

Mayhem Online

Congress considers hate and violence in cyberspace

by Debra Gersh Hernandez

LAWMAKERS AGREE THAT the First Amendment does not protect someone who falsely yells "Fire" in a crowded theater, but now they are asking whether the Constitution protects someone who yells "Fire" online.

The Oklahoma City bombing has brought to the table a new awareness of groups that use the Internet to communicate messages of hate and anarchy.

Of particular concern to recent Senate Judiciary Committee's Subcommittee on Terrorism, Technology and Government Information hearing was the online availability of "mayhem manuals," which give detailed instructions for building bombs.

"Among those who communicate on

Court held that speech could not be punished unless it was "an incitement to imminent lawless action."

Sen. Herb Kohl (D-Wis.) pointed out that while most information on the Internet is useful, the information superhighway has dark back alleys.

"Anyone proficient enough to navigate it can obtain bomb recipes, hate literature, terrorist manuals, lewd photographs or participate in adult chat rooms," he said, expressing concern that children are among the Internet's most adroit users.

Kohl said the government "should not be in the business of telling people what they can and cannot think," but it can "act to prevent people from endangering public safety."

He called upon the online communications industry, parents and Inter-

think and speak as we choose, protects these others as well," he said. "The rule of this free society has long been that it is harmful and dangerous conduct, not speech, that justify adverse legal consequences."

Leahy cautioned that "we need to be sure we are not vainly striking out at a medium of communication because we are frustrated by not being able to identify the person or group responsible for separate, criminal action."

If the government cannot ban books on making bombs, it cannot ban online speech on bomb making, and, similarly, obscenity prohibitions in S-652, the pending Senate telecommunications bill, "do not withstand scrutiny," Leahy said. The Department of Justice, he said, has concluded that the prohibitions "will not work but will, instead, frustrate the department's aggressive enforcement of existing obscenity and child pornography laws, at the same time they threaten important First Amendment rights."

As an alternative, Leahy has introduced S-714, which he plans to offer as an amendment to the Senate telco bill. His plan calls for a study of the role, if any, of the Department of Justice or the Federal Communications Commission in controlling obscene or harassing speech on the Internet.

"Likewise, in this area of violent speech, we should not rush to renounce our fundamental commitment to First Amendment values," Leahy added. "While maintaining freedom of speech is not without risk, we will have already lost when we adopt censorship and repression. Speech with which we disagree is best met by more speech, not less; by debate, not denial; and by sunshine, not darkness."

Unlike her colleagues, however, Sen. Dianne Feinstein (D-Calif.) was not as committed to unrestricted online speech.

Allowing information to flow unre-

"Speech with which we disagree is best met by more speech, not less; by debate, not denial; and by sunshine, not darkness," Leahy said.

the Internet are purveyors of hate and violence," said subcommittee chairman Arlen Specter (R-Pa.). He said the most widely known mayhem manual is the 93-page *Big Book of Mischief*.

Besides books on making bombs, there are discussion groups where bomb making tips can be traded anonymously, he said.

"There are serious questions about whether it is technologically feasible to restrict access to the Internet or to censor certain messages," Specter said. "If that is not feasible, then the government would only be able to act after the fact to punish those who misuse the Internet."

Specter also pointed to "significant First Amendment concerns," and explained that in 1969, the Supreme

net publishers to take responsibility for controlling children's access to certain information.

Kohl warned against overreaction, saying, that the zest for cleaning out the Internet's back alleys should not harm innovative activities.

After all, he said, mayhem manuals are as easily found in libraries and bookstores as on the Internet, and, in a free society, people who want such information are going to find it.

Sen. Patrick Leahy (D-Vt.) said he abhors hateful speech and the rantings of those who believe the federal government has secret plans to restrict individual rights, but he also opposes repression.

"The same First Amendment that protects each of us, and our right to

stricted — including “engaging in promotion of an ultrahazardous pursuit . . . by purveyors of this stuff [and] using the First Amendment right to justify its purveying — is a “pushing of the envelope to extremes,” she said.

As a mother and grandmother, she said, she does not want kids to have access to these materials.

“I have a hard time with people using First Amendment rights to teach others to go out and kill and to purvey that all over the world,” she said.

“There is a difference between free speech and teaching others how to kill. That’s what these [bomb-making] diagrams do. It’s not just to learn, but to kill. The language is incendiary, not academic,” Feinstein said.

But the threat from hate groups is nothing new, and the Simon Wiesenthal Center has been following such online communications for months, said Rabbi Marvin Hier, dean and founder of the center and its Museum of Tolerance.

Before and after the Oklahoma City bombing, the Wiesenthal Center has tracked numerous “recipes” for building bombs, Hier said.

Of the 250 active hate groups monitored by the Wiesenthal Center, more



Dianne Feinstein

online speech are equivalent.

“This is a network, a pulpit to the world,” he said. “The Internet is a huge vehicle. This is a very powerful tool.”

He suggested at the hearing that law enforcement agents be given “the opportunity and capability to monitor hate and violence-oriented postings in cyberspace.” Otherwise, authorities will be unable to track “potentially illegal activity if they cannot do what amounts to the equivalent of clipping a

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than 50 communicate online, using electronic bulletin boards and World Wide Web sites on the Internet, he said.

“The reasons for this troubling trend are quite clear. Cyberspace offers direct, instantaneous, cheap, mainstream communications in the marketplace of ideas,” Hier explained. “Further, young people — a target group for racists — are especially drawn to this cutting edge of technology . . .

“The information superhighway also empowers local militia and hate group members with a sense that they are part of an increasingly powerful, nationwide movement,” he continued. “In addition to the obvious mainstream marketing capabilities, available technology also permits, when desired, anonymity when launching hate attacks on the Internet.”

