

If we extended the standard of perfection now being applied to PBS and the endowments to other institutions, we should have long ago terminated the Congress, the State Department, the presidency and every known agency of government. In addition we should have eliminated all hospitals, schools, colleges and universities and dealt with all churches as Henry VIII dealt with the monasteries of England.

The NEA has frequently endorsed the motion that the sole duty of art is to provoke and outrage. Great art will, sometimes, do exactly that. But that is a consequence, not an end. Monet outraged many of the bourgeoisie, but that was not his intention, only a result of the impact his vision of light had on people raised on a diet of academic realism.

Public broadcasting and the Endowments consume only 1/100th of 1 percent of the federal budget. By helping to preserve and disseminate culture they have contributed value far exceeding their modest funding. Terminating these useful agencies on the basis of a few sensational mistakes will do little to balance the budget but will deprive the country of much value.

CENSORING CYBERSPACE

Mr. LEAHY. Mr. President, I rise today to speak about legislation that would impose Government regulation on the content of communications transmitted over computer networks.

Ironically, this legislation was accepted without debate by the Commerce Committee as an amendment to a draft telecommunications bill whose purported purpose is to remove regulation from significant parts of the telecommunications industry.

It is rumored that this matter could be headed for consideration by the Senate on Monday, although the bill has yet to be introduced and the Commerce Committee has yet to issue its report on the measure.

There is no question that we are now living through a revolution in telecommunications with cheaper, easier to use and faster ways to communicate electronically with people within our own homes and communities, and around the globe.

A byproduct of this technical revolution is that supervising our children takes on a new dimension of responsibility.

Very young children are so adept with computers that they can sit at a keypad in front of a computer screen at home or at school and connect to the outside world through the Internet or some other online service.

Many of us are, thus, justifiably concerned about the accessibility of obscene and indecent materials online and the ability of parents to monitor and control the materials to which their children are exposed.

But Government regulation of the content of all computer communications, even private communications, in violation of the first amendment is not the answer—it is merely a knee-jerk response.

Although well-intentioned, my good friend from Nebraska, Senator EXON, is championing an approach that I believe

unnecessarily intrudes into personal privacy, restricts freedoms, and upsets legitimate law enforcement needs.

He successfully offered the Commerce Committee an amendment that would make it a felony to send certain kinds of communications over computer networks, even though some of these communications are otherwise constitutionally protected speech under the first amendment.

This amendment would chill free speech and the free flow of information over the Internet and computer networks, and undo important privacy protections for computer communications. At the same time, this amendment would undermine law enforcement's most important tool for policing cyberspace by prohibiting the use of court-authorized wiretaps for any digital communications.

Under this Exon amendment, those of us who are users of computer e-mail and other network systems would have to speak as if we were in Sunday school every time we went online. I, too, support raising our level of civility in communications in this country, but not with a Government sanction and possible prison sentence when someone uses an expletive.

The Exon amendment makes it a felony punishable by 2 years' imprisonment to send a personal e-mail message to a friend with obscene, lewd, lascivious, filthy or incident words in it. This penalty adds new meaning to the adage, "Think twice before you speak."

All users of Internet and other information services would have to clean up their language when they go online, whether or not they are communicating with children.

It would turn into criminals people, who in the privacy of their own homes, download racy fiction or indecent photographs.

This would have a significant chilling effect on the free flow of communications over the Internet and other computer networks. Furthermore, banning the use of lewd, filthy, lascivious or indecent words, which fall under constitutional protection, raises significant first amendment problems.

Meanwhile, the amendment is crafted to protect the companies who provide us with service. They are given special defenses to avoid criminal liability. Such defenses may unintentionally encourage conduct that is wrong and borders on the illegal.

For example, the amendment would exempt those who exercise no editorial control over content.

This would have the perverse effect of stopping responsible electronic bulletin board system [BBS] operators from screening the boards for hate speech, obscenity, and other offensive material. Since such screening is just the sort of editorial control that could land BBS operators in jail for 2 years if they happened to miss a bit of obscenity put up on a board, they will avoid it like the plague. Thus, this amendment stops responsible screening by BBS operators.

