

# Laws Affecting Enforcement of Internet Use Policies



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# First Amendment

## Freedom of Speech Analysis

- Public or Private Institution?
- Right to Receive Information
  - Martin v. City of Struthers, 319 US 141 (1943)
    - Griswold v. Connecticut, 381 U.S. 479 (1965)
    - Stanley v. Georgia, 394 U.S. 557 (1969)
- Academic/Intellectual Freedom
  - Sweezy v. State of New Hampshire, 354 U.S. 234 (1957)
- Limited Public Forum
  - Kreimer v. Bureau of Police, 958 F2d 1242 (3d Cir., 1992)

# Sexually Explicit Material is Constitutionally Protected Speech

- Sexually Explicit Material is Pornography
- Pornography is Generally Constitutionally Protected Speech
  - [Ashcroft v. Free Speech Coalition](#), 535 U.S. 234, (2002)
  - [U.S. v. ALA](#), 539 US 194 (2003)
- Exceptions to Pornography as Constitutionally Protected Speech:
  - **Obscenity** -- Pornography v. Obscenity
  - **Child Pornography** -- Illegal
  - **Material Harmful to Minors**

# Obscenity is Notoriously Difficult to Define

- Miller v. California, 413 US 15 (1973)
  - 1. the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest;
  - 2. the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by (state) law; See N.C. Gen. Stat. 14-190.1, and
  - 3. the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.
- Stanley v. Georgia, 394 U.S. 557 (1969)-Possession OK

# Other Exceptions to Pornography as Constitutionally Protected Speech

- Child Pornography & Material Harmful to Minors
- Generally, pornography can be banned only if obscene, but States are entitled to greater leeway in the regulation of pornographic depictions of children than for adults under the Miller test.
- See New York v. Ferber, 458 U.S. 747 (1982)
- U.S. v. ALA, 539 US 194 (2003)
  - Upheld CIPA because adults can request that filters be removed
- Child under 18 engaging in "sexual activity" or in "lewd" or "lascivious" depictions
- Child Pornography Illegal to Create, Transmit, View or Possess
- Examples, 18 U.S.C. § 2251, et. sec; NC Gen Stat 14-190.13, et sec.

# Sexual Harassment Hostile Work Environment

- Federal Law Claim

- State Regulations – For Example See N.C. Admin Code, Title 25, 1J.1101

- An environment that **BOTH** a reasonable person **AND** the particular person who is the object of the harassment would find hostile or abusive.

- Determined by looking at all of the circumstances, including:

- The frequency of the alleged harassing conduct,
- Its severity,
- Whether it is physically threatening or humiliating, and
- Whether it unreasonably interferes with an employee's work performance.

- Mainstream Loudoun, et al. v. Loudoun County Library

- 24 F.Supp.2d 552 (E.D. of Va. 1998)

- Adamson v. Minneapolis Public Library,

- No. 03-2521 (U.S. Dist. Court Minnesota, dated 3/24/03)