A Comparative Study of Internet Content Regulations in
the United States and Singapore:

The Invincibility of Cyberporn

By Joseph C. Rodriguez

I. Introduction

In one dimly lit alley of the Internet, in an area known as newsgroups, we find among the over twenty-three thousand different newsgroups categorized by area of interest newsgroups with titles such as "alt.binaries.erotica.bestiality," "alt.binaries.pictures.child.erotica.male," or "alt.erotica.female.plumpers."1 We also find that capitalism lives on as a peek inside the first category reveals a promotion for a bestiality Website2superimposed on an image of a human fornicating with an unidentifiable animal.3 A few more clicks transport us away and into one of the more heavily traveled areas of the Internet, the World Wide Web (Web). After searching for and retrieving links for cyberporn,4we discover that by simply clicking through various legal disclaimers in the form of hypertext links Web pages emerge with pornographic images interspersed with banners advertising various porn stars, nude teens, live sex shows, and hundreds of channels of streaming adult video.5

As one might expect, the proliferation of cyberporn has motivated some nations to regulate Internet content. Cyberporn is not the only type of content, however, that nations have chosen to regulate. Rather, in policing the Internet, some nations have prohibited content based on broad terminology, such as being against public interest or public morality, which extends government censorship well beyond cyberporn.6 Analytically, the degree of government censorship used by each nation's Internet regulatory approach demonstrates, for one, that the tension between an individual's rights and the community's interests.7 As a result of this tension, each nation's Internet regulatory approach also reflects a nation's perception of the role of law and the role of the individual in its society.

Two nations with starkly contrasting degrees of government-imposed Internet content regulations are the U.S. and Singapore.8 All attempts at regulating Internet content in the U.S. have collided with staunch opposition.9 Opponents of Internet content regulation in the U.S. argue that almost any type of regulation would restrict the free flow of information and forms of expression that are protected by the U.S. Constitution,10 thus subverting the individualism and liberalism that has allowed the U.S. to prosper. In contrast, in 1996, Singapore enacted an elaborate administrative law framework for Internet content reflecting a more instrumentalist approach to the role of law and a lower regard for individual rights than the U.S.

This paper explores the differences between the U.S. and Singaporean Internet content regulations and discusses how the differing Internet regulations are due to,
and illustrate fundamental differences in, the role of law and of the individual in the respective countries. Part II provides a broad introduction to the Internet and to the various communication and information retrieval technologies available on the global network. Part III lays the foundation of the comparison by discussing the British and Chinese influences in Singapore, the evolution of the political structures and role of law in Singapore, and Internet regulation in Singapore. Part IV discusses the U.S. and parallels Part III in structure. Part V explains the differences in the U.S. and Singapore Internet regimes. Finally, the conclusion comments on the future of international Internet regulation.

II. Background

A. History and Basic Structure of the Internet11

Historians argue that the printing press was the greatest technological innovation of the last millennium because it enabled the spread of information and knowledge and spurred the growth of modern civilization.12 Perceived in this respect, the Internet, a global medium of communications that connects people, institutions, and governments around the world,13 will undoubtedly transform our civilization beyond recognition.

Although conceptually intimidating, the Internet is merely a collection of cooperating, interconnected computer networks.14 The Internet emerged from a U.S. military computer network called "ARPANET" in the late 1960s when researchers formulated standard networking protocols to link together networks similar to ARPANET.15 Because these links consisted primarily of university networks collaborating on research, the Internet was initially geared towards the free flow of information characteristic of the academic world.16 Moreover, the cooperative nature and academic roots of the Internet produced a system where the lack of any hierarchical structure was both an intrinsic and a desired quality. Consequently, the decentralization of power inherent in such a cooperative, non-hierarchical system became a defining characteristic of the Internet.17

The emergence of the Internet Service Provider (ISP) served as another critical step in the Internet's development.19 The ISP eliminated the need for an individual to obtain costly networking equipment to access the Internet by allowing an individual to access the Internet with a modem-equipped computer, a phone line, and Internet software. The ISP possessed all of the necessary networking equipment to become one of Internet's interconnected networks; an individual joined this network by establishing a connection with the ISP usually through a phone line.20 The ISP acts as gateway, therefore, by passing all of the user's communications and information through the ISP's network before it reaches the user's computer.

An individual with Internet access may engage in a wide variety of communication and information retrieval methods that can be organized into six general categories: (1) one-to-one messaging (e.g., e-mail); (2) one-to-many messaging (e.g., listserv); (3) distributed message databases (e.g., newsgroups); (4) real time communication (e.g., Internet Relay Chat, telephony, video-conferencing); (5) real time remote computer utilization (e.g., telnet); and (6) remote information
retrieval (e.g., FTP, gopher, and the Web).21

The Web, consisting mainly of text and two-dimensional graphics that follow a page model,22 exploded in popularity when the development of a user-friendly commercial Web browser in 1993 made the Web more navigable for businesses and consumers.23 Other factors such as the reduction in prices for Internet-ready computers and the ability to engage in the Internet's interactive experience anonymously have also fueled the popularity of both the Web and the entire Internet.24

B. Current State of Internet Usage and Content

As can be expected in a massive and unregulated global information system, the adult-entertainment industry has flourished.25 In late 1998, approximately 28,000 adult Websites promoting pornography on the Internet generated close to $925 million in annual revenue.26 Also in 1998, almost 70% of the traffic on the Web was estimated to be adult-oriented material,27 an increase from a 1996 estimate indicating that almost 50% of the content available on the Web was unsuitable for children.28 Further, much of Web erotica is geared towards the Internet's predominantly male users as "sites with content designed for women represent a miniscule portion of the Web's thousands of commercial sexually explicit sites."29

The amount of Internet erotica demonstrates that Internet content is largely a reflection of Internet user demographics and the attempted exploitation of these users' interests. Of the 153.25 million people estimated to be online as of January 1999, approximately 75 million are estimated to come from the U.S.,30 where approximately 60% of the adults using the Internet are male.31 Asia sits in third place behind Europe with an estimated 26.55 million Internet users as of January 1999.32 Studies vary on the amount of Internet users in Singapore, a multi-lingual yet largely English speaking society, with user estimates ranging from approximately 15-25% of Singapore's population of 3.1 million.33 Consequently, with the U.S. as the dominant Internet user, English-language male-oriented content is prevalent.34

C. Immediate Future of the Internet

The immediate future of the Internet will revolve around next generation applications taking advantage of increases in bandwidth.35 Currently, connection speeds limit most users to experiencing text with minimal animation and sound effects and to raw forms of streaming video and audio.36 With increased bandwidth, broadband technologies will allow the user to experience richer multimedia events such as interactive three-dimensional worlds, object surfaces with photo-realistic rendering, near broadcast quality video, and CD-quality audio.37 Moreover, increased bandwidth will allow even more information to flow across the borderless medium that is the Internet.38

III. Singapore

A. Historical and Ideological Influences

Upon visiting Singapore's national Website in mid-February, an image of fruits, spilling out of a small red satchel decorated with Chinese characters fills the screen in celebration of Chinese New Year.39 This image demonstrates that in Singapore the
"cultural and institutional influences are still overwhelmingly Chinese." The Chinese, who have emerged as the dominant ethnic group in Singapore's diverse culture, comprise 77% of the estimated 3.1 million people residing on the island nation of Singapore.

With Chinese as the dominant ethnic group, Confucian ideals permeate Singapore society. These ideals, originally developed in response to the fractured, belligerent nature of China in 551-479 BC, focus on providing social harmony. To eliminate conflict, Confucianism stresses the need for people to follow rules of conduct in relationships and the need for people to establish an orderly and hierarchical society. To further achieve social stability, Confucianism espouses discipline and reverence for authority. Confucianism also sacrifices individual rights to preserve social harmony. Specifically, civil and political rights or rights that functioned to protect the individual from the state's interests did not exist in Confucian theory. Even after various Chinese constitutions granted individual rights, the individual was still subservient to the state and individual rights still did not limit the power of the state.

Along with a lack of individual rights, no explicit role of law exists in Confucianism; natural law, a concept similar to moral virtue, governed the behavior of the individual and controlled an individual's unbridled self-interests. In response to the impracticality of ruling millions of Chinese by moral virtue alone, Chinese philosophers supplemented Confucianism with Legalism. The Legalists, a group of Chinese political philosophers, advocated harsh uses of penal law and advised the use of people as instruments of the ruler. The Qin Dynasty utilized Legalism's "rule by law" philosophy during the third century BC to unite the Chinese world. Thereafter, the role of law as an instrument of power for the ruling class was firmly transfixed in classical Chinese philosophy.

British influences also pervade Singapore. Due to its ideal location overlooking the Malacca Straits, Englishman Sir Thomas Raffles established a halfway station in Singapore for British shipping in 1818. As a British colony, Singapore experienced unprecedented prosperity as a major port of call. However, after the Japanese occupation of Singapore during World War II, the British Crown's role as a "protector" was undermined and resistance developed against British colonization that led to Singapore becoming self governing in 1959 and entering into a federation with Malaysia in 1963. The Malaysian prince, Abdul Rahman, however, expelled Singapore from the federation because of tensions with the ethnic Chinese. Inevitably, Singapore experienced bloody ethnic violence and continuing tensions with Malaysia due to the ill-formed federation and due to Singapore's cramped location "pinched between the Malay Muslim giants of Malaysia and Indonesia." Finally, in 1965, Singapore became independent and the last British armed forces withdrew in 1971.

Currently, differences in language, color, religion, and culture remain as barriers to forming any cohesive national identity and as ingredients for future conflicts. To control and assuage the conflicting cultural groups, the government implements rigid paternalistic policies. Instead of aggravating the situation by
forcing the various cultures into an imminently volatile cultural melting pot, the Singapore government promotes cultural plurality by encouraging the teaching of Confucian ideals to establish social harmony.61

B. Evolution and Characteristics of Political Structures

British influences carried over into Singapore's legal system.62 As part of the English common law family, Singapore's legal system resembles the English system in "terms of methodology, the style of legal thought and reasoning, the structure of legal institutions, [and] the doctrines of legal classification as well as procedure."63 However, Singapore modified the English laws that it adopted to protect Singapore's diversity and culture.64

The Constitution of Singapore also deviates from British standards in a further attempt to protect the values and diversity of Singaporean society.65 Responding to ethnic tensions, the goal of the Constitutional Commission, appointed by the First Parliament in 1965, was to preserve the multi-racial character and equality of citizens in Singapore. The Commission recommended that the best way to protect the citizens was to establish certain fundamental rights in the Constitution.66 The Singapore Constitution thus lists the such fundamental liberties as liberty of the person; prohibition of slavery and forced labor; protection against retrospective criminal laws and repeated trials; equality; prohibition of banishment and freedom of movement; freedom of speech, assembly, expression and association; freedom of religion; and educational rights.67

Notably, no guarantee of freedom of the press exists in the Singapore Constitution. Rather, the press, in particular newspapers, has been blamed for aggravating the ethnic tensions during the 1950 riots in Singapore.68 Moreover, the Singapore government believes that the media should be supportive of the government and its policies rather than act as a check on government power.69

Singapore's political structure also reflects a movement away from British standards. In the same year that it was expelled from the Malaysian Federation, Singapore established itself as an independent nation with a parliamentary form of democratic government.70 However, unlike the classic parliamentary system where competing political parties determine who will hold the executive position, Singapore allows the dominant political party in Parliament, in effect, to control its own election.71 By making the Parliament unicameral,72 Singapore also increased the powers traditionally given to Parliament under British constitutional practice. The supremacy of Singapore's Parliament is further demonstrated by its ability to impose restrictions on rights granted by the constitution; that is, constitutional rights are subject to "such restrictions as [Parliament] considers necessary or expedient."73 Because the Parliament functions as a powerful legislative branch and elects the executive branch, the political structure creates an environment conducive to the use of legislation as an instrument of control by the dominant political party that in the history of Singapore has been the People's Action Party (PAP).74

C. Role of Law in Singapore Society

Since 1965, when the PAP first held every seat in parliament, the PAP's authoritarian regime has taken advantage of Singapore's super-parliamentary structure
to use the law and other extra-legal measures as instruments of social policy and control. Initially, the PAP consisted primarily of Chinese, English-educated middle-class nationalists led by Lee Kuan Yew (Lee). Lee, viewed as the architect of modern Singapore, built Singapore by reviving and reinforcing Confucian traditions in Singapore's predominantly Chinese population. Both Confucianism and the use of law as an instrument of social control are evident in the PAP's treatment of the political opposition and of the media.

