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- The cultural and social struggles over what constitutes “free” speech have defined the nature of American democracy. In 1989, when Supreme Court Justice William Brennan was asked to comment on his “favorite part of the Constitution,” he replied, “The First Amendment, I expect. Its enforcement gives us this society. The other provisions of the Constitution really only embellish it”.
 - **“Of all the issues that involve the mass media and popular culture, none are more central, or explosive, than freedom of expression and the First Amendment.**
 - **Our nation’s fundamental development can often be traced to how much or how little we tolerated speech during particular historical periods”.**

Models of Expression

- Four conventional models
 - Authoritarian model
 - Public guided by an educated ruling class
 - Communist or state model
 - Government controls the press
 - Social responsibility model
 - Press functions as a Fourth Estate
 - Libertarian model
 - No restrictions on speech

Authoritarian Model

- The authoritarian model developed about the time the printing press arrived in sixteenth-century England.
- Its advocates held that the general public, largely illiterate in those days, needed guidance from an elite, educated ruling class.
- Government criticism and public dissent were not tolerated, especially if such speech undermined “the common good”—an ideal that elites and rulers defined and controlled.
- Censorship was frequent, and the government issued printing licenses primarily to publishers who were sympathetic to government and ruling-class agendas.

Communist or State Model

- Under most authoritarian models, the news is still controlled by private enterprise.
- **But under the communist or state model, press control resides in government. Speaking for ordinary citizens and workers, state leaders believe they are enlightened and that the press should serve the common goals of the state.**
 - Although some state systems encourage media and government cooperation, political and military leaders still dictate the agendas for newspapers and the broadcast media.

China & The Internet



Libertarian Model

- The **libertarian model**, the flip side of state and authoritarian systems, encourages vigorous government criticism and supports the highest degree of freedom for individual speech and news operations.
- **In a strict libertarian model, no restrictions are placed on the mass media or on individual speech.**
 - Libertarians tolerate the expression of everything, from publishing pornography to advocating anarchy.
 - In North America and Europe, many political and alternative newspapers and magazines operate on such a model.

Social Responsibility Model

- **Along with the libertarian model, a social responsibility model characterizes the main ideals of mainstream journalism in the United States.**
- **The concepts and assumptions behind this model coalesced in the controversial 1947 Hutchins Commission, which was formed to examine the increasing influence of the press.**
- **The report argued that the mass media had grown too powerful and needed to become more socially responsible.**
 - ***Key recommendations encouraged comprehensive news reports that put issues and events in context,***
 - ***more news forums for the exchange of ideas, better coverage of society's range of economic classes and social groups,***
 - ***and stronger overviews of our nation's social values, ideals, and goals.***

Social Responsibility Model

- The social responsibility theory moves beyond the simple “Objective” reporting (facts reporting) to “Interpretative” reporting (investigative reporting).
- The total news is complete facts and truthful but the commission of the freedom press stated that “No longer giving facts truthfully rather than give a necessary analyzed or interpretative report on facts with clear explanations”.

Censorship as Prior Restraint

- In the United States, the First Amendment has theoretically prohibited censorship.
- Supreme Court decisions have defined censorship as prior restraint.
 - **This means that courts and governments cannot block any publication or speech before it actually occurs, on the principle that a law has not been broken until an illegal act has been committed.**
- During a declared war, for instance, if a U.S. court judged that the publication of an article would threaten national security, such expression could be restrained prior to its printing.
- In fact, during World War I the U.S. Navy seized all wireless radio transmitters. This was done to ensure control over critical information about weather conditions and troop movements that might inadvertently aid the enemy.
- In the 1970s, though, the Pentagon Papers decision and the *Progressive* magazine case tested important concepts underlying prior restraint.

Unprotected Forms of Expression

- **Seditious expression; *A revolt or an incitement to revolt against established authority***
 - ***Schenck v. United States* established the “clear and present danger” criterion for expression.**
 - **speech rights afforded by the First Amendment, while generous, are not limitless, and context determines the limits.**
 - **"The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger “**

Unprotected Forms of Expression (cont.)

■ Libel

- **Defamation of character in written or broadcast form**
- **More difficult to prove in cases involving public figures**

■ Defenses

- Qualified privilege - reporters who print or broadcast statements made in court
- Rule of opinion and fair comment - journalists should make it clear that a statement of opinion is a criticism and not an allegation of fact
- Satire, comedy, and opinions expressed in reviews

Libel & Slander

- The biggest single legal worry that haunts editors and publishers is the issue of libel, another form of expression that is not protected as speech under the First Amendment.
- Whereas slander constitutes spoken language that defames a person's character, libel refers to defamation of character in written or broadcast expression.
- Inherited from British common law, libel is generally defined as a false statement that holds a person up to public ridicule, contempt, or hatred or injures a person's business or occupation.

