

Revisiting User Control: the Emergence and Success of a First Amendment Theory for the Internet Age

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Supporting Documents

In 1995, when the popular, commercial Internet was just emerging, concerns about protecting children online were already on legislative agendas, and no one knew exactly what level of First Amendment protection courts would afford this new form of mass communication. That year, two public policy advocates, Jerry Berman and Daniel Weitzner, argued in the *Yale Law Journal* that the Internet’s technical characteristics, including abundance of capacity and a high level of individual user control, meant that online speech should receive the highest level of protection under the First Amendment—protection comparable to print.

In the years since then, the concept of user control—or “user empowerment”—has been central to numerous decisions protecting speech in the online environment, from the United States Supreme Court on down. Under this theory, if technology can provide users (and parents) with the ability to control what they (and their children) access online, government regulation of content would be unconstitutional. Arguments against and criticisms of this constitutional theory have been advanced, but the idea that users and parents—and not the government—should control what children access online remains the dominant rationale for courts to protect speech online. This essay looks at the origins and application of the “user control” theory in the online context and how the theory has fared the test of time. We conclude that “user control” on the Internet is as vital and important today as it was when Berman and Weitzner first advanced the theory fifteen years ago.

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