The PAP has exhibited little tolerance for political opposition. In 1963, Singapore's Internal Security Council detained more than a hundred political leaders, trade union leaders, and student leaders who had been PAP rivals. To prevent political groups from secretly forming, freedom of association was severely limited by requiring official permission for public gatherings of five persons or more, and by requiring associations with more than ten members to register with the government. Moreover, in 1985, by barring political engagement by organizations not specifically registered for such purposes, the PAP essentially shielded the government from organized public scrutiny.

In addition to controlling the political opposition, the PAP has also utilized administrative laws to control the media and to censor the type of content produced perhaps recognizing the powerful influence of media on Singapore's volatile ethnic tensions. In addition to censoring all films, Singapore places a special focus on publications, scrutinizing foreign papers in particular. Procedurally, the PAP primarily utilizes different licensing schemes to regulate the media. For example, the PAP inhibits press criticism of official policy by requiring an annual renewal of licenses.

The structural conditions under which the judiciary operates are also conducive to "rule by law." For example, the government possesses the discretion to renew short-term appointments to the Supreme Court and to transfer lower court judges to government service, making the judiciary vulnerable to political influence and pressure. Further, the judiciary's role in reviewing constitutional issues has been frustrated because of procedural mechanisms. Moreover, even in situations where the Singapore judiciary possesses the ability to protect an individual's fundamental liberties, the court has exercised considerable self-restraint.

Notably, the majority of Singaporeans accept the PAP's instrumentalist approach. This acceptance demonstrates Singaporeans' cultural tolerance for a strong, paternalistic government as their Confucian values include a respect for law and authority. However, despite the public's acceptance of the PAP's policies, the PAP's approach is still considered "rule by law."

D. Modern Singapore

The Singapore government also receives legitimacy for its top-down policies and "rule by law" approach from its economic success. "Authoritarian capitalism" has lifted Singapore above its Southeast Asian neighbors who are still struggling to convert from agrarian economies. In 1998, Singapore was ranked Asia's top city for doing business. Also, with the demise of Hong Kong, Singapore is becoming the most cosmopolitan business city, and the technological and financial hub for
Former Prime Minister Lee felt that the style of "authoritarian capitalism" practiced by the PAP was warranted by the socioeconomic conditions of Singapore and its status as a developing country. This style is readily apparent in the controlled, meticulously engineered nature of the country's development. The government utilizes three holding companies to control commercial enterprises via significant ownership stakes in all industries.

Within Singapore's domestic industries, the PAP achieves further control through "tight interlocking directorships involving a small coterie of politically-trusted civil servants." The PAP's control undoubtedly extends into the information technology (IT) industry, where the government has taken an aggressive approach to becoming the global technological hub by promoting Singapore as the "intelligent island." Singapore is presently in the midst of Singapore ONE, a project designed to make Singapore the first nation in the world to offer interactive multimedia applications to every household via a public broadband network.

E. Singapore Internet Policy and Regulatory Framework

In developing Internet content regulations, Singapore had to resolve the obvious tension between its aggressive IT growth strategies that allowed colossal amounts of uncensored information into the country via the Internet and the government's traditional restrictions on media. In 1996, Singapore took an initial step by indicating it would make no legal distinction between the Internet and other types of media by shifting the responsibility for regulating the Internet from the Telecommunication Authority of Singapore to the Singapore Broadcasting Authority (SBA).

The SBA adopted the following three-pronged approach to encourage Internet development:

a) promoting the public awareness of positive aspects and hazards of using the Internet through public education;

b) encouraging the industry to set its own standards through industry self-regulation; and

c) instituting a light-touch policy framework in regulating content which is regularly fine-tuned based on consultation.

Pursuant to this policy, the SBA instituted a "light-touch policy framework" in July 1996 by establishing a Class licensing Scheme ("licensing") and Internet Code of Practice ("Code").

Procedurally, the SBA licensing--an administrative law technique commonly utilized to regulate the media in Singapore--acts as "an automatic licensing scheme and there is no need to obtain prior approval from the SBA." Licensing focuses on eliminating objectionable content and targets ISPs and Internet Content Providers (ICPs). Licensing achieves control over ISPs and ICPs by establishing situations in which both must register with the SBA and by establishing content restrictions that require both to comply. The SBA content restrictions have pornography as a primary concern and also "focus on content which may undermine public morals, political stability and religious harmony in Singapore."
The Code provides clearer guidelines as to what is objectionable content. Also, due to a recommendation by the National Internet Advisory Committee (NIAC), the SBA amended the Code to provide clearer guidelines as to what is "prohibited material." The 1997 Amendment to the Internet Code of Practice provides:

1. Prohibited material is material that is objectionable on the grounds of public interest, public morality, public order, public security, national harmony, or is otherwise prohibited by applicable Singapore laws.

(2) In considering what is prohibited material, the following factors should be taken into account:

(a) whether the material depicts nudity or genitalia in a manner calculated to titillate;
(b) whether the material promotes sexual violence or sexual activity involving coercion or non-consent of any kind;
(c) whether the material depicts a person or persons clearly engaged in explicit sexual activity;
(d) whether the material depicts a person who is, or appears to be, under 16 years of age in sexual activity, in a sexually provocative manner or in any other offensive manner;
(e) whether the material advocates homosexuality or lesbianism, or depicts or promotes incest, paedophilia, bestiality and necrophilia;
(f) whether the material depicts detailed or relished acts of extreme violence or cruelty;
(g) whether the material glorifies, incites or endorses ethnic, racial or religious hatred, strife or intolerance.

(3) A further consideration is whether the material has intrinsic medical, scientific, artistic or educational value.

(4) A licensee who is in doubt as to whether any content would be considered prohibited may refer such content to the Authority for its decision.

Notably, the Amendment specifically directs that current laws shall extend to the Internet, and the SBA has stated that "[b]y licensing content powers, SBA also reinforces the message that the laws of Singapore such as the Penal Code, Defamation Act, Sedition Act and Maintenance of Religious Harmony Act apply as much to communications on the Internet as they do to traditional print and broadcasting media." To enforce the Code, the SBA licensing framework requires that licensees, ISPs, and ICPs must use their "best efforts" to comply with the Code and must act to ensure that nothing is included in any broadcasting service that is against "public interest, public order or national harmony[] or [which] offends against good taste or decency." To clarify the meaning of "best efforts," the SBA set forth further guidelines in an attempt to clarify ambiguities surrounding the obligations and responsibilities of ISPs and ICPs. The SBA stated that ISPs are "not required to monitor the Internet or its users. They will, however, need to limit access to only 100 high impact
pornographic sites, as identified by SBA, as a statement of societal values."115 Additionally, ISPs are encouraged to take their own initiative against offensive content through their own "Acceptable Use Policies"116 and are encouraged to exercise judgment in which newsgroups to subscribe to and make available to their users.117 The Code also requires ISPs to deny access to sites that have been identified by the SBA as possessing prohibited material.118 Moreover, lincensing requires that an ISP "faithfully and truthfully furnish such information, and furnish such undertakings, as the [SBA] may require[.]"119

As opposed to individuals or entities that merely act as a gateway for content, the Code is more clearly applicable to individuals or entities that produce content.120 Consequently, ICPs, particularly Web authors, must observe the Code.121 Additionally, although the SBA does not require prior approval for content, licensees are advised to consult with the SBA if they are unsure whether their content would be prohibited.122 Further, "best efforts" does not require an ICP, such as a Web publisher or server administrator, to monitor the Internet or to pre-censor content, but an ICP is required to bar access to prohibited materials when directed by the SBA.123 If an ICP is responsible for discussions on Websites with public access, the ICP is advised to choose themes according to the Code and exercise editorial judgment accordingly.124

Individuals are exempted from lincensing, unless their Web pages are for commercial purposes, or to promote political or religious causes.125 The lincensing exemption for individuals reflects the SBA's attempt to limit lincensing in deference to individual privacy. To provide reassurance to the public, the SBA stated: SBA's purview only covers the provision of material to the public. It is not concerned with what individuals receive, whether in the privacy of their own home or at their workplace. Corporate Internet access for business use is also outside the scope of the regulations, as is private communications e.g. electronic mail and Internet Relay Chat (IRC).126

The SBA has also announced that its Internet administrative law framework "emphasises public education, industry self-regulation, the promotion of positive sites and minimum regulation[.]"127 In contrast to SBA rhetoric, former Prime Minister Lee, in a brutal assessment of the Singapore population's ability to handle the free flow of information on the Internet, contended, "The top 3 to 5 percent of a society can handle this free-for-all, this clash of ideas."128 Therefore, in Lee's view, Internet censorship is required to prevent the Internet's destabilizing social and political effects.129

F. Implementation and Enforcement

Despite Singapore's technological prowess and the relatively small number of users and content it must regulate, censoring the Internet has proved virtually impossible for the SBA. Singapore has realized that it is unfeasible to censor the Internet in the same manner as other types of media. In recognition that "there is a limit to what domestic legislation can achieve in the face of a global and borderless medium like the Internet," the SBA chief stated, "that it was impossible to fully regulate the Internet."130
Censoring the Internet has proved difficult despite assistance from ISPs within Singapore. The three major ISPs within Singapore, being either partially government-owned or linked to government companies, evince the SBA's considerable influence in the domestic Internet industry. These three ISPs utilize proxy servers to regulate all incoming Internet traffic and to implement the SBA's policies. The proxy servers act as filters and block access to sites the government deems objectionable. However, the effectiveness of the SBA content restrictions must be questioned when the SBA has announced it would block access to only one hundred high-impact pornographic sites, and over 28,000 cyberporn Websites existed as of 1998. Moreover, the explosive growth of new cyberporn sites would seemingly circumvent any SBA attempts to block identifiable cyberporn sites.

The SBA has also directed the three ISPs to provide an optional Family Access Network (FAN) to which parents can subscribe for their children. The FANs essentially empower the parents, who are unfamiliar with other methods of protection, such as filtering software, to manage how their children access the Internet. However, the effectiveness of the FANs must also be questioned when considering the difficulties in censoring the Internet via proxy servers. Moreover, by simply downloading by-pass programs that are readily available on the Internet, other methods of protection such as software filters can be circumvented.