Unprotected Forms of Expression (cont.)

- Right to privacy
 - Person's right to be left alone, without his or her name, image, or daily activities becoming public property
 - News media generally granted wide protections under the First Amendment
 - Most journalism organizations use their own guidelines.

Obscenity

- For most of this nation's history, it has generally been argued that obscenity does not constitute a legitimate form of expression.
- The problem, however, is that little agreement has existed on how to define an obscene work.
- Battles over obscenity continued. In a landmark case, ***Roth v. United States***, the Supreme Court in 1957 offered this test of obscenity: whether to an "average person," applying "contemporary standards," the major thrust or theme of the material, "taken as a whole," appealed to "prurient interest" (in other words, was intended to "incite lust").
- Refining ***Roth***, the current legal definition of **obscenity** derives from the 1973 ***Miller v. California*** case, which involved sanctions for using the mail to promote or send pornographic materials. After a series of appeals, the Supreme Court argued that an obscene work had to meet three criteria:
 - The average person, applying contemporary community standards, would find that the material as a whole appeals to prurient interest (marked by unwholesome sexual interest)
 - The material depicts or describes sexual conduct in a patently offensive way
 - The material, as a whole, lacks serious literary, artistic, political, or scientific value

Obscenity

- The Child Online Protection Act makes it illegal to post “material that is harmful to minors,” but an early version of the law was declared unconstitutional.
- *In 2007, nearly ten years after Congress first passed the Child Online Protection Act - a federal district court again ruled against the law, finding that it would infringe on the right to free speech on the Internet.*
- *Moreover, the judge stated that the act would be ineffective, as it wouldn't apply to pornographic Web sites from overseas, which account for up to half of pornographic sites.*
- *The ruling suggested that the best protections for children are parental supervision and software filters.*

Protected Expression

- Copyright infringement
 - **Copyright** protects the rights of authors and producers to their published or unpublished work.



The unauthorized reproduction or distribution of this copyrighted work is illegal. Criminal copyright infringement, including infringement without monetary gain, is investigated by the FBI and is punishable by up to 5 years in federal prison and a fine of \$250,000.

Copyright

- A copyright legally protects the rights of authors and producers to their published or unpublished writing, music and lyrics, TV programs and movies, or graphic art designs.
- file-swapping on the Internet has raised an entirely new class of copyright concerns, not only in the music industry but also in every media sector.
- Copyright protection was extended with the Digital Millennium Copyright Act of 1998, which goes beyond traditional copyright protection to outlaw technology or actions that circumvent copyright protection systems.

Self-Regulation in the Movie Industry

- Motion Picture Producers and Distributors of America (MPPDA)
 - Established the Motion Picture Production Code in the 1930s
- “No picture shall be produced which will lower the moral standards of those who see it. Hence the sympathy of the audience shall never be thrown to the side of crime, wrongdoing, evil or sin.”

Self-Regulation in the Movie Industry

- *Miracle case*
- In 1952, thirty-seven years after the Supreme Court decided that censors across the nation could regulate movies, the Court agreed to revisit the issue by accepting another movie censorship case.
 - **Supreme Court decision granted films free speech protection and rendered most activities of film review boards unconstitutional**

The MPAA Ratings System

- Established ratings as guideposts for the suitability of films for various age groups

Rating	Description
G	General Audiences: All ages admitted; contains nothing that would offend parents when viewed by their children.
PG	Parental Guidance Suggested: Parents urged to give "parental guidance" as it may contain some material not suitable for young children.
PG-13	Parents Strongly Cautioned: Parents should be cautious because some content may be inappropriate for children under the age of 13.
R	Restricted: The film contains some adult material. Parents/guardians are urged to learn more about it before taking children under the age of 17 with them.
NC-17	No one 17 and under admitted: Adult content. Children are not admitted.

The Demise of the Fairness Doctrine

In '87, Journalists Backed Free Speech

"The truth is...that there is no 'fairness' whatever in the 'fairness' doctrine. On the contrary, it is a chilling federal attempt to compel some undefined 'balance' of what ideas radio and television news programs are to include....The 'fairness doctrine' undercuts free, independent, sound and responsive journalism — substituting governmental dictates. That is deceptive, dangerous and, in a democracy, repulsive."

— *Washington Post* editorial, June 24, 1987.

■ Fairness Doctrine

- Required stations to:
 - Air and engage in controversial-issue programs affecting their communities
 - Provide competing points of view when offering such programming
- Broadcasters argued it created an unfair burden.
- Ended in 1987
- Support periodically resurfaces.

