BROADCASTING ON THE INTERNET: LEGAL ISSUES FOR TRADITIONAL AND INTERNET-ONLY BROADCASTERS

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I. Introduction

The Internet has revolutionized the way in which we communicate. It is unlike any other form of communications media. It's a global network that can connect Atlanta to Antarctica, [New York to Nepal] - or virtually anywhere else - in less than a second. The Internet is a giant network which interconnects numerous smaller groups of linked computer networks. It is thus a network of networks. [The] Internet allows individuals to interact, share, argue, preach, plead, court, annoy, or harvest information in a way the world is only beginning to explore. The Internet's impact has been so great that the current administration desires for all Americans to have access to it. The concept of "universal service" will hopefully allow this to become a reality.

The Internet could potentially make us a society of shut-ins, as it allows us to shop, work, play and communicate not only with our neighbors, but also on a worldwide level. In 1991, the World Wide Web (WWW) was invented by CERN. The number of WWW sites reached a high of 230,000 in June 1996, and this number will only continue to grow. The types of WWW sites range from individuals with home pages, to governments, businesses of all kinds, and more. The Internet has also been noticed by the traditional media. Newspapers, magazines, radio and television stations have embraced this technology by creating their own sites. Many radio stations are broadcasting on the net, and the potential exists for television stations to broadcast video on the net.

The purpose of this article is to explore broadcasting on the Internet. What will follow is an analysis of how traditional broadcasters are using the net and that will be compared/contrasted to the emergence of Internet-only broadcasters. This, of course, leaves wide-open legal questions and concerns. How will issues such as music licensing/copyright be handled? Indecency? Although online technology raises many new legal issues, the law available to help us resolve them, at least today, is largely based on the world as it existed before online commerce became a reality. One attempt at this has failed, as the Communications Decency Act (CDA) was held unconstitutional by a unanimous Supreme Court.

The Internet is different, and the old standards can't be applied. Furthermore, the relaxation of the broadcast ownership rules made possible by the Telecommunications Act of 1996 has led to an onslaught of mergers and acquisitions. The consolidation of broadcast ownership may make Internet-only broadcasting more appealing, as this would be the only realistic way of having a "voice" without having to "buy one's way in."

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1 Eric S. Slater is a fourth-year evening student at New York Law School.
4 Supra note 1.
5 47 U.S.C. 246 (1996). The Clinton administration would like to provide Internet access for all Americans by setting up public schools, libraries, etc. with Internet service.
6 "Internet Timelines: Copyright 1993-6 by Robert L. Zaksan, http://www.inux.org/Agios/Zaksan/Internet/History/HT.html. The World Wide Web was created by a researcher at the European Laboratory for Particle Physics, CERN, near Geneva. See also, Katie Haefner and Matthew Lyon, WHERE WIZARDS STAY UP LATE: The Origins of the Internet, Simon & Schuster, 1996, for a comprehensive look at the Internet's history and development.
10 Telecommunications Act of 1996, supra note 8, § 202(b)(1).
The bottom-line is that it is difficult to apply the traditional regulatory scheme to the Internet. Although the Internet appears to be similar to broadcasting, it is actually a combination of several media, including print, telephony, television (now that it's possible to stream video on the Net), and of course radio. It might be possible to apply certain aspects of traditional regulation to the Net, but it doesn't seem feasible to hold it to regulatory schemes found in any of the above-mentioned media. It is erroneous to hold the Internet to broadcast-like standards because it is different enough to warrant a different type of regulation.

The discussion is organized as follows: Part II will address Broadcasting on the Net; part II.A. will specifically highlight broadcast radio stations on the Net; part II.B. will provide an overview of how stations transmit their signals on the Net via "real-time" broadcasting and downloading of information. Part III will delve into some important legal issues affecting traditional broadcasters on the Net. Here, the issues of indecency (III.A.), music licensing and copyright (III.B.), and the effect of new broadcast ownership rules will be addressed (III.C.). The discussion of broadcast ownership rules will segue into part IV, which will provide background on internet-only broadcasters. The article will conclude with part V.

II. Broadcasting on the Net

Broadcasting on the Net is comprised of two groups. The first group is traditional over-the-air radio broadcasters who via "real-time" transmit the actual broadcast signal on the Internet from the station's website. The second group is internet-only broadcasters (not connected to a traditional broadcasting entity) who via real-time transmit programming from a website. The remainder of this article will devote itself to comparing/contrasting the two groups in light of legal issues such as indecency and music licensing/copyright.

Additionally, the author posits that because of new broadcast ownership rules for radio, traditional, non-Internet market entry is becoming more and more difficult for those other than the new generation of megacompanies which seem to be gobbling up radio stations as if they're going out of style. As this trend continues, it seems logical that a new generation of broadcasters, a.k.a., internet-only broadcasters (or "cybercasters") will grow in popularity. The Internet enables all of us to potentially become broadcasters. Purchasing a radio station can run into the millions of dollars, a sum that most people can't afford. On the other hand, building an Internet website is relatively inexpensive. Transmitting a broadcast signal or an internet-only signal is also comparatively inexpensive. As the broadcast radio landscape becomes controlled by a small number of large companies (giving the public few choices for diversity in programming and viewpoints), internet-only broadcasters will be able to fill the void by potentially providing more diverse and interesting programs.

A. Broadcast Radio Stations on the Web


12 Potentially, with the requisite equipment and technical skill, a large number of individuals can access the Internet. Compared to the cost of purchasing a broadcast station, the Internet is much less expensive.

13 GTI Internet of Morristown, NJ, an Internet Service Provider (ISP), charges $4.5/hour to build websites for individuals and companies. Since it is necessary for websites to be connected with an ISP, GTI's monthly rate is $95; if you have a ".com" or ".org" designation, it's $100/month. Costs can vary depending on the complexity of the website and from company to company.

