



## Arizona Legislature Passes Internet Censorship Bill

The Arizona state legislature has passed an Internet censorship bill that has provoked the ire of liberty seeking Arizonians. The bill extends telephone harassment laws to the Internet and other means of electronic communication. Under the pretense of being anti-bullying, the bill states that virtually anything said online that is deemed "offensive" by the state, to include editorials, illustrations, etc., could be a punishable offense. According to a Senate fact sheet, HB 2549 "[p]rohibits using any electronic or digital device, instead of a telephone, with the intent to terrify, intimidate, threaten, harass, annoy or offend a person." HB 2549 was sponsored principally by Representatives Ted Vogt (left), Vic Williams, and Chad Campbell.



The Media Coalition contends that the bill is simply intended to "censor electronic speech," because HB 2549 would "apply to the Internet as a whole, thus criminalizing all manner of writing, cartoons, and other protected material the state finds offensive or annoying."

The Coalition submitted a letter to Arizona Governor Jan Brewer, asking her not to sign the bill into law. The letter observes that the provisions in the bill are not specifically defined and would therefore be broadly applied to almost any statement:

H.B. 2549 would make it a crime to use any electronic or digital device to communicate using obscene, lewd or profane language or to suggest a lewd or lascivious act if done with intent to :annoy," "offend," "harass" or "terrify" ... "Lewd" and "profane" are not defined in the statute or by reference. "Lewd" is generally understood to mean lusty or sexual in nature and "profane" is generally defined as disrespectful or irreverent about religion or religious practices.

H.B. 2549 is not limited to a one to one conversation between two specific people. The communication does not need to be repetitive or even unwanted. There is no requirement that the recipient or subject of the speech actually feel offende, annoyed or scared. Nor does the legislation make clear that the communication must be intended to offend or annoy the reader, the subject or even any specific person.

A Danish newspaper posted pictures of Muhammad that were intended to be offensive to make a point about religious tolerance. If a Muslim in Arizona considers the images profane and is offended, the paper could be prosecuted. Some Arizona residents may consider Rush Limbaugh's recent comments about a Georgetown law student lewd. He could be prosecuted if he intended his comments to be offensive. Similarly, much general content available in the media uses racy or profane language and is intended to offend, annoy or even terrify.

Bill Maher's stand up routines and Jon Stewart's nightly comedy program, Ann Coulter's books



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criticizing liberals and Christopher Hitchens' expressions of his disdain for religion, Stephen King's novels or the Halloween films all could be subject to this legislation. Even common taunting about sports between rival fans done online is frequently meant to offend or annoy, and is often done using salty and profane language.

The Comic Book Legal Defense Fund [explains](#):

The bill is sweepingly broad, and would make it a crime to communicate via electronic means speech that is intended to "annoy," "offend," "harass" or "terrify," as well as certain sexual speech. Because the bill is not limited to one-to-one communications, H.B. 2549 would apply to the Internet as a whole, thus criminalizing all manner of writing, cartoons, and other protected material the state finds offensive or annoying.

UCLA law professor Eugene Volokh, who runs the Volokh Conspiracy website, analyzes the broad application of such a law on something as simple as a blog comment that may not be well received:

So, under the statute, posting a comment to a newspaper article — or a blog — saying that the article or post author is "f\*\*\*ing out of line" would be a crime: It's said with intent to offend, it uses an electronic or digital device, and it uses what likely will be seen as profane language (see, e.g., [City of Columbia Falls v. Bennett \(Mont. 1991\)](#)). Likewise if a blog poster were to post the same in response to a commenter's comment. Similarly, if someone posts something in response to an e-mail on an e-mail-based discussion list, or in a chatroom, or wherever else. (Note that if "profane" is read to mean not vulgarly insulting, but instead religiously offensive, see [City of Bellevue v. Lorang \(Wash. 2000\)](#), then the statute would be unconstitutional as well.)

Even the writers for Comedy Central have poked fun at the absurdity of this bill, writing on one of its blogs that there might be "a silver lining in this blatantly unconstitutional attempt to ban trolling."

"Though Arizona is doing its best to criminalize birth control and immigration, among other facets of the modern world, it still hasn't banned electricity," [the post](#) says. "In fact, Arizona legislators use 'digital device[s]' to draft legislation that is often plainly intended to annoy or offend anyone with a conscience. When Arizona legislators outlaw trolling, only outlaws will be Arizona legislators."

Still, despite the outcry against the legislation, it should come as no shock to anyone. The Internet has been targeted for attack quite a lot in the past few years. Just last year, former President Bill Clinton recommended a law to censor speech on the Internet. During an interview on CNBC, he recommended that the government set up an agency to monitor media speech, under the guise of looking for "factual errors."

"That is, it would be like, I don't know, National Public Radio or BBC or something like that, except it would have to be really independent and they would not express opinions, and their mandate would be narrowly confined to identifying relevant factual errors" he said. "And also, they would also have to have citations so that they could be checked in case they made a mistake. Somebody needs to be doing it, and maybe it's a worthy expenditure of taxpayer money."

Cass Sunstein, Obama's confidante and head of the Office of Information and Regulatory Affairs, even proposed Internet censorship to be enforced and regulated through regulated links in news pieces to opposing opinions, though he later retracted that proposal, admitting it would be "too difficult to regulate in a way that would respond to those concerns," adding that it was "almost certainly unconstitutional."



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In a 2008 *Harvard Law Review* paper written by Sunstein, he indicated that the government should be employing covert agents to “cognitively infiltrate online groups and website as well as other activist groups which advocate views that are ‘false’ about the government.” Sunstein admits that even if the oppositional voices are in fact correct, they need to be discredited so as to “increase the citizens’ faith in government officials.”

Sunstein also called for the rewriting of the First Amendment.

More recently, Americans have had to contend with the Stop Online Piracy Act (SOPA), Protect Intellectual Property Act (PIPA), and the global Internet treaty signed by President Obama, which would permit foreign companies to demand that ISPs (Internet Service Providers) remove web content in the United States without any legal oversight without significant attention. Entitled the Anti-Counterfeiting Trade Agreement, the treaty was signed by President Obama on October 1, 2011, but it is currently a subject of discussion as the White House is circulating a petition demanding that Senators ratify the treaty.

What’s worse is that the White House has done some maneuvering so that the treaty does not have to be confirmed by lawmakers to be implemented, regardless of the unconstitutionality of such an approach. Instead, it is presenting the treaty as an “executive agreement.” By doing this, the entire legislative process has now been circumvented, without the Senate having to give its approval, as the Constitution demands.

Whether Brewer will sign the bill into law remains to be seen.



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