The difficulties in regulating the Internet are further compounded by the ambiguities that exist in applying the current laws and the SBA licensing to the Internet. For example, if an individual posts a libelous message against the PAP, the question remains whether both the ISP and ICP are liable. Due to these ambiguities and the Internet's young and evolving condition, the SBA and other enforcement agencies have implemented a "light-touch approach" in enforcing current laws on the Internet and to the enforcement of its Internet regulatory framework. This means that an offender will be given a chance to rectify the violation before the SBA takes action. However, it is still unclear whether a violation of an existing law will be forgiven upon rectifying the violation. If a violation of an Internet regulation persists, the SBA has discretionary authority on how much to fine the offender and whether to revoke his license. The SBA Website proclaims that "to date, SBA has not taken action against anyone for objectionable content on the Internet, as service and content providers have generally abided by the guidelines."

Although the SBA may not have acted, Singapore Telecom reportedly shut down the Web page of a seventeen year-old who was disseminating racist jokes about Malays. Also, in a high profile case, Singaporean Lai Chee Chuen faced seventy-seven charges of possessing obscene films, including material from the Internet. Authorities emphasized that Lai's arrest followed a tip from Interpol, which had been monitoring child pornography rings via the Internet. Regardless, individuals remain concerned about personal privacy especially when licensing specifically obligates ISPs to cooperate with authorities in any manner necessary.

Supposedly, individuals who limit their Internet activities to engaging in private communications and to receiving information, such as downloading pornographic images, are outside of the SBA's purview. However, in 1994, Singapore authorities...
searched public Internet accounts for graphics files usually associated with pornographic images. Of the 80,000 image files found, only five were considered pornographic by authorities.141

IV. United States
   A. Philosophical Underpinnings

   Along with the printing press, another great innovation or idea of the past millennium is that "the individual is most likely to contribute to economic prosperity under the condition of free competition."142 Adam Smith advanced this idea in Wealth of Nations in 1776.143 Smith championed individualism, the idea of self-love or the pursuit of self-interests, by explaining that people promote the general development of civilization by pursuing their own interests.144 Smith also argued that creating the optimum environment for free competition among individual interests required minimal government intervention.145 Smith's laissez-faire ideas regarding the free market and the pursuit of self-interests are reflected in the U.S. capitalist system.146

   Another ideology that embraces individualism and that also acts as an underlying philosophy to the U.S. constitutional system is liberalism. Liberalism's primary feature is its belief that government should be limited to "free individuals to undertake private as well as public pursuits of happiness."147 John Locke, an influential liberalist,148 argued specifically for limitations on legislative power.149 Locke feared arbitrary legislative power and rooted his arguments against it in natural law.150 That is, the law of nature did not bestow upon an individual the "arbitrary power over the life, liberty, or possessions of another."151 Rather, the law of nature only granted an individual the power of self-preservation. Therefore, since individuals served as the source of legislative power and individuals could not grant arbitrary legislative power that they themselves did not possess, legislative power was limited by natural law.152

   Natural law can be traced to ancient Greece, where numerous philosophical influences on U.S. legal institutions can also be traced.153 Greek philosophers, Aristotle in particular, expounded natural law as a higher law that overruled man-made law.154 Consequently, Greece developed a rough form of constitutionalism with a natural law basis.155 Further, in contrast to its neighbors who were ruled by tyrants guided by arbitrary discretion, ancient Greece developed statutory law that functioned to provide Greek citizens with order and liberty. Therefore, Greek society was governed not by the rule of a king but by the "rule of law,"156 which is a label often used to describe the impact of the legal institutions in the U.S.157

   B. Constitutional Basis and Political Structure

   Liberalism and individualism heavily influenced the U.S. Constitution and political structure.158 Thus, as one might expect, two of the architects of the U.S. Constitution, Thomas Jefferson and James Madison, were dissatisfied with the limits placed on the executive and legislative powers in the British constitutional system.159 Madison even considered the notions of individual liberty expressed in
the Magna Carta as insufficient.160

In response, Madison spearheaded the effort to develop the Bill of Rights, the first ten amendments to the U.S. Constitution that explicitly protected certain individual liberties from government interference.161 The Bill of Rights served as a capstone to the U.S. Constitution, establishing a U.S. system of democratic government that resolved the conflict of "how to protect the rights of the people against the powers of a government created of, by, and for the people."162 The original Virginia Bill of Rights of 1776 set forth the importance of "individual liberty" by granting every individual the right to the enjoyment of life and liberty and to acquire and possess property.163 The final version of the Bill of Rights echoed this guaranty and preserved among others, the freedoms of speech and press as well as the rights of the people to assemble peaceably and to petition the Government for a redress of grievances.164

Both Jefferson and Madison also agreed that the judiciary should play a key role in safeguarding individual rights.165 Consequently, a key element of the Constitution, a document that allows the Bill of Rights to preserve the power relationship between the people and government, is a system of checks and balances.166 This system of checks and balances is created by the separation of powers of the U.S. government into legislative, executive, and judicial branches, where officers in each branch are given constitutional means to resist encroachment from the other branches and to make the other branches accountable.167 In practice, the Bill of Rights enables the judiciary to protect the people against violations of their individual rights by other branches of government. Thus, the judiciary serves as the "people's defense against the people's government."168 Consequently, accountability and a high regard for individual rights act as distinguishing features of the U.S. political structure.

C. Role of Law in U.S. Society

A high regard for individual rights is also a distinguishing feature of U.S. legal theory. The history of U.S. constitutional law further substantiates the importance of individual rights and supports the argument that law exists in the U.S. to protect these rights.169 Moreover, though law may serve other roles such as dispute settlement and social control, the history of U.S. constitutional law illustrates that the primary and distinguishing feature of the role of law in the U.S. is the protection of individual interests.170

In 1803, in Marbury v. Madison, the U.S. Supreme Court laid a crucial foundation for the protection of individual rights by solidifying the Court's powers of judicial review, i.e., the ability to declare statutes unconstitutional.171 In Marbury, the U.S. Supreme Court not only solidified its powers to review legislation and to declare legislation unconstitutional but also reinforced the independence of the judiciary.172 Moreover, the Marbury Court established that the Constitution was the supreme law of the land and that the constitutional interpretations of the Supreme Court were paramount.173 With these powers of judicial review and constitutional interpretation, the judiciary cemented its role as a protector of individual rights.

In the late-twentieth century, the U.S. Supreme Court has vigorously exercised
its role as protector of individual rights. Most cases exist in the First Amendment arena, emphasizing the importance of "creating a free marketplace of ideas and a society in which robust exchange of views occurs without government censorship." Even the U.S. Supreme Court, however, acknowledges that freedom of expression is not absolute and that certain limitations are required for an efficient society. Nevertheless, the U.S. Supreme Court retains the power of ultimate constitutional interpretation and remains as the ultimate protector of individual rights.

D. Digital Economy

As of 1999, the U.S. resides, unchallenged, on top of the world in terms of both political and economic power. The incredible expansion of the U.S. economy over the last few years has been fueled in part by advances in IT, communications and computers, and by the growth of the Internet. The U.S. Department of Commerce reported that IT was responsible for 8.2% of the staggering $8.67 trillion gross domestic product of the U.S.

Within the U.S., technology firms are furiously competing to further develop what is already the most extensive Internet technology infrastructure in the world. In an effort to further encourage the race to bring broadband Internet access to households, the U.S. government allocated $850 million of the fiscal year 1999 budget for investment in high-performance computing and communications, which includes a network that is 1,000 times faster than today's Internet.

E. U.S. Internet Policy and Regulatory Efforts

In July 1997, the U.S. government released its policy towards the Internet in a report entitled A Framework for Global Electronic Commerce. In establishing a "hands-off" policy, the report emphasized that the U.S government supports the broadest possible flow of information across international borders. In contrast to traditional broadcast media, the Internet promises users greater opportunity to shield themselves and their children from content they deem offensive or inappropriate. To the extent, then, that effective filtering technology becomes available, content regulations traditionally imposed on radio television would not need to be applied to the Internet. In fact, unnecessary regulation could cripple the growth and diversity of the Internet.

The report further explained that the U.S. government supports industry self-regulation such as the adoption of competing ratings systems and the development of easy-to-use technical solutions, including filtering technologies and age verification systems.

Despite this "hands-off" policy, lawmakers grew weary of waiting for the Internet industry to develop acceptable standards and introduced a flurry of new Internet-related legislation during the legislative sessions of the 105th Congress in 1998. Much of the new legislation focused on protecting children. Although existing laws, such as those dealing with child pornography and obscenity, are applicable to the Internet, the new legislation appears better suited to policing the Internet.

For example, the Children's Online Privacy Protection Act regulates the
collection, use, and distribution of information obtained online from children under the age of thirteen.\textsuperscript{188} This act prohibits the collection and dissemination of individually identifying information via notice and parental consent.\textsuperscript{189} Another example, the Protection of Children from Sexual Predators Act, adapts and strengthens existing laws protecting children from sexual predators on the Internet.\textsuperscript{190} Although this act largely targets serious criminals, a significant aspect of the act is that it makes ISPs liable as well.\textsuperscript{191} The act also requires ISPs to report apparent exploitation of children involving child pornography that occurs via the ISP's servers, and prohibits ISPs from knowingly transferring obscene material to individuals who are known to be under the age of sixteen.\textsuperscript{192} ISPs are not required to monitor their user's content\textsuperscript{193} and are protected from civil liability if they act in good faith to comply with the act.\textsuperscript{194}

Another act establishing potential ISP liability is the Digital Millennium Copyright Act.\textsuperscript{195} This act governs the liability of Internet sites and ISPs for the copyright infringement of its users. It provides a mechanism for copyright owners to force site owners and ISPs to remove infringing material.\textsuperscript{196} Therefore, the Digital Millennium Copyright Act may have a considerable, and perhaps unintended, impact on Internet pornography as a large percentage of Internet pornography consists of images that are being sold and transferred in violation of the original copyright.\textsuperscript{197}

Much of the new legislation came in response to the U.S. Supreme Court decision in Reno v. ACLU ("ACLU I") that declared certain provisions of the Communications Decency Act ("CDA I") of 1996 unconstitutional.\textsuperscript{198} The provisions in question attempted to prohibit transmissions of "obscene," "indecent," or "patently offensive" communications by means of telecommunications devices to persons under the age of eighteen by threatening civil and criminal penalties.\textsuperscript{199} Considering the constitutional guarantee of freedom of expression, the Supreme Court in a unanimous decision agreed with the lower court's conclusion that the statute "'sweeps more broadly than necessary and thereby chills the expression of adults' and that the terms 'patently offensive' and 'indecent' were 'inherently vague.'"\textsuperscript{200} Therefore, although the Court found the well being of the nation's youth important, it did not justify a content-based blanket restriction on speech and did not outweigh the importance of freedom of expression.\textsuperscript{201}

In the 105th Congress, legislators responded to the defeat in ACLU I with the Communications Decency Act II or Child Online Protection Act ("COPA"). Legislators tailored COPA to address weaknesses in CDA I. For instance, legislators "modify[ed] the 'patently offensive' language by explicitly describing the material that [wa]s harmful to minors.\textsuperscript{202} Legislators also reduced the scope of COPA to cover only materials posted on the World Wide Web.\textsuperscript{203} Legislators further restricted COPA's scope to commercial transactions in response to another major flaw in CDA I, the mandate to use age-verification systems to prevent minors from accessing pornography.\textsuperscript{204}

