

Porn

*Roth v. US; Miller v. CA; New York v. Ferber;
Ashcroft v. Free Speech Coalition; Reno v. ACLU;*

Archive: *FCC v. Pacifica*

Definitions

Obscenity - from the Latin, *obscenus* - *not said*.
Beyond the protection of the First Amendment.
Obscenity includes pornography, but also include blasphemy and profanity.

Pornography - from the Greek *pornographos*,
writing about prostitutes. Material whose
primary purpose is to cause sexual arousal;
not all pornography is obscene.

Arguments against Pornography

Porn focuses on body, not complete person

Sexual gratification outside marriage is wrong

Pornography undermines gender equality

Pornography increases sex crimes and/or reduces sympathy for victims

Porn contributes to a more vulgar society

Porn harms “performers”

Arguments against Censorship

Pornography is a harmless outlet for exploring sexual fantasies

No one has moral authority to determine what may be perverted or “prurient”

No proof that pornography increases sex crimes

Problem of defining pornography to include sexual discourse serving other values

Movie Buffs Case, Orem 1996

During the previous 2.5 years, 19,389 pay-per-view movies were purchased on the Playboy Channel, Spice Channel or Adam and Eve Network on DirectTV satellite systems

425 pay-per-view movies and 111 monthly subscriptions to the Playboy Channel or Erotic Network over EchoStar Satellite (Dish Network) and 1,416 subscriptions to the Spice Channel over TCI Cable systems in the last 10 months of 1998.

Movie Buffs Case, Orem 1996

An average of 287 adult movies watched monthly over pay-per-view system in the Provo Marriott Hotel.

An average of 20 percent of total sales at Suncoast Motion Picture store in the University Mall in Orem were from adult movies.

Queen v. Hicklin (1868)

“whether the tendency of matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall.”

Butler v. State of Michigan (1957)

According to Justice Frankfurter in *Butler*, the effect of the Hicklin test was "to reduce the adult population of the United States to reading only what is fit for children."

Butler v. State of Michigan (1957)

Michigan made it a misdemeanor to sell or distribute to the general reading public any book containing obscene language "tending to the corruption of the morals of youth"

Court found that it violated the Due Process Clause because of significant overbreadth.

Roth v. US (1957)

- a. "whether to the average person, applying contemporary community standards,**
- b. the dominant theme of the material, taken as a whole, appeals to the prurient interests,"**
- c. the work is without redeeming social value."**

***Memoirs of a Woman of Pleasure
(Fanny Hill) v. Mass. (1966)***

- a) the dominant theme of the material taken as a whole appeals to a prurient interest in sex;**
- (b) the material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and**
- (c) the material is utterly without redeeming social value.**

Miller v. California (1973)

- (a) whether "the average person, applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest,**
- (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and**
- (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.**

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Prior Restraint on Obscenity

Must meet all three requirements:

- 1. the burden of instituting judicial proceedings, and of proving that the material is unprotected, rests on the censor;**
- 2. any prior restraint can be imposed only for a specified brief period and only to preserve the status quo;**
- 3. A prompt final judicial decision on the merits must be assured.**

Freedom v. Maryland, [380 U.S. 51](#) (1965)

Young v. American Mini Theaters (1976)

Court upheld a Detroit zoning ordinance that forbade adult motion picture theaters from locating within 1,000 feet of any two other regulated uses or within 500 feet of residential areas. Regulated uses referred to 10 different kinds of establishments in addition to adult theaters.

U.S. v. Williams

Williams was charged with one count of promoting, or “pandering,” material “in a manner that reflects the belief, or that is intended to cause another to believe,” that the material contains illegal child pornography

Claims that statute is overbroad b/c it could be construed to punish the solicitation or offering of “virtual” (computer generated/animated) child pornography

U.S. v. Williams

"an offer to provide or request to receive virtual child pornography is not prohibited by the statute. A crime is committed only when the speaker believes or intends the listener to believe that the subject of the proposed transaction depicts real children. It is simply not true that this means 'a protected category of expression [will] inevitably be suppressed,' post ... Simulated child pornography will be as available as ever."