At a press conference following the hearing, Hier disagreed that print and

newspaper article by downloading a file on the Internet,” he said.

“We are not advocating an attack on cherished First Amendment freedoms; however, we do believe that law enforcement should be free to investigate clearly expressed intentions to commit violence,” Hier said.

The rabbi also called on technology providers “to help America marginalize the hatemongers” by “taking a pro-active stand to bar their services from such hatemongers,” as some online services already do.

In addition, he suggested evaluating the format and function of the information superhighway “to see what limits, if any, should be applied . . .

“[W]e need to keep in mind that the obscene or threatening phone caller has neither his privacy nor his speech protected when he threatens a member of the community via phone. Why are those protections afforded if he

launches the same attack via the Internet?” Hier asked.

Deputy Assistant Attorney General Robert S. Litt believes that the free flow of information about building destructive weapons facilitates acts of violence like the bombing in Oklahoma City.

These how-to guides are already available online, and press coverage of the Oklahoma City bombing “has made this fact widely known,” Litt said.

Conceding that similar information has been available for years, Litt said the Internet “has unquestionably increased” its flow by making it easily available to millions of people.

“A person so inclined can learn how to construct a devastating bomb in the privacy of his own home, untroubled by the constraints he might normally feel about purchasing a bomb cookbook at the local bookstore,” Litt said, adding that would-be terrorists and children alike can access such information.

There are, however, federal laws to combat this problem, Litt explained. Laws penalizing extortion, threats, conspiracy, and aiding and abetting the violation of other federal laws “can be applied even when the offense is accomplished through speech,” he said.

As a recent New York court ruling demonstrates, “speech is not protected when it is the vehicle of the crime itself,” he said, adding that federal law prohibits “demonstrating how to make an explosive device if one intends or knows that it will be used in a civil disorder involving acts of violence affecting interstate commerce.”

Litt conceded that the Constitution “imposes stringent limits” on the government’s ability to punish, in the absence of criminal intent, the advocacy of principles or the dissemination of information, even if the communication is utterly repugnant.

The Supreme Court set the limit in 1969. The First Amendment protects speech — even speech that advocates or instructs illegal action — unless there is an imminent danger of, and an incitement to, lawless action, or unless the speech itself constitutes a crime.

“The same rules apply to information communicated over the Internet,” and people using the Internet to distribute information about bomb building know it, Litt said.

One maneuver they employ is to

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state that bomb-making instructions are "solely for informative purposes."

While the Department of Justice has prosecuted criminal online, Litt said "more could be done within constitutionally permissible limits to punish terrorist and violent activity occurring on the Internet."

Among his suggestions: allowing access to credit records, expanding the list of felonies that can be subject to electronic surveillance, ensuring the availability of court-authorized electronic surveillance of digitized communications, developing better systems to

Burrington said the First Amendment protects online speech "to no less an extent than any other publishing or dissemination activity." He also said people who communicate on e-mail or bulletin boards have a Fourth Amendment right to privacy that is bolstered by the Electronic Communications Privacy Act of 1986.

Burrington urged lawmakers to consider the facts about online services when considering government regulation.

First, the breadth of the services makes it impossible for operators to know about or to screen everything on their systems. Second, whoever originates content, not the system that car-

lifeguards can be stationed and control established, but once the public crosses the street to the "vast sea of information" on the other side, there is no more control.

Even the First Amendment has its limits; for instance, it does not extend to falsely yelling "fire" in a crowded theater, noted Jerry Berman, executive director of the Center for Democracy and Technology.

"But what does it mean to shout 'fire' in cyberspace?" he asked. "We believe that shouting 'fire' in cyberspace is actually far less threatening, and thus less deserving of censure, than the equivalent act in the physical world."

"Though one can shout fire in an e-mail message or on an Internet news group, the likelihood that it will incite readers to imminent, criminal action is much reduced, because the readers are dispersed around the country, and even around the world," he commented.

"In the face of terrorist threats, it is particularly important to maintain an open society in order to minimize public paranoia about the government and to discredit arguments of those who advocate the destruction of our government," Berman noted. "The openness of the Internet and other interactive media should be seen as a great boon to our democracy, not as a threat to order."

The Center for Democracy and Technology, Berman stated, "believes that any prosecutorial or investigative activity must be predicated on speech, plus a reasonable indication that the speech will lead to imminent violence."

"Speech alone is not enough to prosecute or investigate other media, and it should not be sufficient in interactive media," he added.

Further, the Internet is not just "a haven for bomb-makers, militia members, racists, and purveyors of child pornography," Berman said. It has "the potential to revitalize political discourse by providing citizens with access to more detailed information about the political process and by creating a forum for political organizing that includes far more citizens in the political process than does the passive politics of television."

In its own research, the center found directions on the Internet for building a bomb, but the information came from a British World Wide Web site. Information about how to build an atomic bomb was on a Swedish site.

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decode encryption systems, and balancing privacy rights with limits on anonymous communications, perhaps by allowing confidentiality, which means one's identity would be revealed only in appropriate cases that are judicially supervised.

The interactive services industry "strongly opposes illegal activity" over online and its members not only cooperate with law enforcement officials but also "have all taken self-regulatory actions to keep the networks 'clean,'" explained William W. Burrington, America Online Inc. assistant general counsel and director of government affairs.

ries it, is responsible for that content. Third, online communication is a global medium, meaning U.S. regulations may not apply outside the country.

Burrington described America Online as a closed service that can safeguard against children's access to inappropriate material — by such techniques as requiring account holders be over 18, and allowing parents to block certain services — but the Internet is wide open and beyond the provider's control.

America Online is like a private pool, and Internet, like the ocean across the street, he said. At the pool,

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