Despite legislative efforts to tailor COPA narrowly to pass judicial scrutiny, COPA has received similar constitutional challenges from the same interest groups that challenged CDA I. As of April 1999, a U.S. federal district court has issued a
preliminary injunction that protects Website operators from prosecution in anticipation of a full trial.205

The House Commerce Committee's Subcommittee on Telecommunications, Trade and Consumer Protection is also considering several other Internet bills.206 Two similar bills, the Family Friendly Access Act of 1997 and the Internet Freedom and Child Protection Act of 1997, would require ISPs to provide customers with filtering software.207 The Communications Privacy and Consumer Empowerment Act would require ISPs to provide "parental empowerment through marketplace solutions."208 The E-Rate Policy and Child Protection Act would require that public schools and libraries that receive federal funds for Internet services "establish a policy with respect to access to material that is inappropriate for children."209 Finally, the Safe Schools Internet Act of 1998 would require that public schools and libraries that receive federal funds for Internet services install blocking software.210

F. Implementation and Enforcement

As demonstrated by the litigation surrounding CDA I and II, enforcement of Internet regulation is being fiercely challenged on a constitutional basis. For instance, the Child Pornography Prevention Act ("CPPA") of 1996 has withstood a constitutional challenge in the First Circuit case of U.S. v Hilton.211 Hilton involved the criminal prosecution of electronic technician David Hilton, who was charged under CPPA for allegedly possessing child pornography sent to him via the Internet.212 In response to Hilton's argument that CPPA was both unconstitutionally overbroad and vague, the First Circuit said that even though the act was a content-based restriction, it was constitutional because it targeted child pornography, a category of speech not entitled to First Amendment protection.213 Therefore, Hilton illustrates that child pornography does not enjoy the constitutional protections given to the freedom of expression.

Aside from regulations protecting children, the Internet has been left largely unregulated by the U.S. Additionally, as the Internet is not supervised by any specific federal agency and the government has adopted a "hands-off" policy, only the threat of future regulations by lawmakers encourages the development of self-regulation. Therefore, being unable to develop acceptable content restrictions, the government must wait for industry to suggest legislative proposals on how to address the difficult issue of regulating the Internet.

V. Analysis

A. Differences in the Internet Content Regulations in the U.S. and Singapore Illustrate a Fundamental Difference in the Role of the Individual in the Two Nations

The differences between the U.S. and Singapore Internet content regulations demonstrate that the individual plays a more subordinate role in Singapore society than in U.S. society. That is, individual rights are more subordinate to government interests in Singapore than in the U.S. Analytically, this lower regard for individual rights becomes apparent when examining the type of treatment given to individual rights in relation to community interests, the type of constitutional rights granted to
individuals, and the type of protection given to an individual's constitutional rights. Moreover, by considering differences in the ideology and in the socioeconomic and political conditions influencing the development of the role of the individual in the U.S. and Singapore, one gains a better understanding of the differences between the two nations' Internet content regulations.

For example, the different treatment given to individual rights in relation to community interests can be traced to the conflicting ideologies of the two societies; a classic confrontation between the values espoused by Confucianism and by Western liberal democracy. In the U.S., the individual is seen as the cornerstone of society. In the U.S. capitalist system, the individual is not only allowed but also encouraged to pursue her interests in the free market. Moreover, U.S. liberalism emphasizes a limited government that frees individuals to pursue their interests. Accordingly, the importance given to the preservation of individual rights limits the government's authority in U.S. society.

In stark contrast, individual rights did not even exist in Confucianism. Individual rights were immaterial since Confucianism assumed a harmony of interests between the community and the individual. However, because of the development of individual rights in modern Singapore, the difference in treatment of individual rights in the U.S. and Singapore is no longer as distinct and is now one of degree. That is, if a conflict existed between community interests and the exercise of an individual's rights, Singapore would be more likely to subvert the individual's rights because of Singapore's greater emphasis on social harmony and group interests.

This different treatment of individual rights in the U.S. and Singapore led to the development of different constitutional rights in the respective nations. In each nation, its constitution explicitly protects the freedom of speech, assembly, and religion. Additionally, although not explicit in the U.S. constitution, both nations also protect the freedom of expression and of association. However, because of the perceived role of the press in aggravating social tensions, Singapore excluded the freedom of the press from its Constitution. In contrast, the U.S. constitutional grant of freedom of the press acts as a crucial safeguard against the U.S. government, making the government accountable to the people.

The different treatment of individual rights also impact the type of protection given to an individual's constitutional rights, explaining how these nearly identical sets of core constitutional rights can offer different protections in the two nations. Moreover, the different constitutional protections also explain some of the differences in the two nations Internet content regulations.

The regulation of pornographic content in the respective nations offers a prime example of the effect of different constitutional protections on Internet content regulations. In the U.S., the concept of checks and balances acts in accordance with the Bill of Rights to protect individual interests, while "government in the Confucian tradition 'was established on trust and not distrust, on ethical foundations and not checks and balances.'" The importance of this difference is illustrated by the U.S. Supreme Court's display of its powers of judicial review in ACLU I, demonstrating
the U.S. legislatures accountability to the judiciary branch when violating individual interests.227 In voiding the statute on a constitutional basis, the Court concluded that the statute was too vague to regulate the content of speech.228

Unlike the U.S, Singapore's rather broad and vague definitions of pornography remain intact. Even though an avenue exists for constitutional challenges in Singapore, Chinese traditionally disfavor litigation, especially litigation involving authority figures.229 Thus, individuals or groups are unlikely to challenge governmental policies or regulations.230 Even if one overcomes the traditional deference to authority, Singapore's self-restrained judiciary seems unwilling to play the role of protector of individual interests.231 Moreover, Singapore's history indicates criticizing or challenging the supreme legislative power of the Singapore's Parliament is unwise.232 Consequently, Singaporeans have essentially no realistic method of preventing the government from interfering with their constitutional rights.

The lack of effective safeguards for constitutional rights in Singapore has not only allowed the censoring of pornographic content but has also allowed the censoring of a broad range of content.233 Moreover, if one accepts the premise that the Constitution of Singapore only subordinates individual rights if community interests are involved,234 the justification for the wide array of content regulations can be discovered in the underlying socioeconomic and political factors influencing Singaporean society.

A primary influence on the social harmony of the Singapore community is the bloody ethnic violence and social tensions that Singapore has experienced since its independence in 1959.235 Even today, disruptive socioeconomic conditions exist because of differences in language, color, religion, and culture.236 These largely ethnic and religious tensions exist internally, in Singapore's diverse community, and externally, with Singapore's Malay-Muslim neighbors.237

Because of these tensions, Singapore prohibits Internet content that incites ethnic, racial, or religious strife.238 Religious content is closely monitored as groups or individuals that want to promote religious causes or that want to discuss religion online must register with the SBA.239 Further, ICPs are strongly advised to choose discussion themes that do not cause ethnic, racial, or religious upheaval and to exercise editorial judgment accordingly.240

In the U.S., the importance of individual rights has translated into more stringent constitutional protections, preventing the censoring of ethnic, religious, or racial content. Moreover, the freedom of expression has protected almost all types of Internet content from censorship in the U.S.,241 a nation not unfamiliar with ethnic, racial, or religious conflict itself.242 Only child pornography has overcome the constitutional protections so far, and the failed attempts at censoring other types of content on the Internet emphasize the difficulty in interfering with an individual's freedom of expression in the U.S.

Unlike the U.S., Singapore's lesser constitutional protections have allowed considerable interference with Singaporeans' freedom of expression on the Internet. These lesser constitutional protections have allowed the development of a massive administrative law framework that uses broad definitions of "prohibited
material" to censor the Internet. Thus, in contrast to U.S. censorship in the one narrowly defined area of child pornography, Singapore's broad definitions serve to inhibit individuals in virtually all areas of content development. This is a classic illustration of the difference in Internet content regulations caused by the different role of the individual in the U.S. and Singapore.

B. Differences in the Internet Content Regulations Illustrate a Fundamental Difference in the Role of Law in the U.S. and Singapore

The differences between the Internet content regulations of Singapore and those of the U.S. also demonstrate that Singapore takes a more instrumentalist approach to the role of law than the U.S.243 That is, in relation to the U.S., Singapore uses law more to protect and serve government interests than to protect individual interests. These differences in the role of law can also be traced to differences in ideology and in political structure of the two nations.

In Singapore, the "rule by law" approach is rooted in classical Chinese philosophy.244 In addition to a strong ideological basis, the super-parliamentary structure and lack of effective constitutional protections further contribute to creating an environment conducive to law being used in an instrumentalist fashion.245 Accordingly, a long history of the government's use of various laws as a means of social control, such as subduing the political opposition and employing social engineering, exists in Singapore.246 Moreover, a long history of social control via censorship of all types of media exists.247 Therefore, the existence of a broad administrative law framework to censor the Internet is but another example of Singapore taking an instrumentalist approach to the role of law.

In contrast, individualism and liberalism heavily influenced the U.S., explaining the distinctive role of law in the U.S., i.e., the protection of individual interests.248 With such a focus on protecting the individual, the protection of children and the prevention of child pornography on the Internet can be expected. However, when adults are concerned, the importance of maintaining a free exchange of ideas outweighs the ill effects of pornography.249 Moreover, unlike Singapore, the U.S. distinguishes the Internet from other forms of media, taking into consideration that the Internet offers users greater opportunity to shield themselves from content they find offensive or inappropriate.250 Consequently, the U.S. "hands-off" policy merely reflects an ideology where individuals are free to pursue their own interests in a society with minimal government intervention.

The differences in the role of law in the two nations are further demonstrated by the censoring of political content by Singapore. Administrative law has traditionally been used as a tool to subdue the PAP's political opposition in Singapore.251 Accordingly, the presence of regulations targeting political discussion on the Internet is a clear example of Singapore's "rule by law" approach in its Internet regulations.

In the U.S., the guarantee of freedom of speech prevents government interference with an individual's right to engage in political debate on the Internet. The traditional Western democracy embraces "ideologies of oppositions", such as opposition politics and the value of protest.252 Therefore, political pluralism,
the voicing of different viewpoints and opinions from different political groups, is encouraged and accepted as part of the policy making process. Accordingly, the role of political pluralism is illustrated by the uniting of several Internet interest groups who combat government regulations and who, so far, have been successful in doing so. Consequently, the absence of any U.S. legislation regulating political content on the Internet is indicative of the U.S. ideology of opposition, another example of the difference in Internet content regulations due to the different role of law in the U.S. and Singapore.

VI. Conclusion

In attempting to predict the future of Internet regulation, two important considerations contribute to the fact that the U.S is unlikely to relinquish dominion over the Internet: the U.S.’s dominant Internet presence and the U.S. government's continued investment in the Internet. Therefore, although the Internet is purportedly universal, the U.S. will foreseeably be the dominant content provider. Thus, any content regulation necessitates the cooperation of the U.S. government and the U.S. Internet industry.

Consequently, only two realistic options remain for Internet regulation: (1) acceptance of U.S. Internet policy or (2) rejection of U.S Internet Policy. Admittedly, this dichotomy is overly simplistic and the majority of nations will choose the latter category and attempt to enact their own brand of Internet regulation. However, as Singapore's efforts have demonstrated, one country cannot effectively censor the Internet—no matter how technologically advanced. Nevertheless, national Internet regulation would entail (1) the regulation of ISPs and ICPs within the nation's jurisdiction and (2) the use of technology to filter the Internet. As policing the nation's ISPs and ICPs is an ineffective way of controlling content because of the dominance of the U.S. Internet industry as well as the content produced by other foreign nations, the role of new technologies is increasingly important.

