

## User-Generated Internet Content and the First Amendment

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The internet has invaded almost every facet of our lives and connected people in ways few could have anticipated. Yet, in the past few weeks, many international interpretations of freedom of expression have surfaced regarding the internet. One such interpretation is found in the Italian government's recent proposal to censor internet video. Another interpretation, closer to home, can be found in a Southern District of Florida decision protecting a student's uploaded internet speech. *Evans v. Bayer*, 2010 WL 521119 (S.D.Fla., Feb. 12, 2010).

Under Prime Minister Silvio Berlusconi, Italy's government recently proposed a new decree aimed at regulating user-generated uploads to the internet. Jeff Israely, *Berlusconi vs. Google: Will Italy Censor YouTube?* TIME.COM, Jan. 22, 2010, available at <http://www.time.com/time/world/article/0,8599,1955569,00.html> (last visited Feb. 21, 2010). The proposed legislation targets sites such as YouTube, blogs, and other sites which allow users to upload videos. Colleen Barry, *Italy drafts law for censorship of Internet postings*, HERALDTRIBUNE.COM, Jan. 23, 2010, available at <http://www.heraldtribune.com/article/20100123/article/1231031?p=2&tc=pg&tc=ar> (last visited Feb. 21, 2010). The decree would require anyone who regularly uploads videos to obtain a license from the Ministry of Communications. Israely, *supra*. Further, if an internet service provider fails to filter out inappropriate content, that internet provider could face civil and even criminal sanctions. Barry, *supra*. Critics cite the new decree as

yet another attempt by Berlusconi to protect his own media empire. Barry, *supra*.

Opponents also say that the decree unjustifiably limits freedom of expression on the Internet, which is becoming increasingly popular with the Italian youth. Israely, *supra*.

Among other implications, Italy's controversial attempt to censor internet uploads (if passed) will undoubtedly affect interaction between young Italians. Sites like YouTube have quickly gained popularity among American youth, and such user-uploaded content is often the subject of students' conversations. The Italian government's actions can be juxtaposed with a recent Southern District of Florida decision regarding an American student's postings on the internet. *Evans v. Bayer*, 2010 WL 521119 (S.D.Fla. Feb. 12, 2010).

In the last decade, American courts have struggled to define the bounds of the First Amendment as related to student internet speech. Courts have interpreted a vast variety of factual scenarios surrounding a school district's ability to regulate, filter, and discipline students for online speech. *J.S. ex rel Snyder v. Blue Mountain School Dist.*, 2010 376186 (3d Cir. February 4, 2010) (upholding school suspension of student for making Facebook page of principle); *Layshock el rel Layshock v. Hermitage School Dist.*, 2010 WL 376184 (3d Cir. February 4, 2010) (affirming summary judgment for student that school violated his first amendment rights when they suspended him for creating fake MySpace page of principle); *See also Mahaffey v. Aldrich*, 236 F.Supp.2d 779, 785 (E.D. Mich. 2002) (holding that student's webpage listing other students he wished 'would die' was constitutionally protected speech); *Latour v. Riverside Beaver Sch. Dist.*, No. 05-1076, 2005 U.S. Dist. LEXIS 35919, at \*4 (W.D. Pa. Aug. 24, 2005) (holding that school could not punish student for publishing offensive rap lyrics on the internet); *Doninger v.*

*Niehoff*, 2009 WL 103322, 6-7 (D.Conn. 2009) (upholding school discipline of student who criticized school officials on the internet); *Wisniewski ex rel. Wisniewski v. Bd. of Educ.*, 494 F.3d 34 (2d Cir. 2007) (affirming discipline of student who posted cartoon of a teacher being shot on the internet).

Courts have reached widely varied conclusions; some allowing schools to discipline students for internet speech, and others finding that speech to be constitutionally protected. With the spread of 3G network mobile phones into schools, it has become harder for schools to regulate American children's access to the internet.

While the Italian government seeks to censor user-uploaded internet content, the Southern District of Florida recently held that the First Amendment protected a student who created a Facebook group discussing her dislike for a teacher. *Evans*, 2010 WL 521119, \*1. There, a high school student was suspended after creating a Facebook group proclaiming a certain teacher to be "the worst teacher I've ever met." *Id.* at \* 1. The Southern District examined the gambit of recent court decisions dealing with student internet speech, and found the plaintiff's speech to be protected by the First Amendment. *Id.* at \* 5-7. Thus, the court found that the principle wrongly suspended the plaintiff, and that the principle was not entitled to a defense of qualified immunity. *Id.*

This line of decisions has vast implications for American youth, and provides insight into the evolution of internet communication in our society. Today, a student's freedom of expression now reaches far beyond her own friends, family, or class. With the spread of social networking and video-uploading sites, the way students communicate is constantly evolving. While United States courts muddle through complex first Amendment implication of student-generated speech, Italian schools and internet

providers may be required to filter such content before it is even uploaded. The lasting consequences of such varying approaches are still to be seen.

Moreover, the freedom to upload video content to internet sharing sites affects many legal facets. Legal sites such as [abovethelaw.com](http://abovethelaw.com) and [legaltube.com](http://legaltube.com) will likely pave the way for future changes in the way businesses, firms, and attorneys communicate and advertize. For example, LegalTube states that using the site to find a lawyer is “as easy as watching TV.” LEGALTUBE, available at <http://www.legaltube.com/about-us.aspx> (last visited February 21, 2010). Internet video advertisements for legal services will likely become an important part of marketing. Contrasts in communication and business development between democracies censoring internet video may not become apparent for some time, but those consequences will shape the way our children, and our firms, interact.