

Students & the Internet

A 1Voice Teaching Resource

As recent 1Voice stories have demonstrated, student speech on the Internet is one of the fastest evolving – and least understood – aspects of First Amendment law.

These days, almost every student has his or her own MySpace or Facebook page. So what does the First Amendment allow – and not allow – when it comes to free speech in cyberspace?

Give your students this quiz to help them learn more about this fascinating area of the law.

NOTE: Many of the questions and answers below can be found at www.firstamendmentcenter.org.

Students & the Internet How Free Should Students Be?

Try this short quiz to see how well you know what the First Amendment does – and does not – protect when it comes to student speech and the Internet. Answer YES or NO to the following questions

Questions

- _____ 1. Is speech on the Internet entitled to as much protection as speech in more traditional media?

- _____ 2. Does it matter whether a student creates his cyberspeech at school?

- _____ 3. If a student creates his material at home, can school officials regulate it at all?

- _____ 4. Can school officials restrict online expression because it contains offensive language?

- _____ 5. Can a school really punish students for violating code of conduct policies if they find images of students drinking on social network sites like MySpace and Facebook?

- _____ 6. Does using filters to block parts of the Internet violate the First Amendment?

- _____ 7. Could the president sue me if I posted a message critical of him?

- _____ 8. Does the First Amendment protect cyberstalking?

Quiz Answers

1. Yes, the U.S. Supreme Court ruled in *Reno v. ACLU* (1997) that speech on the Internet receives the highest level of First Amendment protection. The Supreme Court explained, “Our cases provide no basis for qualifying the level of First Amendment scrutiny that should be applied to this medium.”
2. Yes, it does. If the student uses school computers to create his material, school officials have jurisdiction and more legal authority to regulate the expression. School officials would likely argue that they could censor such expression as long as they had a reasonable educational reason for doing so under the Supreme Court’s 1988 ruling in *Hazelwood School District v. Kuhlmeier*. Also, when students use school computers, they are subject to the school’s acceptable-use Internet policy. Most schools have policies that set limits on students’ Internet usage.
3. Yes, although the courts are not uniform in how they analyze such cases. This question raises the threshold issue of whether the material is considered on-campus or off-campus speech. The Pennsylvania Supreme Court wrote in its 2000 ruling in *J.S. v. Bethlehem Area School District*: “We hold that where speech that is aimed at a specific school and/or its personnel is brought onto the school campus or accessed at school by its originator, the speech will be considered on-campus speech.”

It would be difficult for school officials to justify regulating material a student creates at home and does not bring to school. However, if a student creates a Web site at home using his own computer but brings the material to school, then school officials could likely regulate it under the “substantial disruption” standard from the Supreme Court’s 1969 decision *Tinker v. Des Moines Independent Community School District*. This means that the material would be treated akin to an underground student newspaper — school officials could regulate it if they could reasonably forecast that it would cause a substantial disruption or material interference with school activities. What is not clear is a situation where a student creates the material at home and never brings it to school, but other students bring it to school and freely distribute it. No case has explained this situation with any detail.

Students also should be aware that there are consequences to posting certain material even on their personal Web sites. If a student posts true threats online, the school may contact the appropriate authorities. If a student posts libelous material, he may be sued for defamation in court. For example, several teachers in Indiana sued a student in 1999 after he posted allegedly false information that harmed the teachers’ reputations.

4. No. They cannot under the *Tinker* standard. One federal district court judge in 1998 wrote in his opinion: “Disliking or being upset by the content of a student’s speech is not an acceptable justification for limiting student speech under *Tinker*.” At least one court has applied the Fraser standard to student Internet

speech that is considered on-campus expression. Under the Supreme Court's 1986 decision *Bethel School District No. 403 v. Fraser*, school officials have the authority to regulate on-campus student speech that is vulgar, lewd or plainly offensive. Most courts, so far, have stated that school officials cannot satisfy the Constitution by banning expression simply because they find it offensive.

5. Yes. Although the First Amendment is a limitation on what government actors (in this case, public school officials) may or may not do, it's becoming increasingly common for schools and potential employers to check social networking sites for personal information, and to penalize kids or other people for what they find, said William McGeveran, a professor at the University of Minnesota Law School and an expert on data privacy. "Facebook is largely a public space, he explained. "Users don't always perceive it that way, but that's what it is." Does using filters to block parts of the Internet violate the First Amendment?
6. Not if parents install the filters at home, because in that case the government is not involved. Constitutional violations require state action or governmental involvement. The question becomes whether public schools or public libraries violate the First Amendment when they install blocking software on computers accessible by the public. In June 2003, the U.S. Supreme Court ruled in *United States v. American Library Association* that mandatory filtering in public libraries does not violate the First Amendment. The Court's decision overturned a lower court ruling that such filtering was unconstitutional.
7. No. With any free-speech issue pertaining to the Internet, established rules of First Amendment jurisprudence apply. If you were to post on a Web site a message criticizing a renowned scholar, a movie actor, or even the president, you could not be sued for libel unless "actual malice" was shown. If criticism turns into threat, however, the situation changes. Threats are not protected speech.
8. No. The distinction here is between protected speech and speech that is not protected. Most of the new laws passed by states require that, for online communications to be considered "stalking," they must constitute harassment of a person that places the person in reasonable fear for his or her safety. Courts have upheld stalking legislation that deals with threats because the First Amendment does not protect true threats. But some of the measures go beyond punishing true threats and proscribe "annoying" speech.