14 GTI quotes a price of between $1500-$2000 as the one-time set-up cost of placing the signal on the server. The transmission must travel at a high speed to the server; a dedicated ISDN line would be needed to achieve this. The cost of a 24-hour dedicated ISDN line at 128 kilobytes is $400/month.
On August 5, 1995, KPIG-FM of Monterey, California began the first permanent cyberscast of a radio station to a mass audience on the Internet. This paved the way for a large number of additional stations to do the same. Prior to that point and still true currently is the fact that many radio stations have websites, even if they’re not necessarily broadcasting on the Net. In two years, the number of U.S. radio stations with websites has increased 900 percent, from about 200 at the beginning of 1995 to about 1,800 at the end of 1996. While there are many companies that develop home pages on the World Wide Web, [there is currently at least one catering] specifically to the radio industry. Most stations, however, are developing their own pages, or are hiring local companies to help them out. The list of stations on the web includes commercial stations and noncommercial stations alike, big and small, from New York to Alaska, and on a worldwide scale as well.

The proliferation of [web sites] will allow stations to provide more information than do newspapers and to interact with listeners. Contents of a typical radio station's website includes information about the station and its format, biographies and the Internet's equivalent of 8" x 10" glossies of its on-air personalities, contests, album reviews, "virtual" tours of the station's studios, and much more. By visiting the website of WCBS-AM, which debuted its site on August 7, 1995, one can see an example of the interactive aspects of what radio broadcasters can offer on the Net. Users can access breaking-news headlines, news features, interview shows, and sports and entertainment reports; the WCBS site also offers printed scripts of news features and encourages users to send questions via e-mail to the station's news anchors or to comment about the station. Additionally, users with "RealAudio" software can listen to the station's "Virtual 88" audio files of the informational segment Boot Camp: Reports on Computers and Technology, which reports on technology trends related to the Internet.

Radio on the Internet can be extremely positive from the standpoint of localism and getting listeners involved on-line. Michael Rau, Vice President of Technology for EZ Communications said in an interview that "[radio can excel on the Internet as a local information provider. Radio can deliver more local information online than a service like America Online; [radio has] access to more local information that [it needs], and [it] has local ties to [its] communities." The WCBS site above is indicative of this as far as news/information radio is concerned; music-oriented radio is taking advantage of this as well. Tom Glade, Vice President and General Manager of KDGE-FM in Dallas, Texas, stresses "[b]roadcasting the station over the Internet is just a natural part of having a good website." Listeners who are computer oriented just seem to e-mail the station with much more frequency and spontaneity than those who are confined to "snail mail." Glade further states that [increased audience contact is a valuable marketing aid.

As the number of individual stations on the Web continues to grow, radio station groups such as EZ Communications, and networks
such as ABC RadioNet\textsuperscript{30} have also joined the fray. ABC debuted its Internet broadcasting on September 11, 1995, with coverage of the O.J. Simpson trial.\textsuperscript{31} The popularity and success enjoyed by commercial radio stations on the Web have spurred noncommercial radio networks such as National Public Radio to look into the viability of setting up a website and possibly broadcasting on the net.\textsuperscript{32} Many college and university stations have websites and many stations are broadcasting on the Net as well.\textsuperscript{33} Additionally, specialized services for commercial stations have been developed. For example, Electric Village\textsuperscript{34} created RockVillage, a site for classic rock stations, and Earwig, a site for new rock stations.\textsuperscript{35} These are interactive services that operate transparently to users; they are adorned with a station's logo. Listeners simply link from a station's site to an ElectricVillage site, there, listeners can find celebrity interviews, CD reviews and sound clips, games, columns, and polls.\textsuperscript{36}

Another company to do this is Poison Communications, which teamed up with AudioNet to broadcast Poison's AM and FM stations in Florida on the Net. See also, INTERNET RADIO BROADCASTS, INTERNET WEEK, September 9, 1996.\textsuperscript{30} www.abcradionet.com. See also, ABC RadioNet will be the first to provide live news broadcasts on the Internet, INFORMATION TODAY, October, 1995, ABC Radio News into the Internet, World Media Expo Tech Makes News, BROADCASTING & CABLE, September 11, 1995. See also, Thomas Park, Radio-activity on the Web, World Wide Web DATABASE, December 1995, at p. 38, for a list of other networks broadcasting on the Web including CBS Radio Networks On-line, The Dow Jones Investor Network, and Bloomberg Information Radio.

\textsuperscript{31}\textsuperscript{31}Sean Silverstone, It's radio Internet.radio, audio broadcasting on Internet, PC WEEK, September 18, 1995, at p. A1.\textsuperscript{32} See generally, NPR Joins Commercial Radio in Looking at Internet Broadcasting, PUBLIC BROADCASTING REPORT, March 22, 1996. NPR's site is found at www.npr.org, users can listen to hourly newscasts as well as access information about NPR, its programming, even job opportunities.

The first college broadcasters to transmit on the net (1994) include WXYC at the University of North Carolina, KJHK at the University of Kansas, and KUGS at Western Washington University. For a more complete description of KJHK's website, see Donna Petroccello, Radio on the Internet: University of Kansas puts 24-hour broadcast online, BROADCASTING & CABLE, January 23, 1995, at p. 158.\textsuperscript{33} www.electorivillage.com

\textsuperscript{34} Supra note 18

\textsuperscript{35} Id. RockVillage can be seen on a number of rock station sites, including WDFH-AM, Dover, NJ, at www.wdfh.com. According to the Radio World report, there are currently 37 radio stations exploiting their on-line presence with FlesarioVillage sites.

B. \textit{"Real-time" Broadcasting and Downloading}

Whether it's a traditional radio station or an internet-only broadcaster, the way in which Internet broadcasting is accessed is essentially the same. Enabled by Progressive Network's RealAudio and Xing Technology's StreamWorks, stations can now cybercast in real time or on demand.\textsuperscript{37} As technical developments evolve, and as the sound quality of these stations improves, and, finally, as the number of Internet subscribers increases, the number of radio stations on the Net is expected to grow.\textsuperscript{38} Searcher magazine explains what's needed to listen to radio on the Net:

To enjoy Internet radio, you need a test PC with a sound card and audio speakers. You need a 28.8-Kbps modem; an ISDN line or LAN connection is better, of course. You will need of 8MB or RAM minimum, and at least 2MB free on your hard drive.

Now you can begin. Download the RealAudio site (http://www.realaudio.com/) to download the free software for listening. (If you have Windows 95, the RA software is already installed and enabled with the Microsoft Web browser.) Once you download RealAudio, you need to tell your Web browser that you have RA. Click on "Preferences or Options," click on "Viewers or Helper Applications," and look for the audio option. Then follow the instructions provided at the RealAudio site to have your browser recognize these audio files as they stream in from the Internet.\textsuperscript{39}

Once the software has been downloaded, you're ready to go. Don't expect the crisp, clear

radio stations exploiting their on-line presence with
FlesarioVillage sites.