Unfortunately, for those countries seeking to enact their own brand of regulation, Singapore's attempt at regulation demonstrates that the technology does not yet exist, and it is impossible to filter the Internet. The task of filtering is made more difficult by evolving technology that circumvents filters and by increasing bandwidth that allows greater flows of information. Therefore, unless a nation takes the drastic step of blocking all foreign Websites and essentially creating a national Intranet, a grudging acceptance of U.S. Internet policy is in order.

For U.S. Internet policy, the legislative trend indicates that U.S. ISPs will be gaining more responsibility and legal liability. As in Singapore, the protection of children is an area where U.S. legislation is placing more responsibility on ISPs. The current and pending legislation in the U.S. appears focused on providing some layer of protection for the child such as filtering software or other blocking technologies. The Singapore equivalent would be the Family Access Networks that utilize proxy servers to ban objectionable content. Therefore, although Singapore will likely prohibit a broader range of material from reaching the child's viewing
screen, a clear trend is emerging wherein ISPs will, at the minimum, be required to make available some form of filtering or blocking technology to the parent. For us adults, we must bear the task of choosing what content we can and cannot tolerate.

1 Internet newsgroups available via the news server <news.aloha.net> (accessed on Feb. 2, 1999). Aloha Net is a U.S. Internet Service Provider (ISP) based in Honolulu, Hawai‘i.

2 A "Website" refers to a site on the World Wide Web.


4 Term commonly used to refer to pornography and to all of its various static and dynamic formats on the Internet. Simple query for 'cyberporn' performed by AltaVista Search Engine retrieved hypertext links to 154,360 World Wide Web (Web) pages (visited on Mar. 30, 1999) <http://www.altavista.com>. For an examination of cyberporn on the Internet, see infra notes 25-28 and accompanying text.


7 See, e.g., Jack Lee Tsen-Ta, Rediscovering the Constitution, 16 Singapore L.R. 157 (1995). "The fundamental liberties in our Constitution involve a study of tensions: between an individual's rights and the community's interests, between the role of the judiciary on the one hand and the executive and legislature on the other." Id.

8 Though China may offer a greater polarity, Singapore is a more useful comparison for three reasons. First, Singapore's successful transition from an agrarian to an industrial/manufacturing to a technology-based economy is a more useful model and applicable to more developed nations than China's approach. Therefore, many countries will likely emulate Singapore's approach to technological development and Internet regulation--especially in Asia.

Second, China is erecting the cyberspace version of the Great Wall to block access to foreign Websites, (see John T. Delacourt, The International Impact of Internet Regulation, 38 Harv. Int'l L.J. 207, 215-218 (1997) (discussing China's attempts at using Internet "firewall software" to restrict access to a limited number of government approved sites and that China envisions purely business related Internet use)), and envisions only business related Internet development. Consequently, any comparison would be short-lived.
Third, Singapore's more sophisticated technological infrastructure allows for a more insightful analysis in terms of the role that technology may serve in regulation as well as in the evolution of the Internet.


Opponents of Internet content regulation in the U.S. include a collection of individuals and entities that use the Web, including, long-established booksellers, large media companies, and online magazines. Opponents represent both general and special interests such as fine art, safer-sex materials, and gay and lesbian resources. See ACLU II TRO Memo, at 3-4.

10 See id. at 3 (arguing that "the effect of the law is to restrict adults from communicating and receiving expression that is clearly protected by the First Amendment"). See also Robert F. Goldman, Note, Put Another Log on the Fire, There's a Chill on the Internet: The Effect of Applying Current Anti-Obscenity Laws to Online Communications, 29 Ga. L. Rev. 1075, 1112 (1995).


12 See Bob Davis, What was the Greatest of All Inventions? Maybe a Computer in the Next Millennium Will Answer the Question, The Wall St. J., Jan. 31, 1999. According to management guru, Peter Drucker, we are in the fourth information revolution, the electronic revolution, with the others being (1) writing in Mesopotamia 5,000 years ago, (2) the book in China around 1300 BC, and (3) the printing press around 1450. See The Millennium: This Millennium's Most Influential Innovations, The Asian Wall St. J., Jan. 18, 1999, at 9. Interestingly, Drucker believes Gutenberg's information revolution had a far greater impact than the present electronic revolution--especially on the fundamental mindset of humanity. Id. Drucker is seemingly supported by the relatively low penetration rates achieved so far by the Internet on a global level. See infra note 33 and accompanying text.

13 See Reno v. ACLU, 929 F. Supp. 824, 831 (E.D. Pa. 1996). In affirming the district court's holding, the U.S. Supreme Court described the Internet as "an international network of interconnected computers" (Reno v. ACLU, 521 U.S. 844, 849 (1997) ("ACLU I")) and as "a unique and wholly new medium of worldwide communication." Id. at 850 (internal quotation omitted). For a discussion of ACLU I, see infra notes 198-204 and accompanying text.

According to the U.S. statutory definition:

The term "Internet" means collectively the myriad of computer and telecommunication facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol [TCP/IP], or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire
or radio.


15 See Digital Econ. Rpt., supra note 14, at app. II, at A2-2. ARPANET is an acronym for the network developed by the Defense Advanced Research Projects Agency that allowed computers operated by military, defense contractors, and universities conducting defense related research to communicate with one another on redundant channels. See id.

16 See Mike Meredith, Freedom and Censorship (visited Jan. 17, 2000) <http://www.iso.port.ac.uk/~mike/docs/Internet/Internet/node7.html> ("As the Internet has its principle origins in the academic world, it has a tradition of freedom of information with little or no censorship.").

17 See NUA Internet Surveys, NUA Ltd., Mar. 15, 1999. The survey reported that key characteristics of the Web and indeed the PC itself are the decentralisation of power and the subsequent empowerment of the individual. The ability to self-publish marked the Internet as a medium which supported self-expression, creativity and communication--fundamental hallmarks of human freedom evident in the cave paintings of Neanderthal man.

Id. NUA is a free weekly newsletter delivered via e-mail that analyzes trends and provides reports and surveys on the Internet; a subscription is available at <http://www.nua.ie/surveys/>.

18 Also known as Online Service Provider (OSP) or Internet Access Service Provider (IASP).

19 ISPs reduced barriers such as prohibitive cost and ease of access. ISPs also allowed secondary access providers such as schools, cybercafes, employers, and libraries to provide individuals access to the Internet--further increasing Internet usage. Another critical development occurred when the U.S. National Science Foundation removed its ban of commercial activity on the Internet in 1991. Notably, in contrast to the current difficulties involved in regulating the Internet because of its non-hierarchical structure, the National Science Foundation essentially controlled the Internet in its early stages. See Digital Econ. Rpt., supra note 14, at app. II, at A2-2.

20 See Peter Wayner, Plugging in to the Internet: Many Paths, Many Speeds,The New York Times on the Web, July 2, 1998 (visited on Mar. 15, 1999) <http://www.nytimes.com>. Approximately 93% of residential households in the U.S. that access the Internet use a phone line. See id. By 2002, this figure is estimated to go down to 64% because of the development of alternative access technology (e.g., cable modems and wireless access via satellite). See id. Currently,
phone lines are viewed as incapable of handling the transmission speeds necessary for next generation Internet technology.  Id.  See also infra note 38.


23 See ACLU I,521 U.S. at 853 (analogizing the Web to "a vast library including millions of readily available and indexed publications and a sprawling mall offering goods and services").

24 See Hanley, supra note 6, at 1000. Technology allows one to engage in communication methods such as chat rooms and distributed message databases without revealing one's true identity.  For example, a user may remain anonymous with encryption technology or by using a fake user name and e-mail address.  See generally George P. Long, Who are you? Identity and Anonymity in Cyberspace, 55 U. Pitt L. Rev. 1177 (1994).

25 See H.R. Rep. No. 105-775, supra note 21, in Background and Need for Legislation, II.B. The availability of material harmful to minors (arguing for more stringent protections against cyberporn by describing the vast amounts of cyberporn on the Internet).

26 See H.R. Rep. No. 105-775, supra note 21, in Background and Need for Legislation, I.C. Adult entertainment industry.  Any attempt at quantifying the amount of cyberporn on the Internet, including the text accompanying this note, must be viewed with caution because of the amorphous nature of the Internet.  Even attempts by mainstream sources such as Philip Elmer-DeWitt, On a Screen Near You: Cyberporn, Time 38 (July 3, 1995) and Marty Rimm, Marketing Pornography on the Information Superhighway: A Survey of 917, 410 Images, Descriptions, Short Stories, and Animations Downloaded 8.5 Million Times by Consumers in Over 2000 Cities in Forty Countries, Provinces, and Territories, 83 Geo. L.J. 1849 (1995) have been discredited.  See Glenn E. Simon, Cyberporn and Censorship: Constitutional Barriers to Preventing Access to Internet Pornography by Minors, 88 J. Crim. L. & Criminology 1027 n.100 (citing Jonathan Wallace & Mark Mangan, Sex, Laws and Cyberspace 127-28 (1996)).

Nevertheless, public perceptions and, more importantly, Senate debates have already been influenced by the discredited cyberporn surveys.  See Simon, supra this note, at 1027 n.100 (citing Jonathan Wallace & Mark Mangan, Sex, Laws and Cyberspace 151 (1996) ("But the damage had already been done--Senators Grassley and Exon had waved the Time article around Congress; Senator Coats had quoted Rimm's phony statistics.").

28 See H.R. Rep. No. 105-775, supra note 21, in Background and Need for Legislation, II.B. The availability of material harmful to minors (citing Half of Net Content Said Unsuitable for Children, Reuters Financial Service (Jan. 10, 1996)).

29 Pamela LiCalzi O'Connell, Web Erotica Aims for New Female Customers, The New York Times on the Web, Aug. 13, 1998 (visited on Feb. 15, 1999) <http://www.nytimes.com>. Recent statistics indicate that women are closing the gap in some areas of Web use, for example, sexually explicit materials and commercial sex-oriented sites for women have been rising. Id.

Among Internet users in the U.S., 86% of men are likely to click on sex sites compared to 14% of women. See NUA Internet Surveys, NUA Ltd., Apr. 6, 1999 (citing a report in the Journal of the American Psychological Association authored by Alvin Cooper of the San Jose Marital and Sexuality Center). Of the sex site users, 87% said they felt neither shame nor guilt for visiting these sites, and 75% do not tell anyone about their use of the sex sites. See id.

30 See NUA Internet How Many Online, NUA Ltd. [hereinafter Internet Census] (visited Feb. 9, 1999) <http://www.nua.net/surveys/how_many_online/index.html> (recognizing the difficulty of estimating the number of people online the NUA methodology involves making an estimated guess based on a collection of published Internet surveys).

31 See Study Says 70 Million American Adults Use the Internet, The New York Times on the Web, Aug. 26, 1998 (visited on Feb. 15, 1999) <http://www.nytimes.com> (estimating that of the 70.2 million American adults online, 40.1 million were male and 30.1 million were female). N.B.: Since the author analyzed these statistics, the numbers of adults online has skyrocketed.