On the other hand, another defense rewards with complete immunity any service provider who goes snooping for smut through private messages.

According to the language of the amendment, online providers who take steps to restrict or prevent the transmission of, or access to obscene, lewd, filthy, lascivious, or indecent communications are not only protected from criminal liability but also from any civil suit for invasion of privacy by a subscriber. We will thereby deputize and immunize others to eavesdrop on private communications.

Overzealous service providers, in the guise of the smut police, could censor with impunity private e-mail messages or prevent a user from downloading material deemed indecent by the service provider.

I have worked hard over my years in the Senate to pass bipartisan legislation to increase the privacy protections for personal communications over telephones and on computer networks.

With the Exon amendment, I see how easily all that work can be undone—without a hearing or even consideration by the Judiciary Committee, which has jurisdiction over criminal laws and constitutional matters such as rights of privacy and free speech.

Rather than invade the privacy of subscribers, one Vermonter told me he would simply stop offering any e-mail service or Internet access. The Physician's Computer Co. in Essex Junction, VT, provides Internet access, e-mail services, and medical record tracking services to pediatricians around the country.

The President of this company let me know that if this amendment became law, he feared it would cause us to lose a significant amount of business. We should be encouraging these new high-technology businesses, and not be imposing broad-brush criminal liability in ways that stifle business in this growth industry.

These efforts to regulate obscenity on interactive information services will only stifle the free flow of information and discourage the robust development of new information services.

If users realize that to avoid criminal liability under this amendment, the information service provider is routinely accessing and checking their private communications for obscene, filthy, or lewd language or photographs, they will avoid using the system.

I am also concerned that the Exon amendment would totally undermine the legal authority for law enforcement to use court-authorized wiretaps, one of the most significant tools in law enforcement's arsenal for fighting crime. The Exon amendment would impose a blanket prohibition on wiretapping digital communications. No exceptions allowed.

This means the parents of a kidnapping victim could not agree to have the

FBI listen in on calls with the kidnapper, if those calls were carried in a digital mode. Or, that the FBI could not get a court order to wiretap the future John Gotti, if his communications were digital.

Many of us worked very hard over the last several years and, in particular, during the last Congress, with law enforcement and privacy advocates to craft a carefully balanced digital telephony law that increased privacy protections while allowing legitimate law enforcement wiretaps. That work will be undercut by the amendment. Our efforts to protect kids from online obscenity need not gut one of the most important tools the police have to catch crooks, including online criminals, their ability to effectuate court-ordered wiretaps.

The problem of policing the Internet is complex and involves many important issues. We need to protect copyrighted materials from illegal copying. We need to protect privacy. And we need to help parents protect their children.

I have asked a coalition of industry and civil liberties groups, called the Interactive Working Group, to address the legal and technical issues for policing electronic interactive services. Instead of rushing to regulate the content of information services with the Exon amendment, we should encourage the development of technology that gives parents and other consumers the ability to control the information that can be accessed over a modem.

Empowering parents to control what their kids access over the Internet and enabling creators to protect their intellectual property from copyright infringement with technology under their control is far preferable to criminalizing users or deputizing information service providers as smut police.

Let's see what this coalition comes up with before we start imposing liability in ways that could severely damage electronic communications systems, sweep away important constitutional rights, and undercut law enforcement at the same time.

We should avoid quick fixes today that would interrupt and limit the rapid evolution of electronic information systems—for the public benefit far exceeds the problems it invariably creates by the force of its momentum.

JENNIFER HARBURY

Mr. LEAHY. Mr. President, imagine a government, a democracy, whose officials withheld information about its involvement in the death of one of its citizens, and lied about its knowledge of the torture and death in a secret prison of the spouse of another of its citizens.

Imagine if at least one of the people connected to those atrocities had been trained by that government, paid by that government, and continued to receive payments of tens of thousands of tax dollars even after the government knew of his crime.