\textsuperscript{37} Agagi Raseet, Radio on the Internet: Radio stations across the Internet, SEARChER, July, 1996, at p. 22

\textsuperscript{38} Frank Moser, Radio Meets The Internet, P.N.E.D. IN, September, 1996, at p. 7.

\textsuperscript{39} Supra note 37. The article goes on to discuss the same process for downloading Xing's StreamWorks software.
sounds you get from listening to a compact disc or even to the radio on your regular old stereo, however. Even with top [computer] equipment, you'll find listening to Internet radio on a par with an AM broadcast suffering from some static interference.\textsuperscript{40} Sometimes, the signal will even break up. This is not due to your equipment, but to the imperfect file compression algorithms used to convey the wonders of sound via packets over the Internet onto your desktop.\textsuperscript{41}

[Radio World chief correspondent Alan Haber] reports that the number of stations around the world actually sending audio to listeners via the Web has risen to the hundreds.\textsuperscript{42} A number of other companies are now marketing their own versions of audio software, such as Premiere Radio Networks, Telos Systems, and the Macintosh Music Network.\textsuperscript{43} Broadcasting on the Net will provide exposure for stations and could perhaps become an additional source of revenue. Stations can (and are) selling advertising space on their websites and are providing links to other sites, including advertisers' sites.

Currently, most stations are sending their actual on-air signal out over the Web, whereby computer users can "tune in" and listen on the Web. Eventually, stations may start up specialty programming lineups that are designed exclusively for the Internet audience, rather than just a rebroadcast of the station's lineup.\textsuperscript{44} This, of course, remains to be seen.

III. Legal Issues Concerning Radio Broadcasting on the Net

Many of the legal and business issues that affect radio broadcasting will also reappear on the Internet, such as music licensing fees, contest rules, payola and plugola, obscenity and indecency, intellectual property rights, national sales representation and, ultimately, industry consolidation.\textsuperscript{45} These issues affect the traditional radio broadcasters who are on the Web as well as the Internet-only broadcasters. This section will discuss how the issues of indecency, music licensing, and industry consolidation will be handled by traditional broadcasters on the Net.

A. Indecency

1. Pacifica and Broadcast Indecency

Regulation of indecency for over-the-air broadcasters is governed by the Supreme Court's holding in the landmark case of FCC v. Pacifica Foundation.\textsuperscript{46} This case involved an afternoon radio broadcast of George Carlin's satirical monologue, entitled "Filthy Words," which listed and repeated a variety of colloquial uses of "words you couldn't say on the public airwaves."\textsuperscript{47} The Court found the Carlin monologue to be indecent, upholding the Federal Communications Commission's (FCC) ruling that "...the language as broadcast was indecent and prohibited by 18 U.S.C. § 1464."\textsuperscript{48}

In upholding the FCC ruling, the Court agreed with the Commission's concept of indecency as "intimately connected with the exposure of children to language that describes in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities and organs, at times of day when there is a reasonable risk that children may be in the audience."\textsuperscript{49} The Court was persuaded by the Commission's following considerations:

- (1) children have access to radio and in some cases are unsupervised by parents;
- (2) radio receivers are in the home, a place where people's privacy interest is entitled to extra deference;
- (3) unconsenting adults may tune in a station without any warning that offensive language is being or will be broadcast, and
- (4) there is a scarcity of

\textsuperscript{40} Bd.

\textsuperscript{41} Bd. Part of the problem is the phone line and modem. ISDN lines are better, a high-speed LAN connection is probably best.

\textsuperscript{42} Supra note 18. Progressive Networks alone claims more than 230 call-in users of its BroadAudio system.

\textsuperscript{43} Bd.

\textsuperscript{44} Supra note 18.

\textsuperscript{45} Id., p. 8.
spectrum space, the use of which the government must therefore license in the public interest.\textsuperscript{50}

Furthermore, the Court recognized the fact that "... of all forms of communication, it is broadcasting that has received the most limited First Amendment protection."\textsuperscript{51} Because of this traditional treatment of broadcasting, the Court discussed two relevant distinctions between broadcasting and other media:

First, the broadcast media have established a uniquely pervasive presence in the lives of all Americans... Second, broadcasting is uniquely accessible to children, even those too young to read.\textsuperscript{52}

The main crux is the accessibility to children. The Pacifica court addressed the concept of "channeling,"\textsuperscript{53} to in effect mandate that broadcasters air indecent programming during hours of the day when there's the least risk of children in the audience. There has been much controversy surrounding this issue, and it led to the establishment of a "safe harbor" rule\textsuperscript{54} for broadcasting. The current safe harbor seems to operate to the exclusion of radio "shock jocks," many of whom, such as Howard Stern, hold down morning drive time slots (generally 6:00-10:00 a.m.). The timeslot spoken of is obviously not part of the safe harbor time period. Arguably, many children are part of the potential radio listening audience at this time. Is this sufficient protection for children?

2. Does Pacifica Apply to the Internet?

Can/should the concept of indecency be applied to new technology such as the Internet? Apparently Congress thought it should when it enacted the Communications Decency Act (CDA).\textsuperscript{55} This statute would in essence ban indecency on the Internet; the Congressional intent was to mandate blocking and screening of offensive material on the Internet.\textsuperscript{56} At this point one must ask whether traditional law should be applied to the Internet, i.e., is the Internet similar to traditional media (such as broadcasting), or is the Internet different enough to warrant a different set of rules and laws to govern it? Apparently the judiciary believes the Internet to be different, as the CDA was held unconstitutional, first by the district court, and ultimately, by the Supreme Court.\textsuperscript{57}

This case pitted a total number of 47 plaintiffs, including various organizations and individuals who are associated with the computer and/or communications industries, or who publish or post materials on the Internet, or belong to various citizens groups.\textsuperscript{58} This group of plaintiffs, with the ACLU as lead plaintiff, contend that the two challenged provisions of the CDA that are directed to communications over the INTERNET which might be deemed "indecent" or "patently offensive" for minors, defined as persons under the age of eighteen, infringe upon rights protected by the First Amendment and the Due Process Clause of the Fifth Amendment.\textsuperscript{59} The plaintiffs focused their challenge on two provisions of section 502 of the CDA, which amend 47 U.S.C. §§ 223(a) and 223(d):