32 See Internet Census, supra note 30.

33 If we accept the 25% estimate, Singapore would be similar to the U.S. in terms of the percent of the total population using the Internet. See id. See also U.S. Census Bureau, U.S. Population (visited Feb. 22, 1999) <http://www.census.gov> (estimating U.S. population as 271,928,271 on visit date); SBA's Approach to the Internet (visited Jan. 17, 2000) <http://www.sba.gov.sg/work/sba/Internet.nsf/ourapproach/1> (estimating that approximately 600,000 of Singapore's 3.1 million people use the Internet as of Feb. 1999).

34 See Digital Econ. Rpt., supra note 14, at app. II, at A2-3 ("English is the dominant language of the Internet and is used for approximately 82 percent of Web pages worldwide.").

35 See Digital Econ. Rpt., supra note 14, at app. II, at A2-12 ("Bandwidth, measured in terms of bits per second, determines the speed at which data can flow through the computer and communications systems without interference").


37 See id.

38 See Digital Econ. Rpt., supra note 14, at app. II, at A2-13-14 (describing...
the developing technologies that will allow increased bandwidth and the corresponding transmission speeds.

39 See Singapore Infomap (visited on Feb. 18, 1999) <http://www.sg> (the national Website of Singapore and the first national Website in the world.)


41 See id. at 15 (explaining that the ethnic Chinese in Singapore are largely the descendants of early poverty stricken migrants from China's southeastern provinces of Fujian and Guangdong).


44 Confucianism emphasizes the need for people to enact certain social roles by following rules of conduct in relationships. See Benjamin Schwartz, On Attitudes Toward Law in China, in Jerome A. Cohen, The Criminal Process in the People's Republic of China 62-63 (1957). Schwartz explained that "social roles do not merely place individuals in certain social locations but also bear within themselves normative prescriptions on how people ought to act within these roles. The notion 'father' does not refer to social status but prescribes a certain pattern of right behavior." Id. at 63.


46 See Randall Peerenboom, Confucian Harmony and Freedom of Thought: The Right to Think versus Right Thinking, in de Bary & Weiming, supra note 45, at 237-38 (1998). Prior to the modern Chinese political order rights were not part of Confucian theory nor part of the reality of everyday life in Confucian China, at least if rights refer to so-called first generation civil and political rights and/or if rights are conceived of as anti-majoritarian devices to protect the individual against the collective, that is, as trumps on the will of the majority, the good of society, the interests of the state. Id.

47 See Andrew J. Nathan, Chinese Democracy 110-12 (1985). Political rights have always occupied a prominent place in the modern Chinese political order and have been featured in each of eleven major central government constitutions and constitutional drafts under four different types of regimes: the last imperial dynasty, the liberal early republic, the authoritarian Guomindang, and the socialist People's
See Schwartz, supra note 44, at 63. Confucius stated, 
"Lead them with edicts, keep them in line with punishments, and the common people will stay out of trouble but have no sense of shame. Lead them by virtue, keep them in line with the rites (li), and they will not only have a sense of shame but order themselves."

Peerenboom, supra note 46, at 248. When applying Confucianism to modern society, "modern day Confucians claim not only that the litigiousness of Western states confirms Confucius's worst fears, but that the emphasis on law and individual rights rather than social values and mores has lead to excessive individualism and a breakdown in the sense of community." Id.

See Schwartz, supra note 44, at 67.

See id.


See id.


Lewis M. Simons, Brave New Singapore; despite failures elsewhere in Asia, authoritarian capitalism is thriving in Lee Kuan Yew's tiny fiefdom, The Atlantic, July 1991, 26, 30 ("With a population that is 76 percent Chinese, 15 percent Malay, and six Indian Singapore has had its share of bloody ethnic violence, principally in the 1960s.").

See Turnbull, supra note 54, at 293.

See id. at 305-306.

See Turnbull, supra note 54, at 301.

See Firouzeh Bahrampour, Note and Comment, The Caning of Michael Flay: Can Singapore's Punishment Withstand the Scrutiny of International Law, 10 Am. U.J. Int'l L. & Pol'y 1075, 1078-79 (explaining that these rigid policies remain in effect today and also remain ingrained in Singapore's political policies).


For a thorough discussion of the development of Singapore law by one of Singapore's premier legal minds, see Phang, supra note 45, at 351-57. Phang describes the development of the common law of Singapore as one of
'impoverishment' because of the total reliance upon English precedents and methodology that caused a lack of innovation or development; thus, Phang promotes the creation of an 'autochthonous' Singapore legal system in order to develop local law to suit local needs and circumstances and in order to maintain the legitimacy of the legal system in the public perception. See id.

63 Brief Legal History (visited Jan. 17, 2000) <http://www.sg/flavour/profile/pro-law1.html>. Prior to "the general reception of English law" in 1826, Singapore possessed no proper legal system. And, although the Singapore legal system borrowed heavily from English law, Indian and Australian influences exist. See id. Consequently, Singapore's laws are primarily a composite of Singaporean legislation and English common law and statutes. See id. Also, a small degree of legal pluralism exists (e.g., Muslim law governs the Muslim community in religious, matrimonial and related matters). See id.

64 See generally Phang, supra note 45, at 34-61 (describing the purpose and effects of British Colonialism, the nature and sources of Singapore law, and the reception of English law); Bahrampour, supra note 60, at 1078.


66 See id.

67 See Singapore Const. arts. 9-16.

68 See Kevin Tan Yew Lee et al., Constitutional Law in Malaysia & Singapore 644 (1991) (blaming newspapers for exacerbating the violent situations in the 1969 riots in Malaysia, the 1950 riots in Singapore, and many other incidents); Peng Hwa Ang & Berlinda Nadarajan, Censorship and Internet: A Singapore Perspective [hereinafter Censorship Study] (visited Apr. 12, 1999, last updated May 4, 1995) <http://info.isoc.org/HMP/ PAPER/132/txt/paper.txt> (citing the 1950 Maria Hertogh Riots, the 1964 riots during Prophet Muhammad's birthday, and the 1969 riot spillover as partly caused by the uninhibited reporting of the press). See also infra note 224 and accompanying text.

69 See Rafael X. Zahralddi-Aravena, Chile and Singapore: The Individual and the Collective, a Comparison, 12 Emory Int'l L. Rev. 739, 775 (1998) ("The government of Singapore owns the news media and believes that the media's proper place is as a supportive arm of the government and not a check on the government as it is in the United States.").

70 See Thorpe, supra note 61, at 1041; Tan Yew Lee, supra note 68, at 188-89 (noting that Singapore broadly follows the British Westminster model of Parliament).

71 See Thorpe, supra note 61, at 1042; see also Tan Yew Lee, supra note 68, at 191-200, 210-227 (explaining the membership qualification as well as the privileges and immunities of Parliament).

72 See id. at 189; Turnbull, supra note 54, at 319.

73 Tan Yew Lee, supra note 68, at 633 (referencing Singapore Const. art. 14(2)(a) as amended by the Revised Editions of Laws Act (Cap 275, 1985)
explaining that Parliament is allowed to impose restrictions for such purposes as national security, public order, and morality). Consequently, Parliament has passed numerous statutes that interfere with an individual's constitutional rights. See infra notes 79-83 and accompanying text.

74 See Phang, supra note 45, at 257, 261 (arguing that Singapore's small size as well as traditional deference to authority further contribute to an environment that lends itself to using law as a tool of social control).

75 But see id. at 257. Although Phang accepts the proposition that there is a basis for the perception that the law in tandem with other extra-legal measures have been utilized by the PAP as an instrument of social policy and control, Phang attacks the perception as overly simplistic and believes that this perception is better understood in light of Singapore's political matrix itself that creates an environment conducive to utilizing the legislative process in an instrumentalist fashion and the wider socioeconomic factors as well as political context. Id.

76 See Garry Rodan, The Internet and political control in Singapore, 113 Political Science Quarterly, No. 1, 63, 65 (1998)

77 See De Bary & Weiming, supra note 45, at x. Lee credits Confucian traits as key factors in Singapore's success. See id. Notably, a touch of anti-Westernism exists in "Lee's espousal of Confucian social discipline versus the decadent libertarianism and individualism he sees as undermining the moral fiber of the West and eating away at its social fabric." Id. Interestingly, Lee believes the air conditioner is this millennium's most influential innovation. See The Millennium: This Millennium's Most Influential Innovations, supra note12; Simons, supra note 56, at 26 (noting that Lee served as Prime Minister of Singapore from 1959 to 1990 and currently serves as Senior Minister).

78 See Turnbull, supra note 54, at 281. PAP rivals have been partly subdued via the British-imposed Internal Security Act 1960 (Act 18) (Cap 143, 1985), permitting suspects to be arrested and imprisoned indefinitely without trial. For those few political opponents who manage to reach Parliament, the PAP acts to discredit those they find troublesome. See Douglas Sikorski, Effective government in Singapore: perspective of a concerned American, Asian Survey 818, 823 (1996). For example, after winning an 1981 election, and becoming the first non-PAP parliamentarian, Joshua Jeyaretnam was convicted of criminal charges, barred from his legal practice, and forced to sell his house in order to pay a S$ 150,000 libel suit brought against him by Lee. See Simons, supra note 56, at 31.

Lee is referred to as "the most successful litigant in history" because of his long history of litigation. For example, in 1997, Lee instituted thirteen libel actions against Tang Liang Hong of the rival Workers' Party. Tang also faces thirty-three counts of tax evasion from the Inland Revenue Department. See Rodan, supra note 76, at 67.

79 See Sikorski, supra note 78, at 823-24 (commenting that individuals that excel professionally are invited quite persuasively to join the PAP).

In Singapore, numerous statutes exist that infringe upon the constitutional rights of freedom of assembly and freedom of expression, including: the Penal Code (Cap
providing penalties for the offense of unlawful assembly), the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1985), § 5 (empowering the minister to make rules regulating public meetings), the Public Entertainments Act (Cap 257, 1985) (regulating public lectures, talk, debates, and discussions), the Societies Act (Cap 311, 1985) (rendering a meeting of an unlawful society an offense), and the Preservation of Peace Act (Cap 240, 1985) (allowing the executive powers to disperse assemblies in the interest of public order). See Tan Yew Lee, supra note 68, at 670-671.

80 See Societies Act (Cap 311, 1985); Rodan, supra note 76, at 65, 67. In 1990, the Maintenance of Religious Harmony Bill outlawed social or political commentary from institutions not covered by the Societies Act. See id.

81 See Tan Yew Lee, supra note 68, at 644, 670. The licensing and censorship of films is governed by the Films Act 1952 (Cap 107, 1985). See id. Other statutes that regulate mass media include: The Newspapers and Printing Presses Act (Cap 206, 1985) (giving the minister discretion to grant or withdraw a license) and the Undesirable Publications Act (Cap 338, 1985) (regulating both local and foreign publications pursuant to the public interest). See Tan Yew Lee, supra note 68, at 670

82 See Rodan, supra note 76, at 68. Amendments to the Newspaper and Printing Presses Act (Cap 206, 1985) (amended by Act 22 of 1986) restricted the circulation of foreign publications that were deemed to be interfering in domestic politics. See id. In 1994, the PAP utilized this legislation by subjecting the International Herald Tribune to two suits for publishing two articles regarding PAP nepotism and the lack of judicial independence in Singapore. See id. See also Tan Yew Lee, supra note 68, at 645-656 (analyzing litigation involving the foreign press in Singapore such as Dow Jones Publishing Company (Asia) v. Attorney General, 2 MLJ 385 (1989) (Singapore Court of Appeals); Turnbull, supra note 54, at 271 (noting that when Western films and magazines that had a corrupting influence were banned an accompanying wave of anti-Westernism swept Singapore).