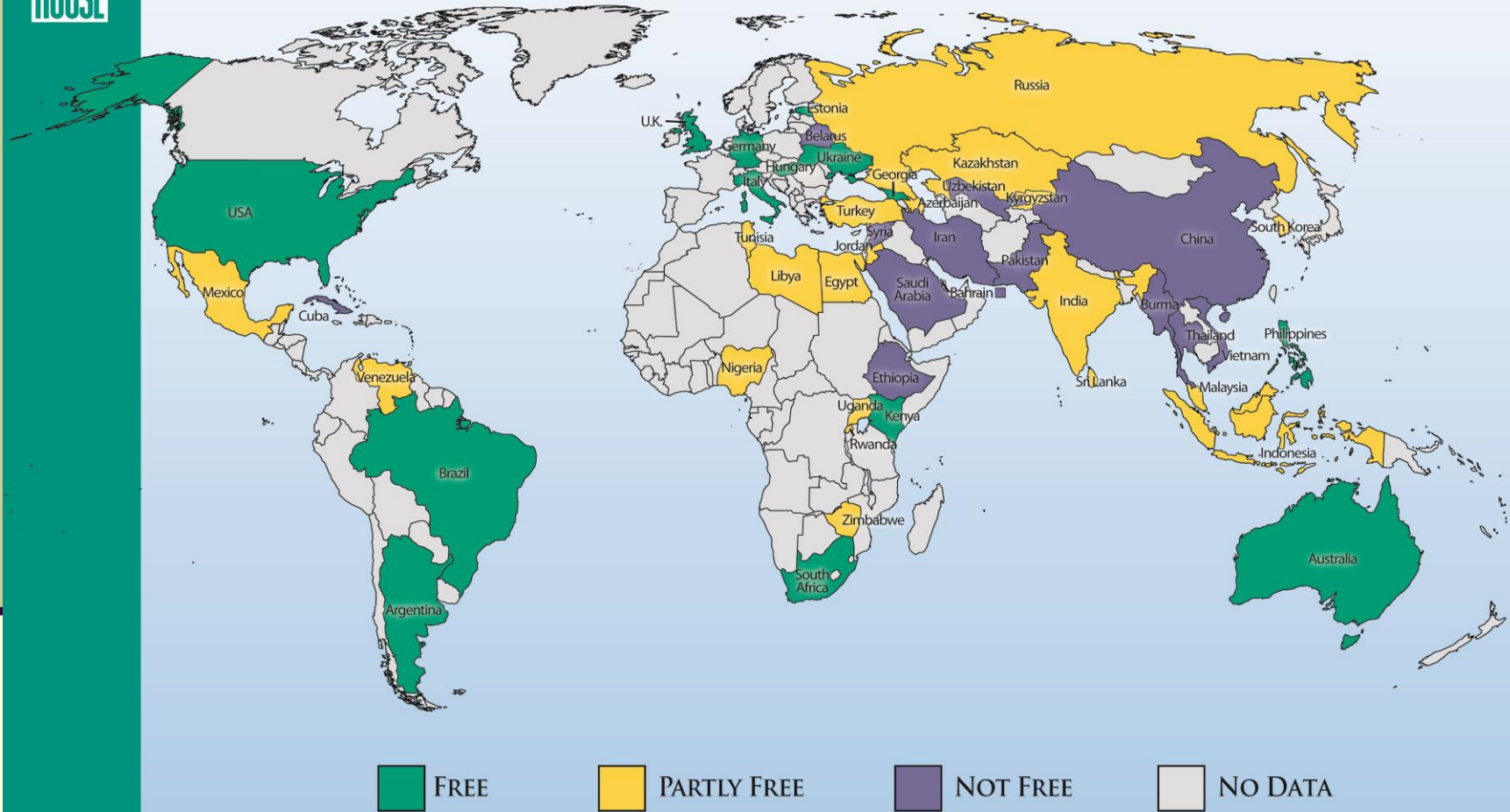
Models for Expression and Speech



- The international human rights organization Freedom House comparatively assesses political rights and civil liberties in 195 nations and territories. The most recent map counts 63 countries as “Not Free,” including Angola, Belarus, China, Cuba, Egypt, Iran, Iraq, North Korea, Russia, and Zimbabwe.

FREEDOM ON THE NET 2012

A GLOBAL ASSESSMENT OF INTERNET AND DIGITAL MEDIA



Watchdog Citizens & Citizen Journalism

- As we struggle to determine the future of converging print, electronic, and digital media and to broaden the democratic spirit underlying media technology, we need to stay engaged in spirited public debates about media ownership and control, about the differences between commercial speech and free expression.
- As citizens, we need to pay attention to who is included and excluded from the opportunities not only to buy products but also to speak out and shape the cultural landscape.
- To accomplish this, we need to challenge our journalists and our leaders. More important, we need to challenge ourselves to become watchdogs—critical consumers and engaged citizens—who learn from the past, care about the present, and map mass media's future.