Section 223(a)(1)(B) provides in part that any persons in interstate or foreign communications who, "by means of a telecommunications device,"\textsuperscript{60} "knowingly . . . makes, creates, or solicits" and "initiates the transmission" of "any comment, request, suggestion,

\textsuperscript{50}Id. at 731, footnote 2.
\textsuperscript{51}Id. at 747.
\textsuperscript{52}Id. at 748-49
\textsuperscript{53}Id. at 757.
\textsuperscript{54}Originally discussed in Pacifica, to include the hour of 10:00 p.m. - 6:00 a.m. we bring the appropriate time of day for broadcasters to air indecent programming. In December, 1987, the FCC attempted to modify the safe harbor rules to 12:00 a.m. - 6:00 a.m., several "twists" of Action for Children's Television v. FCC led to the current permissible safe harbor of 10:00 p.m. - 6:00 a.m. in Action for Children's Television v. FCC, 58 F.3d 654 (1995).
\textsuperscript{56}Supra note 9.
\textsuperscript{57}Id. at 826-27.
\textsuperscript{58}Id. at 827.
\textsuperscript{59}Id. at 838, footnote 5, in which the court states that the CDA does not define "telecommunications device." The court asked the question to address whether a modem is a "telecommunications device," to which the parties answered in the affirmative. The court concluded that the sponsor of the CDA thought it would reach individual Internet users, many of whom still access through modems.
proposal, image or other communication which is obscene or indecent, knowing that the recipient of the communication is under 18 years of age," shall be criminally fined or imprisoned. (emphais added) 51

Section 223(d)(1) (the "patently offensive provision"), makes it a crime to use an "interactive computer service" to "send" or "display in a manner available" to a person under age 18, "any comment, request, suggestion, proposal, image, or other communication that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs, regardless of whether the user of such service placed the call or initiated the communication." 562

Senator Jim Exon, senior Senator from Nebraska and a cosponsor of the CDA states that "[the CDA] stands for the simple premise that it is wrong to provide pornography to children on computers just as it is wrong to do it on a street corner or anywhere else." 563 The Congressional intent of drafting the CDA was to "make it a crime to knowingly use a telecommunications device or interactive computer to knowingly send indecent material in a manner accessible to a child." 564 If this sounds familiar, you're right. In the CDA case, the Government premised its argument on the fact that broadcast indecency is controlled by Pacifica, and that the same reasoning should apply to controlling indecency on the Internet. 565 The court found this argument less than persuasive and distinguished the Internet from other modes of mass media.

The three-judge panel deciding the case found the CDA to be unconstitutional, the Supreme Court agreed with much of the lower court's opinion. District Judge Dalzell's opinion is clear and concise in that it distinguishes the Internet from other media. He begins his analysis by discussing how indecency has come to be understood since the Supreme Court's decision in FCC v. Pacifica Foundation, and Sable Communications v. FCC. 566 Even though the Government has a compelling interest to protect children, it must be done in the least restrictive way so as not to intrude on the First Amendment rights of adults. 567 Thus, any regulation of indecency in [the areas of broadcasting and telephony ("dial-a-porn") must give adults access to indecent speech, which is their right. 568 Judge Dalzell correctly indicates that [the] INTERNET is a new medium of mass communication. [FN 15] As such, the Supreme Court's First Amendment jurisprudence compels us to consider the special qualities of this new medium in determining whether the CDA is a constitutional exercise of governmental power. 569

In the Supreme Court, Justice Stevens' majority opinion points out that there are significant differences between Pacifica and the CDA, the most dispositive perhaps being that broadcasting has historically received the most limited First Amendment protection and the Internet has no comparable history. 570 Furthermore, the factors present in broadcasting such as a history of extensive government regulation, the scarcity of available frequencies at

51 Id. at 828-29.
52 Id.
54 Id.
55 Supra note 61 at 874.
its inception, and its "invasive" nature, are not present in cyberspace. Because of these differences, the Internet should not be regulated in the same manner. The majority agrees with the district court that Pacifica is not controlling and that the level of First Amendment scrutiny spoken of therein does not apply to the Internet.

Since the Internet differs from broadcasting, what is it more similar to? How should it be regulated, if at all? In the district court, Chief Judge Sloviter found that Internet communication is more akin to telephone communication than to broadcasting. The high court expressed concern in its vein in that under the CDA, a parent allowing her 17-year-old to use the family computer to obtain information on the Internet that she, in her parental judgment, deems appropriate could face a lengthy prison term. The same would be true of the parent sending his 17-year-old information deemed indecent via e-mail. The same activities, however, would be permissible if done on the telephone.

The Internet is accessed via a modem and telephone lines, hence the Internet's similarity to the telephone. In discussing the Internet's differences, Chief Judge Sloviter stated that "[e]ven if a broad search will, on occasion, retrieve unwanted materials, the user virtually always receives some warning of its content, significantly reducing the element of surprise or "assault" involved in broadcasting." At issue in Pacifica was the lack of warning concerning broadcast programming coupled with broadcasting's pervasive nature and unique accessibility to children. Because the Internet poses no element of surprise, Judge Sloviter concluded "[t]herefore, it is highly unlikely that a very young child will be randomly "surfing" the Web and come across "indecent" or "patently offensive" material." The opposite, of course, would be true of broadcasting. The Supreme Court found Judge Sloviter's analysis persuasive.

The Internet is entitled to the highest level of First Amendment protection, similar to the protection the Court gives to books and newspapers.

3. The Internet's Characteristics

From a technical standpoint, broadcasters must obtain a license to broadcast, which allows them to operate on a specific frequency on the electromagnetic spectrum. In order to transmit, the broadcasters' signal must travel (or be processed) in such a way that it commences in a studio, then goes to a transmitter, then to an antenna. Broadcasting comes directly into the home; all that's required is a receiver, and with the flip of a switch, it's on. The only affirmative step is that the on/off switch is engaged. Use of the Internet requires a computer and the ability to access the Net via a service provider. No license is required, no transmitter, no antenna, just a modem hooked up to a telephone line. Judge D'Allessio focused on four related characteristics of Internet communication that were important in holding the CDA unconstitutional:

First, the Internet presents very low barriers to entry. Second, these barriers to entry are identical for both speakers and listeners. Third, as a result of these low barriers, astoundingly diverse content is available on the Internet. Fourth, the Internet provides significant access to all that wish to speak in the medium, and even creates a relative parity among speakers.