83 See Turnbull, supra note 54, at 322. The Singapore press is further silenced by a regulation that requires newspaper directors to be personally approved by the Prime Minister. See Newspapers and Printing Presses Act (Cap 206, 1985).

84 See Rodan, supra note 76, at 69.

The structural conditions under which the judiciary operates, including the granting of short-term appointments to the Supreme Court that may or may not be renewed at the government's discretion and the potential for untenured lower court judges to be transferred between judicial and government service, provide an avenue through which political influence and pressure can be exerted over the judiciary.

Id. See also Sikorski, supra note 78, at 828 ("courts cannot be excluded from the Confucian fiduciary commitment to national goals--a predilection to favor duty to the nation above the rights of individuals"). But see Thorpe, supra note 61, at 1053. Despite claims of the PAP's interference with judicial independence, in 1994, the "Singapore [judiciary] seized the first position in the World Competitiveness Report of Legal Systems," a study
supervised by the Swiss government. Id. An independent foreign institution placed Singapore first because of its high scores in (1) public confidence in the judicial system's ability to fairly administer justice, and (2) public confidence that their persons and property are protected. See id.

85 See Tan, supra note 43, at 136-37. "Articles 149 and 150, both conferring on the Government wide-ranging powers and allowing legislation contravening the Constitution in times of anticipated subversion and emergency, respectively, oust judicial review of law." Id. Cases interpreting these articles have held that the executive's subjective discretion (e.g., executive orders), when made pursuant to Articles 149 and 150, is precluded from judicial review. See id.

86 See id. at 130-138. Recent cases by the judiciary demonstrate considerable restraint and a reluctance to play the role of protector of individual liberties. See id. For example, in JB Jeyaretnam v. Lee Kuan Yew, 2 SLR 310 (1992) (Singapore High Court), the right of free speech was held subject to the common law of defamation.

Further, in Chan Hiang Leng Colin v. Plaintiff, 1 SLR 687 (1995) (Singapore High Court), the "High Court rather summarily dismissed decisions from the United States as inapplicable because the 'social conditions' and extent of freedom protected were different." Tan, supra note 43, at 136.

87 Cf. infra note 247.

88 See supra note 45. See also Bahrampour, supra note 60, at 1078; Michael C. Davis, Constitutionalism and Political Culture: The Debate over Human Rights and Asian Values, 11 Harv. Hum Rts. J. 109, 127-28 (1998) (explaining that a communitarian rationale (i.e., the collective well-being of the nation) is also used to "justify state intervention in all spheres of social life and a legal regime that seriously violates individual rights and inhibits public discourse").

89 See Simons, supra note 56, at 26 (referring to "authoritarian capitalist").


91 See Fortune Magazine ranks Singapore No. 1 business city in Asia, Deutsche Presse-Agentur, Nov. 16, 1998. Fortune credited Singaporeans' relentless drive for self-improvement and said, "Singapore's success hinges on the city-state's almost neurotic obsession with minutiae." Id.

92 See id.


94 See id. ("The tightly controlled structure that former Prime Minister Lee crafted rests heavily on the innate entrepreneurship and pragmatism of the ethnic-Chinese majority and its Confucian father-knows-best ethic. Unlike the other authoritarian capitalist regimes of Asia, Singapore has not only survived but thrived in its original form.").

95 See Rodan, supra note 76, at 66. By 1990, the Singapore state was sole shareholder of fifty companies with interests in 566 subsidiaries with total assets of U.S.$ 6.51 billion. See id. The breadth of the government's interests stretches into industries such as banking, insurance, shipyards, hotels, oil refining, steel mills,
96 Rodan, supra note 76, at 66.
97 See id. at 77 (describing the major ISPs in Singapore as either government-owned or linked to government-owned companies).
98 Not too modern, please: Asia and the Internet, The Economist, Mar. 16, 1996 (discussing that the Singapore government hopes to "create an 'intelligent island', with at least 95% of homes cabled for services like the Internet and interactive television").
100 See IT2000, supra note 99 and accompanying text.
101 See Rodan, supra note 76, at 80.
102 SBA's Approach to the Internet, supra note 33 (official Website of the Singapore Broadcasting Authority (SBA) that explains the SBA's approach to regulating the Internet).
106 See id. ISPs are required to register with the SBA. See id. ISPs include those who function as a main "gateway" to the Internet such as schools, public libraries, cybercafes, and service providers. See id. ICPs do not need to register unless their Web pages are primarily set up to promote political or religious causes. See id. ICPs are defined as "information providers on the World Wide Web" and includes Web authors, Web publishers, and Web server administrators. Id. Therefore, company Web pages must comply with the Code; "[h]owever, companies providing Internet access for their employees' use are not subject to the Class lincensing." Id. (emphasis in original).
107 Anil Penna, Singapore moves to tame Internet, Agence France-Presse, July 11, 1996.
108 See SBA's Approach to the Internet, supra note 33, Class Licence
As part of the SBA's regulatory framework, the SBA fine-tunes its policies to the Internet's constant growth by receiving regular feedback from the National Internet Advisory Committee (NIAC) that is an advisory body composed of a cross section of Singapore Internet industry representatives. See id., Industry Consultation.


Internet Code of Practice, supra note 104, ¶ 4.

Rodan, supra note 76, at 81.

SBA Class Licence, supra note 103, ¶ 11.b.i-ii. In addition to the Class Licence's broad guidelines, the scheme specifically prohibits services from conducting games and lotteries, or broadcasting horse racing analyses, commentaries and tips, advertising or promoting astrology, geomancy, palmistry, or other types of fortune-telling. See id. ¶ 13. Also, only qualified persons recognized by relevant professional boards in Singapore should do any specialist advice or consultancy service. See id. The respective ministry should approve recordings, videos and film broadcasts. See id.

SBA Guidelines (see supra note 105) came in response to a NIAC recommendation that the responsibilities of ISPs and ICPs should be clarified. See NIAC Report, supra note 110, ¶ 11.

SBA's Approach to the Internet, supra note 108, Class Licence Scheme.

See SBA Guidelines, supra note 105, ¶ 16.

See SBA’s Approach to the Internet, supra note 108, Encouraging Industry Self-Regulation.

See Internet Code of Practice, supra note 104, ¶ 3-(4). See also SBA Class Licence, supra note 103, ¶ 14.

SBA Class Licence, supra note 103, ¶ 2-(1)b.

See Internet Code of Practice, supra note 104, ¶ 3.

See SBA Class Licence, supra note 103, ¶ 2.

See Internet Code of Practice, supra note 104, ¶ 3. See also SBA Class Licence, supra note 103, ¶ 2.

See SBA’s Approach to the Internet, supra note 108, Class Licence Scheme.

See SBA Class Licence, supra note 103, ¶ 12

See Raoul Le Blond, Scheme affects 2 groups; Content, access providers, Singapore Straits Times, July 12, 1996 (emphasizing that groups or individuals that want to discuss Singapore politics or religion online must register with the SBA unless SBA notifies them to do so).

Id. Providers of raw financial information and news-wire services as well as software developers are also exempt. See SBA Guidelines, supra note 105, ¶¶ 11-12

Id. ¶ 3(b).
In an enterprise that uses the Internet, a proxy server is a server that acts as an intermediary between a workstation user and the Internet so that the enterprise can ensure security, administrative control, and caching service. A proxy server is associated with or part of a gateway server that separates the enterprise network from the outside network and a firewall server that protects the enterprise network from outside intrusion.

A proxy server receives a request for an Internet service (such as a Web page request) from a user. If it passes filtering requirements, the proxy server, assuming it is also a cache server, looks in its local cache of previously downloaded Web pages. If it finds the page, it returns it to the user without needing to forward the request to the Internet. If the page is not in the cache, the proxy server, acting as a client on behalf of the user, uses one of its own IP addresses to request the page from the server out on the Internet. When the page is returned, the proxy server relates it to the original request and forwards it on to the user. Id.

The SBA does not make available a list of the banned sites. And, the SBA has deflected complaints that the proxy servers slow down Internet access and has even argued that their use is beneficial for performance. See SBA and The Internet: Answers to Frequently Asked Questions, (visited Feb. 13, 1999). <http://www.sba.gov.sg/feedback.htm>.


See NIAC Report, supra note 110, ¶ 13 (recommending that as the "Internet is a young and evolving medium, enforcement agencies should adopt a light-touch approach in implementing their laws").

See Penna, supra note 107. (noting that violations of existing laws such as libel carry the same penalties).
139 See Rodan, supra note 76, at 86.
140 See id.
141 See id. at 77.
142 The Millennium: This Millennium's Most Influential Innovations, supra note 12. Other notable innovations of this millennium include the microchip and the ability to transfuse blood. Id.
143 Adam Smith, The Wealth of Nations (James E. Thorold Rogers ed., Clarendon Press 1880) (1776) (examining the nature and causes of the wealth of nations and how competition forces individuals to serve consumers while the individuals seek profits).
145 See id.
148 See id. at 18. Although many theorists have contributed to clarifying the concept of liberalism, Locke is viewed as a major contributor because his works, such as his Two Treatises on Civil Government (1690), capture the essence of liberalism. See id.
149 See C. Perry Patterson, Evolution of Constitutionalism, 32 Minn. LR 427, 439 (1948).
150 Note that this is a different conception of natural law than that held by Confucius. Confucius' notion of natural law was akin to moral virtue while Locke's version concentrated on the power granted to the individual by nature (e.g., power of self-preservation). Compare Patterson, supra note 149, at 439, with Schwartz, supra note 44, at 64-65.

Adam Smith had another conception of natural law. Smith did not view jurisprudence as involving the traditional laws of nature. Rather, Smith advocated new laws of natural liberty and political economy based on his views on a properly functioning commercial society. Cf. Fine, supra note 144, at 40, 42.
151 Patterson, supra note 149, at 439. Locke explained that a man, as has been proved, cannot subject himself to the arbitrary power of another; and having, in the state of nature, no arbitrary power over the life, liberty, or possessions of another but only so much as the law of nature gave him for the preservation of himself and the rest of mankind, this is all he doth, or can give up to the commonwealth, and by it to the legislative power, so that the legislative power can have no more than this.
152 See Patterson, supra note 149, at 439.
153 See J.M. Kelly, A Short History of Western Legal Theory 9-11 (1992)
(describing ancient Greece as the first society in Western history, which focused its intellect on developing the best way to govern man).

154 See Patterson, supra note 149, at 429. "Aristotle said, 'there really is, as everyone to some extent divines, a natural justicethat is binding on all men.'" Id. (quoting Aristotle, Rhetorica I, 13). Further, Aristotle also advised lawyers that could not make convincing arguments based on man-made law to utilize natural law. See Patterson, supra note 149, at 429 (citing Aristotle, Rhetorica I, 15).

155 See Patterson, supra note 149, at 428 (explaining that the Greek Constitution acted as a general system of authority that determined how the state functioned and that in the Greek mind the constitution meant the general nature or character of the state).

156 See Kelly, supra note 153, at 9-11. The Greeks also devised a legislative process that relied on the majority vote of the people, perhaps a predecessor to representative democracy. See id.

