[US] The 'Exon Bill' - Internet Censorship?

IRIS 1995-8:1/3

Christophe Wagner
OPPENHOFF & RÄDLER RA, Berlin, currently in Washington D.C.

On 14 June 1995, the US Senate passed the Communications Decency Act of 1995 - also known as the Exon Bill for short, after its author - by 84 votes to 16. The Bill prohibits the use of computerised communication techniques, such as E-mail and online services, to disseminate "indecent" material, and introduces prison sentences and fines for persons who give under-age children access to such material. If the Bill passes the House of Representatives and is not vetoed by the President, communication via Internet in the USA will be appreciably restricted.

It is true, in objective terms, that the Bill merely extends existing rules on telephone communications to online communications. However, this greatly increases the scope of the prohibition clauses, making anything the Internet can carry - from newspapers through photographs to classical literature - a potential target. By contrast, the existing rules on telephone comunications were merely intended to give the victims of obscene telephone calls a remedy in criminal law and withhold access to telephone sex services from young people. Given this narrow field of application, the US Supreme Court found them constitutionally acceptable. Extending the supervision of indecency to online communications raises problems chiefly because neither the legislator, the government nor the courts have ever come up with even a half-satisfactory definition of the term "indecent". Unlike "obscenity" (i.e. plainly offensive, pornographic material, with no literary, social or scientific value), to which the freedoms guaranteed in the US Constitution's First Amendment do not apply, "indecent speech" is, in principle, protected by freedom of expression. The vague definition of indecency covers sexual allusions and excremental references (e.g. swear-words).

Because even utterances of this kind are protected by the Constitution, the US law-maker is entitled to impose restrictions only for the purpose of protecting the young. Standards in the broadcasting field are laid down and monitored by the Federal Communications Commission (FCC), but there has in the past been surprising uncertainty regarding the acceptability of certain award-winning programmes and even classical texts, like Ulysses . Because of this uncertainty, and because they are afraid of being fined, losing their clean image or alienating viewers, broadcasters steer clear of anything even remotely offensive.

If these standards are applied to online services and individual communication on the Internet, the latter's hitherto open, democratic and "state-free" character is bound to be seriously affected. The Internet and online services offer a broad

© European Audiovisual Observatory (Council of Europe) 2026

range of functions and communication possibilities, doing many of the things traditionally done by bookshops, newsagents, telegram and telephone services, archives, press agencies, publishers and public forums. So far, all of this has largely escaped state control. The Exon Bill would subject a whole area of communication, which requires no licence (unlike radio and television) and essentially concerns individuals, to state interference of a kind very close to censorship. Online services and service providers may in future find themselves obliged, for fear of prosecution (the maximum sentence is two years in prison), to control network access more strictly, reduce the range of services, and possibly even monitor the content of Internet discussion groups or E-Mail news. This would noticeably inhibit development of the new medium and its possibilities, and would be detrimental in a general sense to free communication.

A Bill To protect the public from the misuse of the telecommunications network and telecommunications devices and facilities ("Communications Decency Act of 1995"), 104th Congress, 1st Session.

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026