How does all of this affect broadcasters? Do the broadcast indecency standards also govern what a traditional radio broadcaster can or can't do when broadcasting over the Net? Ostensibly, since the CDA is unconstitutional, it would be permissible for traditional broadcasters to program indecency over the Net (it's difficult to predict the likelihood of this since it's not permissible to broadcast indecency over the airwaves at certain times of the day—most radio broadcasters probably would not alter their programming in any way just because it's permissible to do it on the Net).

71 Id. at *43-*46.
72 929 F. Supp. at 851-52. Unlike Judge D'Allessio, Judge Sloviter found that Sablo is analogous to Internet communication in that affirmative steps must be taken to obtain information in both instances. 73 1993 U.S. LEXIS 4037 at *60.
74 Id. at *51.
75 929 F. Supp. at 852.
76 Id.
After Pacifica, whenever new technologies are in question, courts have engaged in analysis comparing broadcasting to the new technology. Several [new forms of] electronic media do not fit readily into the regulatory models for broadcasting, common carrier, cable or print.\textsuperscript{80} While they are similar to broadcasting, technologies such as direct broadcast satellites (DBS)\textsuperscript{81}, multichannel multipoint distribution services (MMDS)\textsuperscript{82}, and teletext\textsuperscript{83} are different enough that they are not subject to all of the same broadcast regulations. Important to this analysis is the fact that broadcasters use the public airwaves—these technologies and the Internet do not. Is this fact alone sufficient enough to regulate the Internet differently?\textsuperscript{84}

Because the Internet is transmitted via telephone lines, should it be regulated the same as the telephone, perhaps relying on Sabes? This conclusion seems logical, but is indecency on the Internet similar enough to dial-a-porn? Maybe so. The bottom line is that the high court held "the CDA places an unacceptably heavy burden on protected speech" and "threatens to torch a large segment of the Internet community."\textsuperscript{85} The Internet should be regulated differently because it is different from any other medium of communication.

\textbf{B. Music Licensing & Copyright on the Web}

\textbf{1. A New Medium for Music}

Broadcast radio stations are required to pay music licensing fees to music publishing companies (such as ASCAP and BMI) in order to obtain permission to play music on the air. This includes the use of music as it is used in the format of a station, and for the use of music for production-related purposes, such as music beds for advertisements. The proliferation of traditional broadcasters on the Internet, coupled with the rapid growth of internet-only broadcasters has opened up a new medium for music. The Internet has quietly become the world's largest jukebox, a virtual haven for pop-music cyberians who believe that music was meant to be free.\textsuperscript{86} The reality is that it is not free, or at least not supposed to be free. This means that traditional radio broadcasters, as well as the new breed of internet-only broadcasters, are liable for copyright and music licensing fees if they plan on broadcasting music over the Internet.\textsuperscript{87}

Copyright over the Internet is quite complicated and it has spawned a number of legal disputes, resulting in litigation between users of the Internet and those who want to protect their copyrights.\textsuperscript{88} The Internet has been described as an "...all-in-one copy-and-send mechanism that knows no geographic boundaries, costs very little...

\textsuperscript{80}J. Holdren, Music wants to be free on the cyberspace frontier, THE SAN DIEGO UNION-TRIBUNE, May 14, 1995, at p. 36.
\textsuperscript{82}See generally, Playboy Enterprises, Inc. v. Fraga, 839 F.Supp. 1352 (M.D. Fla. 1993), in which the unauthorized downloading of a copyrighted photo was held to infringe plaintiff's exclusive right of distribution; see also, Adam P. Segal, Determination of Digitized Music on the Internet: A Challenge to the Copyright Act, 12 COMP & LEG & TECH J. 97, 114 (February, 1996); Sega Enterprises, Inc. v. MAPHIA, 857 F. Supp. 679, (N. D. Cal. 1994), in which the court upheld a preliminary injunction against a bulletin board operator, MAPHIA, who allowed and encouraged its customers to exchange unauthorized copies of plaintiff's computer games on the bulletin board; Frank Music Corp. v. CompuServe, No. 95 Civ. 8155 (S.D.N.Y. Feb. 29, 1995), in which plaintiff sued alleging class CompuServe facilitated the illegal downloading of copyrighted songs. The case was settled in 1995. CompuServe agreed to pay $568,000 and future royalties on songs to Frank Music Corp. and other music publishers.
and works almost instantaneously. The Digital Performance Rights in Sound Recordings Act of 1995 provides sound recording owners with exclusive performance rights in sound recordings that are transmitted digitally. The new Act adds a section to the Copyright Act [FN 2] that finally fills the gap left open by the Copyright Act's failure to incorporate digital transmission in the scope of its coverage. [T]his new section is tailored so as not to apply to traditional radio and TV broadcasts. Just where does this leave traditional broadcasters, primarily radio stations? As previously stated, radio stations are required to pay music licensing fees to music publishing companies in order to obtain the rights to play the music. The rates are determined primarily by the revenue of the station. Rates can vary, commercial stations generally pay more than noncommercial stations. Music licensing for broadcast purposes doesn't extend to Internet broadcasting; to protect themselves, radio stations can negotiate to extend existing licenses with music publishers such as ASCAP and BMI. [ASCAP and BMI exist] to protect

88Matthew McAllister, Copyright Law Meets The Internet / Twenty Seek Balance of Protection, Exclusion, NEWSDAY (Nassau and Suffolk, Suffolk), December 3, 1996.
90Id.
91Id.
92More detailed information can be obtained by directly contacting ASCAP and BMI, or see generally ASCAP's website at www.ascap.com, and BMI's website at www.bmi.com.
93Because commercial stations generate more revenue than noncommercial stations, it follows that commercial stations generally pay more in licensing fees. Basically, the more successful the station, the more it has to pay. Also, the author has first-hand knowledge in dealing with ASCAP and BMI, having previously held positions in commercial radio, and currently working as General Manager of a commercial FM station. See generally, "Cheap" Radio Already Profiting on Internet, AUDIO WEEK, March 18, 1996. SZ Communications is one such traditional radio station group owner that has extended its music licensing agreements to allow its stations to broadcast on the Net.
94ASCAP and BMI have drafted agreements that allow computer online services, electronic bulletin boards, Internet sites and similar operations to lawfully perform all the rights of its members by licensing, collecting, and distributing royalties for the public performance of their copyrighted works. These royalties are paid to members based on surveys of performances of the works they wrote or published. The surveys cover performances on AM, FM, and college radio.