157 See John V. Orth, Exporting the Rule of Law, 24 N.C. J. Int'l L. & Com. Reg. 71-76 (1998) (crediting British constitutional expert Albert Venn Dicey with coining the phrase "rule of law"). However, this label seems inexact when considering the ever-shifting nature of this concept in Western legal theory. See id. at n.3 (citing Kelly, supra note 153 (describing the ever-evolving concept of the "rule of law" from ancient Greece to the twentieth century)).

Nonetheless, some values often identified with the "rule of law" are present in the U.S. legal system. One of these values, the abhorrence of arbitrary power, is a fundamental belief of the "rule of law" that resonates with liberal values. See Tan, supra note 68, at 28-30 (citing Joseph Raz, The Rule of Law and Its Virtue, 93 LQR 195, 196 (1977)). Another integral virtue of the "rule of law" is the protection of individual freedom. See id.

158 See supra section IV.A.


160 See Donald S. Lutz, The U.S. Bill of Rights in Historical Perspective, in Schechter & Bernstein, supra note 159, at 4-8. Although the Magna Carta can be seen as a predecessor of the U.S. Bill of Rights, the primary influences on the Bill of Rights came from U.S. rather than English documents. See id. at 7-9. A comparison reveals that of the twenty-eight separate rights listed in the Bill of Rights, only four were present in the Magna Carta. See id. at 3. The Magna Carta included a notion of liberty tied to the aristocracy, which the U.S. failed to adopt since the U.S. possessed no aristocracy and was largely cut off from the feudal relationships that existed in England. See id. at 7-8.

161 The U.S. Constitution, as originally written, only enumerated a few rights
that were scattered throughout the document. See id. at 12-13. Consequently, James Madison promised that if the Constitution was ratified he would personally see that a Bill of Rights, a document fully articulating the fundamental rights of an individual, was added. See id.

162 Schechter & Bernstein, supra note 159, at ix n.1 (paraphrasing from Henry Steele Commager, Majority Rule and Minority Rights (1943)).

163 See Virg. Const. (1776) (Bill of Rights); This Millennium's Most Influential Innovations, supra note 142.

164 See U.S. Const. amend. I.

165 See, Schecter & Bernstein, supra note 159, at xxi n.10 (citing a Letter from Thomas Jefferson to James Madison, Mar. 15, 1789, in Hutchinson, supra note 159).

166 The concept of checks and balances within government can be traced to ancient Greece. See Tan Yew Lee, supra note 68, at 15. However, Baron de la Montesquieu, an eighteenth century French political philosopher, receives most of the credit for articulating the doctrine of separation and balancing of the powers of the executive, legislature, and judiciary branches in Les Spirits de Lois [The Spirit of the Laws] (1748). See id.

167 See Orth, supra note 157, at 76-77 (describing the U.S. system of checks and balances).

168 Schecter & Bernstein, supra note 159, at xii.

169 See infra notes 171-177 and accompanying text.

170 Id. When considering that the use of law in dispute settlement and social control essentially serve to protect individual interests, the protection of individual interests must be considered the primary role of law in U.S. society; consequently, other roles such as law as a means of social control can be seen as secondary. See Steven Vago, Law and Society 165-68 (1994).


172 See Marbury, 5 U.S. at 180 ("Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void, and that courts, as well as other departments, are bound by that instrument."). See also Alstyne, supra note 171, at 34.

173 See Marbury, 5 U.S. at 180.

(estimating that the number of statutes declared unconstitutional by the Supreme Court has risen dramatically from close to zero in 1800 to over 180 in 1980)).


176 Freedom of expression is often used to describe the rights of freedom of speech, of association, and of the press found explicitly in the First Amendment. See U.S. Const. amend. I.

177 The Court has created certain conditions to test whether the government's regulation of freedom of expression is valid. See Epstein & Walker, supra note 174, at 237-239. Most notably, any restriction on expression must be narrowly tailored to meet the government's objectives and the legislature must draft laws "with sufficient precision to give fair notice as to what is being regulated." Id. at 239.


179 See Bureau of Economic Analysis, National Accounts Data, (visited Feb. 21, 1999)<http://www.bea.doc.gov/bea/dn/niptbl-d.htm> (updated frequently and part of the U.S. Department of Commerce). For comparison's sake, the Singapore GDP in 1998 was $141,216.2 (approximately US$85.6 using an exchange rate of $1.65 to US$1, see CNNfn (visited Nov. 6, 1999) <http://www.cnnfn.com/markets/currencies/asia.html>).

180 See generally Digital Econ. Rpt., supra note 14, at app. I. See also id. app II, at A2-3 (noting that the U.S. has the most extensive Internet infrastructure in the world and describing the developing U.S. IT industry and its growing importance to the economy and jobs).

181 See id. at A2-17. The budget provides $100 million for the Next Generation Internet Initiative, a project dedicated to creating a research network that is 100 to 1,000 times faster than today's Internet and will support new applications such as telemedicine, distance learning, and real-time collaboration. See id.


The U.S. Internet Policy and Digital Economy Report are key documents that articulate the Administration's views regarding the Internet. See Letter from U.S.

183 U.S. Internet Policy, supra note 182, at 3. The Administration further explained that [t]he U.S. government supports development of the Internet as a market-driven arena, not a regulated one. This means that governments should refrain from passing regulations to govern the Internet. Where possible, rules for Internet behavior should be set through private collective action rather than government regulation. The aim of these rules should be to empower consumers to protect their own privacy, control content they see, and protect themselves against inappropriate commercial behavior. Competition and consumer choice should be the guiding principles of Internet commerce.


185 See infra notes 188-194 and accompanying text.

186 See infra notes 188-194 and accompanying text.

187 See ACLU I, 521 U.S. at 877 n. 44.


189 See Children's Online Privacy Protection Act § 1303(b)(1)(B).


191 See id. Because of the liability, a prudent ISP should be motivated to develop internal procedures to handle the act's requirements. See Plesser & Halpert, supra note 185, at 18-21.


193 See 42 U.S.C. § 13032(b).

194 See 42 U.S.C. § 13032(c).


196 See id. § 512. Although ISPs are threatened by liability, if ISPs and site operators conform to the acts conditions, they will be protected from all liability for monetary damages. See Plesser & Halpert, supra note 185, at 3.

197 For a more detailed discussion of copyrights in cyberspace, see Jane C. Ginsburg, Putting Cars on the "Information Superhighway": Authors, Exploiters, and Copyrights in Cyberspace, 95 Colum. L. Rev. 1466 (1995).

198 See ACLU I, 521 U.S. 844.

199 See ACLU I, 521 U.S. at 856.
Id. at 862, 864.

See id. at 885 ("The interest in encouraging freedom of expression in a democratic society outweighs any theoretical but unproven benefit of censorship").

H.R. Rep. No. 105-775, supra note 21, in Background and Need for Legislation, III.C.1 The definition of harmful to minors.

See id. in Background and Need for Legislation, III.C.2 Scope limited to commercial transactions.

See id. in Background and Need for Legislation, III.C.3 Age verification systems are technologically and economically feasible. In ACLU I, the Court questioned the technological feasibility of age-verification systems for certain non-commercial, private, and online services such as e-mail and chat rooms. See id. However, COPA hopes to overcome this flaw by restricting its application to commercial transactions, and by providing an affirmative defense if commercial distributors of materials harmful to minors make a good faith efforts to restrict a minor's access to harmful material. See id. in Background and Need for Legislation, III.C.2 Scope limited to commercial transactions.


See Hilton, 167 F.3d 61. The CPPA broadens considerably the definition of child pornography to include "any visual depiction, including any photography, film, video, picture, or computer or computer-generated image or picture of sexually explicit conduct, wheresuch visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct." Child Pornography Prevention Act, 18 U.S.C. § 2251.
213 See Hudson, supra note 206 ("The U.S. Supreme Court found in its 1982 decision New York v. Ferber [458 U.S. 747] that child pornography deserved no First Amendment protection. However, lawmakers were concerned that existing child-pornography statutes were insufficient to combat the problem of computer child pornography.").

214 See supra III.A and IV.A. The debate surrounding the clash between Asian and Western values has increased significantly over the past decade, corresponding with the rise of the global economy. See, e.g., Davis, supra note 88; Sikorski, supra note 78; Bahrampour, supra note 60. See also supra note 48.

215 See supra IV.A.

216 See supra notes 143-145 and accompanying text.

217 See supra notes 147-152 and accompanying text.

218 See supra notes 44-48 and accompanying text.

219 Cf. Peerenboom, supra note 46, at 234-39. Influenced by Confucianism, the Chinese political culture stresses a harmony and unity of thought [tongyi sixiang], a concept that contradicts the freedom of thought held so dearly by contemporary Western liberal democracy. Id. at 235.


221 See id.; cf. Phang, supra note 45, at 262 (noting Confucianism's emphasis on community "is very akin to the Western concept of utilitarianism that emphasizes the rights of the majority"). Singapore also places a greater emphasis on economic rights and economic welfare as opposed to civil rights. Therefore, Singapore can be seen as making a trade-off between economic and social rights versus political and civil rights. However, the strength of this type of 'subsistence' argument is undermined by Singapore's recent economic success where one would also expect an accompanying increase in the political and civil rights of an individual in Singapore society. Cf. Victor Li, Human Rights in a Chinese Context, in Ross Terrill, The China Difference 221-235 (1979).

222 See U.S. Const. amend. I.; Singapore Const. arts. 12-16. For a comparison of the U.S. and Singapore constitutions, see Tan, supra note 43; Tsen-Ta, supra note 7.

223 See id.; see supra notes 175-177 and accompanying text.

224 See supra note 68 and accompanying text. Notably, when the printing press was invented, governments felt that it threatened social stability and government authority. Consequently, governments responded with a system of licensing for authors and printers. The British, however, abolished this system by the mid-eighteenth century. See Daniel A. Farber et al., Constitutional Law: Themes for the Constitution's Third Century 562-563 (1998). The British may have their regrets considering that the printing press helped circulate the theories that became the intellectual framework of the American Revolution. See id.

Nevertheless, freedom of the press came to be recognized as a common law or a natural right in England. See Epstein & Walker, infra note 242, at 313. Therefore, the absence of the freedom of the press in Singapore, despite the significant English
legal influences, illustrates a significant difference in the respective constitutions due to socio-political factors.

225 See infra notes 252-253 and accompanying text.

226 Sikorski, supra note 78, at 824 n.17 (quoting Wu The Yao, The Traditional Chinese Concept, Starategy and Art of Governance, 29 Nanyang U. Occasional Paper (Singapore 1976)). Former Prime Minister Lee contends that American style democracy has no place in Singapore and that a system of checks and balances only interferes with the governance of a developing country. See Simons, supra note 56, at 26.

227 See ACLU I, 521 U.S. 844.


229 See Brian Smith, A Mode of Urban Environmentalism in Southeast Asia, 16 Hastings Int'l & Comp. L. Rev. 123, 126 (1992)

230 See id. (discussing Singaporeans unwillingness to challenge regulations in the environmental arena).

231 See supra notes 85-86 and accompanying text.

232 See supra notes 70-83 and accompanying text.

233 See supra II.E.

234 The Singapore Constitution restricts individual rights by allowing Parliament to impose "such restrictions as it considers necessary or expedient" for purposes of national security, public order, and morality. See Singapore Const. art. 14(2)(a) as amended by the Revised Editions of Laws Act (Cap 275, 1985).

235 See supra notes 54-61 and accompanying text.

236 See id.