad free speech protections, and that government could not restrict access to violent material unless a compelling interest could be demonstrated, which it could not. Thus, limitations on adolescents' free speech, at least within the USA, are restricted to compelling interest on school grounds. Or, put simply, youth may have to be careful what they say in school, but have great latitude elsewhere.

Also at issue regarding free speech protections is what is called a *chilling* effect. This occurs when regulations or censorship of media to minors might result in unintended restrictions to adults as well. Much debate over this took place in the 1990s when Internet pornography became widely available. Naturally, pornography access is restricted to minors. In the 1990s the US government attempted to pass several laws requiring online pornography distributors to check the age of individuals accessing their Web sites, usually by having them provide a credit card number, even if the pornographic images were freely available. SCOTUS struck down the majority of these laws, arguing that requiring adults to present a credit card to check their age could have a chilling effect. Or put another way, many adults prefer to use pornography anonymously, and requiring them to run a credit card would be chilling on their free speech rights. As a consequence, although schools are required to use Internet filters for objectionable content, there are few barriers between minors and Internet pornography other than a voluntary certification of adult age.

10.6 Concluding Statements

The struggles over free speech are always the tug of war of freedom versus the need or perceived need to protect society. We understand that some forms of speech, whether shouting "fire" in a crowded theater when no fire exists, or child pornography, require restriction, given the rather obvious harm generated by such speech. Debates occur when the harmfulness of a particular kind of speech is less clear, or where perceptions of harm and personal morality become intertwined. At present freedom has been on a gradual winning streak, although undoubtedly debates will continue into the foreseeable future. Nonetheless, despite various efforts to regulate or censor various forms of media, the general cross-national trend has favored fewer, not more restrictions. This probably reflects increasing awareness that media has not touched off the kind of public health issues anti-media advocates often profess. However, whether this trend will continue into the future remains to be seen.

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