2. Other Copyright Problems

Because broadcast radio stations can extend music licensing through online license agreements without much difficulty, there has been little controversy surrounding traditional broadcasters' use of the Internet. As long as stations seek permission to do this, they won't leave themselves open for infringement. Major areas of controversy, however, have involved liability of online bulletin board operators' downloading of copyrighted musical works through an online service, and potential problems exist with the unauthorized dissemination and downloading from individual sites on the World Wide Web. These issues shouldn't impact traditional broadcasters that protect themselves by extending their licenses to cover online service.

The issue concerning dissemination of music via online providers appears to have been settled in Frank Music. Here, CompuServe settled with Frank Music Corp. and the National Music Publishers' Association (NMPA) over music...
copyright infringement. Prior to [this] legal action, CompuServe allowed subscribers to download music [from its music forums] The lesson to be learned here is that online services and any entity on the Net should negotiate or pay some sort of licensing fee so as to avoid this type of legal entanglement.

After this settlement, the NMPA was expected to contact America Online, Prodigy, and others "...to take all steps necessary -- whether in support of legislation, litigation, or negotiation -- to ensure the protection of music copyrights utilized in connection with new technologies." An interesting wrinkle is the fact that this settlement is limited only to the use of a song, not the use of the recording. The use of the recording comes under the jurisdiction of ASCAP or BMI; however, the online services are making strides in negotiating agreements with the music publishers to avoid copyright problems. The controversy has also had its casualties; America Online has disbanded its Tape Trader's Central area, fearing trading of fan-made concert tapes is a violation of copyright laws.

3. Copyright From a Worldwide Standpoint

The worldwide nature of Internet copyright led to a meeting of the United Nations World Intellectual Property Organization (WIPO) in Geneva at the end of 1996. Specialists from 160 nations reached agreement to enforce copyright on the Internet, covering two areas. The first treaty is an update of the 1898 Berne Convention, primarily concerned with literary and artistic works, second is concerned with rights of music recording artists and producers. The facts still need to be ratified by signatory states, and they will protect digitally-transmitted sound recordings and the rights of their performers in the age of digital everything. It is currently unclear what the legal ramifications of the WIPO treaty will be with regard to musical works.

The second treaty referred to above addresses the rights of music recording artists and producers. The Preamble states in part that new international rules are needed in order to provide adequate solutions to the questions raised by among other things, technological developments. Of pertinence to both traditional and internet-only broadcasters is Article 15, entitled "Right to Remuneration for Broadcasting and Communication to the Public." It states in part:

(1) Performers and producers of phonograms shall enjoy the right to a single equitable remuneration for the direct or indirect use of phonograms published for commercial purposes for broadcasting or for any communication to the public.

Multilateral treaties dealing with legal and administrative aspects of intellectual property. See www.wipo.org.

Move to Enforce Internet Copyright, NETWORK BRIEFING, January 17, 1997; see also, Copyright in Cyberspace, Mission Accomplished, COMPUTERGRAM INTERNATIONAL, January 2, 1997.

WIPO ensures digital age copyright protection, SCREEN DIGEST, January 1, 1997.

WIPO Performances and Phonograms Treaty.

"Phonograms" as defined in the Treaty means the fixation of sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic work or other audiovisual work. The entire text of the Treaty is found at www.wipo.int/dpdc/document/fulltext.jsp.

Id. at p. 2.

Id. Article 15(1), at p. 5.
It would appear that the "any communication" language above could refer to Internet communication. In fact, it is the digital age question, which is providing a sticking point to Article 15. WIPO indicates the following in a separate explanation concerning Article 15:

It is understood that Article 15 does not represent a complete resolution of the level of rights of broadcasting and communication to the public that would be enjoyed by performers and phonogram producers in the digital age. Delegations were unable to achieve consensus on differing proposals . . . . and have therefore left the issue to future resolution.\footnote{Agreed Statements Concerning The WIPO Performances and Phonograms Treaty, at pp. 1-2. This separate text is found at www.wipo.org/en/techno/protectr97doc.htm.}

At least for the present, it appears that Internet broadcasters from both the traditional and internet-only ranks are safe from liability for infringement; all that is required is that licensing fees be paid to the likes of ASCAP, BMI, etc.

C. New Broadcast Ownership Rules

1. Telecommunications Act of 1996

There are currently a total of 12,001 broadcast radio stations\footnote{This figure obtained from Broadcasting & Cable, March 17, 1997. This number has remained unchanged for quite a long period of time; it appears as though the FCC is not allowing any new radio broadcast frequencies at the present time.} in the United States. Because this number has remained relatively static over the past year or so, very few new players have entered the arena as radio station owners. In fact, it's just the opposite that has occurred. The large, established owners (the new breed of megacompanies referred to in Section I) have merged and acquiesced to a position of great strength due to the implementation of new radio ownership rules\footnote{Sterne note 12.} set forth by the Telecommunications Act of 1996 (hereinafter referred to as the '1996 Act').

The revised national multiple radio ownership rule and local radio ownership rule in accordance with the 1996 Act have eliminated caps on the number of AM or FM broadcast stations which may be owned or controlled by one entity nationally.\footnote{\$ 202(b) of the Act eliminates the previous national ownership limitations.} The revised local radio ownership rule will increase the number of commercial radio stations one entity can own in a local market; the permissible number varies according to market size:

(A) in a radio market with 45 or more commercial radio stations, a party may own, operate, or control up to 8 commercial radio stations, not more than 5 of which are in the same service (AM or FM),\footnote{\$ 202(b)(1) of the 1996 Act. Action by the Commission March 7, 1996, by Order (FCC 96-86).}

(B) in a radio market with between 30 and 44 (inclusive) commercial radio stations, a party may own, operate, or control up to 7 commercial radio stations, not more than 4 of which are in the same service (AM or FM);\footnote{Id.}