It would be bad enough if I were talking about a foreign government, but I am not. I am talking about the United States, where an American citizen, Jennifer Harbury, practically had to starve herself in order to get her government to admit that it had information about the fate of her husband, Efrain Bamaca, who disappeared in Guatemala in 1992.

Ms. Harbury fasted for 32 days before she was told that, contrary to what she, I and other Senators had been told by both the Guatemalan Government and the State Department, her husband had been captured by the Guatemalan army and tortured.

The Guatemalan army, many of whose members were trained in the United States at the School of the Americas, claimed Mr. Bamaca had shot himself. Then, when it turned out that someone else was in the grave where they said he was buried, they denied he had ever been captured.

Then they tried to discredit Ms. Harbury, who unfortunately for them was not intimidated. Two years ago a witness told her that her husband had been captured alive and tortured, but she could not prove it and the administration did little to find the truth until the press stories about her hunger strike became too embarrassing.

Even today, the Guatemalan army denies it captured Bamaca, and the Guatemalan Government says it has no information about his fate even though it has had the information for at least a month.

Mr. President, I was sickened, as were we all, by the murder of the Jesuit priests in El Salvador, by soldiers trained in the United States. Almost as bad was the attempt of the Salvadoran army, including the Minister of Defense who for years had been coddled by American officials, to cover up its involvement in that heinous crime and so many other atrocities there.

But here we have a situation where the CIA, presumably believing by some twisted logic that it was furthering some national interest, reportedly paid a Guatemalan colonel, probably one of many, who it believed was involved in torture and murder.

The CIA continued its payments to Colonel Alpirez even after it had information about his connection with the murder of an American citizen, Michael DeVine.

According to reports, the CIA sent millions of dollars to the Guatemalan military even after the Bush administration cut off military aid on account of the Guatemalan military's cover-up of the DeVine murder.

I remember that, Mr. President, because I was among those who urged the cut-off of aid, and I was assured by the State Department that it had been cut off. Now we learn that was false, because the CIA was secretly keeping the money flowing.

The CIA withheld information about Colonel Alpirez' involvement in the DeVine and Bamaca murders, even

while President Clinton and State Department officials were saying publicly that the U.S. Government had no information.

And now we have reports that the U.S. Army and the National Security Agency not only may have known about those murders, but may have recently tried to conceal their involvement by shredding documents.

Mr. President, that is deplorable. What national interest does that serve? What is served by the CIA withholding information from the President of the United States? What message does it send, for our Ambassador to be telling the Guatemalan army how much we value democracy and human rights, when the CIA is paying them to commit torture and murder, and to betray their own Government?

Those soldiers knew there were criminals in their own ranks who were on our payroll, while our Ambassador was making lofty speeches about human rights.

The State Department said it had stopped aid to the Guatemalan military to send a message about the murder of Michael DeVine, while the CIA was subverting that policy by paying them under the table. What national interest did that serve?

You would have thought we learned our lesson after so many similar episodes during the 1980's in Central America, but obviously the CIA never did. It orchestrated the overthrow of the Guatemalan Government in 1954. During the Reagan years, the CIA repeatedly behaved like it was above the law, and apparently little has changed. Even when the sordid truth came out, the CIA's response was that it had not known about Colonel Alpirez' involvement at the time the crimes occurred. What a typical, feeble attempt to hide its own responsibility during the years since.

Mr. President, our goals in Central America today should be unambiguous. They are democracy, human rights, civilian control of the armed forces, and economic development for all people. Absolutely no national interest is served by subverting those goals.

Before we lecture the Guatemalans about democracy and human rights, maybe we should pay attention to what is going on in our own country. I am very encouraged by reports that President Clinton has a governmentwide review of these allegations, and has said that anyone who intentionally withheld information will be dismissed. That would send a strong message that there is a price for this kind of outrageous behavior.

I am also pleased that the White House has ordered that all documents relating to these allegations be preserved. I only wish someone had thought to do that weeks or months ago.