(C) in a radio market with between 15 and 29 (inclusive) commercial radio stations, a party may own, operate, or control up to 6 commercial radio stations, not more than 4 of which are in the same service (AM or FM);\footnote{Id.}

(D) in a radio market with 14 or fewer commercial radio stations, a party may own, operate, or control up to 5 radio stations, not more than 3 of which are in the same service (AM or FM), except that a party may not own, operate, or control more than 50 percent of the stations in such market.\footnote{Id.}

2. Massive Consolidation in Radio

Even before these provisions went into effect, companies began positioning themselves to take advantage of the revised, relaxed rules. Spurred by the [1996 Act], consolidation swept the broadcasting industry [in 1996], ushering an unprecedented era of megagroups and
multibillion dollar deals. It started in June, when the $4.9 billion dollar merger of Infinity Broadcasting Corp. into Westinghouse Electric Corp./CBS Radio Inc., riveted the attention of investors and advertisers to the radio industry. The amount spent on radio in 1996 was $14.87 billion as more than 1,000 radio deals were made during the year. In an industry where a scarcity of frequency space makes it difficult to enter the market to begin with, the revisions set forth by the 1996 Act are only making it even more difficult for entry, unless you're one of the megagroups. The 1996 estimated revenue of the Infinity/Westinghouse/CBS group was $1.02 billion (79 stations); for the new number two, Chancellor/Evergreen/Viacom, the combined 1996 estimated revenue was $869.55 billion (267 stations). Try competing with that!

The radio industry is criticized for a lack of minority owners and for a lack of diversity in programming and viewpoints. The revised rules will seemingly allow this to continue, as 24 out of the top 25 radio groups are not minority-owned. The only minority-controlled group is Spanish Broadcasting System, Inc. In general, Hispanic broadcasters appear to be doing well, albeit in markets with large percentages of Hispanic listeners, such as New York (approx. 17% Hispanic), Los Angeles (37%), Houston (22%), Miami (38%), and San Antonio (48%).

3. Diversity's Disappearing Act

Diversity in broadcasting was one of the linchpins of the Communications Act of 1934, whereby stations were licensed in the "public convenience, interest and necessity." The technical aspects of broadcasting rendered a scarce resource, and a task of the Federal Communications Commission was to allocate the frequencies and grant licenses based on equitability. A series of court decisions and FCC policies attempted to ensure that the process would aid in awarding the highly coveted broadcast license to the entity who could best serve the particular market. Prior to the current deregulation, the FCC allowed for minority preferences; however, that preference

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123 Id. For a listing of the Top 25 Radio Groups, see Radio Reordinated, BROADCASTING & CABLE, July 1, 1996, at pp. 27-34. Ironically, this listing became outdated very rapidly, as the major players continued to wheel and deal. The number two company on the list, Clear Channel, has dropped to number 3. The number 3 company, on the list, Chancellor Media, is now number two, thanks to its merger with then number 3 Evergreen Media Corp. and number 11 Viacom. See also Elizabeth A. Raddish and Donna Petrouzzo, Inside's pulse into 267, BROADCASTING & CABLE, February 24, 1997, at p. 6.; Sagra note 123, INSIDE RADIO, February 24, 1997, which lists the current top 50 radio groups.
124 Sagra note 122.
126 Sagra note 123, BROADCASTING & CABLE, July 1, 1996, at p. 32.
127 Figures obtained from report compiled by Interp, a radio rep firm. The report is a compilation of Metromark Composition Percentages Ranked on Total 124+ Population.
has now all but disappeared. The use of gender preferences has also been struck down.\textsuperscript{132} It seems that today, all that matters is who currently owns the largest number of stations, and/or who has the best financial backing, cash flow, and approval from Wall Street. Diversity seems not to matter, given the repetitive nature of programming and formats from market to market.

Perhaps the Internet, with its great potential for diversity, can pick up where radio has failed. Few business opportunities remain as much potential for community development as does broadcasting.\textsuperscript{133} For minorities, broadcasting takes on particular importance.\textsuperscript{134} Groups such as the National Telecommunications and Information Administration (NTIA) have recognized the importance and desirability of having minority participation in broadcasting and the telecommunications and information industries.\textsuperscript{135} The NTIA has established a Minority Telecommunications Development Program (MTDP)\textsuperscript{136} to develop programs and policies that increase minority ownership of broadcast and telecommunications businesses. In addition, the NTIA also has made available a step-by-step checklist on how to apply for a broadcast station, and publishes a yearly report on the state of minority owned broadcasting.\textsuperscript{137}

Participation by racial minorities [FN 3] in broadcast station ownership has been minute relative to the proportional representation of minorities in the population.\textsuperscript{138} In fact, preliminary reports indicate that due to the 1996 Act and consolidation, minority ownership of commercial radio stations is likely to show a decline from the 1995 figures.\textsuperscript{139} LuVern James of the NTIA states that a decline is inevitable because minorities made no major station buys in 1996.\textsuperscript{140} Deregulation, though, has allowed some Hispanic broadcasters to grow, but not in numbers that would allow for an overall increase in minority ownership. This overall trend seems to comport with what critics to the 1996 Act predicted, minority broadcasters would be unable to compete with wealthier and larger station and group owners.\textsuperscript{141} The door to traditional broadcasting may be closing, but the door to diversity is open on the information superhighway. The Internet appears to afford the great potential for the dissemination of minority views and programs.

Small, private companies are a second group hurt by the deregulation. It is reminiscent of the cartoon where a big fish eats a small fish, a bigger fish then eats the big fish, an even bigger fish swallows up the first bigger fish, and so on. And so it goes with radio consolidation. The proverbial "bigger" fish are swallowing up the smaller ones. A prime example of this is the recent sale of Secret Communications LP, which owned stations in medium and large markets (including Pittsburgh and Cleveland) to iHeart Broadcasting, Inc.\textsuperscript{142} A look at this purchase

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{132} Langer v. FCC, 958 F.2d 382 (D.C. Cir. 1992).
  \item \textsuperscript{133} David Horning, The FCC and Its Fluctuating Commitment to Minority Ownership of Broadcast Facilities, 27 HOW. L.J. 859 (1984).
  \item \textsuperscript{134} Id. The discussion here continues on to state that radio is a dominant information source for those using English as a second language, also, radio's suitability for the dissemination of music represents a rare opportunity for a kind of vertical integration of cultural production with the distribution of cultural products.
  \item \textsuperscript{135} See generally, MINORITY COMMERCIAL BROADCAST OWNERSHIP IN THE UNITED STATES, The United States Department of Commerce, National Telecommunications and Information Administration, Executive Summary, April 1996, p. i.
  \item \textsuperscript{136} Established in 1978, the MTDP offers a variety of services to support the development of economically viable minority and women-owned telecommunications businesses.
  \item \textsuperscript{137} Supra note 135; separate information sheet included with NTIA packet on corporation checklist.
  \item \textsuperscript{138} Supra note 133, David Horning, 152 HOW. L.J. 860. This statement might not be completely true as the number of Hispanic broadcasters has grown. However, the figures cited for Hispanic listeners may be skewed because of the concentration of Hispanics in certain cities.
  \item \textsuperscript{139} See generally, Jacqueline Consitor, Minority Radio Ownership Drop Seen By NTIA, RADIO WORLD, March 5, 1997, at p. 1.
  \item \textsuperscript{140} Id.
  \item \textsuperscript{141} Id.
  \item \textsuperscript{142} Elizabeth A. Rothan, It's No Secret: Private companies fold in face of deregulation, BROADCASTING & CABLE, October 28, 1996, at p. 66. iHeart Broadcasting is currently the 7th largest group in the U.S. See supra note 123, INSIDE RADIO.
\end{itemize}
\end{footnotesize}
punctuates the [directive from] group owners and radio brokers. Get bigger or get out. The larger companies have most likely gone public and can more easily attract investors. Unbelievably, stations are being sold for at times, 15-20 times more than cash flow. How's that for a barrier to entry? This will potentially lead to the growth of internet-only broadcasters as a reasonable affirmative entry vehicle. It remains to be seen, however, which markets will benefit the most. It's still very early in the game and too soon to determine success rates of programs such as universal service, and overall Internet education.

IV. Internet-only Broadcasters

Who's the real loser in all of this? If you said the listening audience, you're right. As radio continues to lose diversity, and as the barriers to entry are made more and more difficult, the Internet can help fill the void. Judge Dalzell in the case focused on four characteristics that make the Internet different from other media. It is these characteristics that make the Internet so desirable as a speaking tool, and each one will be discussed in turn:

1. Low barriers to entry--A government license is not needed. All that's needed is a computer and access to the Net via an on-line provider or server. Sure, the computer requires an initial investment, but generally the access costs are minimal because of competition. The phone hookup via the computer's modem is generally the equivalent of a local telephone call.

2. The barriers to entry are identical for both listeners and speakers. The same procedures and processes must be followed by all in order to gain access.

3. As a result of the low barriers, astounding content diversity is available on the Internet. Just go to a search engine such as Yahoo and click on one of their preexisting searches or create one of your own. The amount of information that can be found on the Net is amazing.

4. Significant access, relative parity. The television ad for MCI's Internet network claims that there are no genders, no ages, no infirmities, etc., on the Net. It truly appears to be a communications medium that potentially everyone can use and enjoy.

Judge Dalzell further contends [3]: I understand how disruptive the CDA is to INTERNET communications, it must be remembered that the INTERNET evolved free of content-based considerations... Participation does not require, and has never required, approval of a user's or network's content. The CDA in essence, would undermine the diversity of the Internet.

Since Internet-delivered programming does not use the public airwaves, it is not subject to the same Federal Communications Commission regulations that over-the-air broadcasters must follow. The court in the CDA case reasoned the same thing. Judge Dalzell's media specific analysis displayed just how different the Internet is, and the fact that past judicial decisions cannot apply: Pacifica is not persuasive because its holding is narrow in scope; it deals with indecency only in the broadcasting (over-the-air transmission) context. Sable is not persuasive because its holding is narrow in scope; it deals with telephone indecency only in the dial-a-porn context. Turner Broadcasting is not persuasive because it declined to adopt the

143 Id. BROADCASTING & CABLE.
144 Interview with Andrew Sklar, Suburban Marketing Director for McGraw-Guild Radio, New York. McGraw-Guild Radio is a subsidiary of InterTop (see supra note 127). InterTop's business as a whole has been affected by radio consolidation. Whenever a large merger takes place, there's a risk that InterTop will lose client stations.
145 Supra note 72.
146 www.yahoo.com. Other search engines exist such as Lycos (www.lycos.com); Alta Vista (www.altavista.com); and Excite (www.excite.com).
147 929 F. Supp. at 877.
149 929 F. Supp. at 866.
150 Id.
151 112 F. 3d 622 (1994).
broadcast rationale for the medium of cable television.\textsuperscript{152} It would appear that with the holding in the CDA case, both traditional and perhaps, more importantly, internet-only broadcasters are safe to program freely.

Grass-roots radio stations are [springing] up in cyberspace, following [the] recent technological breakthroughs that allow for real-time radio-like audio transmissions on the Internet.\textsuperscript{153} Radio HK is believed to be the first service using RealAudio to program music 24 hours a day exclusively for its Internet audience.\textsuperscript{154} Radio HK's programming initially concentrated on unsigned and independent music bands, but its recent licensing agreement with ASCAP has enabled it to expand its programming repertoire.\textsuperscript{155} As with traditional radio broadcasters, the music licensing for Internet cybercasters is extremely important, both from a legal and programming standpoint.

Radio HK paved the way for numerous other Internet-only broadcasters to hit the Web. The Internet offers music lovers what radio does not: specific music programming that allows listeners to tune in to whatever type of music they want, whenever they want.\textsuperscript{156} "TheDJ" is another Internet-only broadcaster which in addition to programming mainstream radio formats such as country, modern rock, and classical, it is cybercasting more narrowly focused music formats that are not likely to appear on conventional radio, such as industrial, reggae, disco, and punk rock.\textsuperscript{157} Sounds a lot like the early days of FM free-form radio in the 1960's, the Internet-only set also seems very similar to noncommercial college stations, many of which dabble in free-form fare. TheDJ is just the tip of the iceberg, there are many more, too numerous to mention here.\textsuperscript{158}

There are other Internet-only broadcasters, some quite similar to the traditional radio station concept. On September 5, 1995, the Internet's first radio cybercast of a baseball game took place, as the American League playoff game between the Yankees and Mariners was heard on ESPN's Web site.\textsuperscript{159} Companies such as the House of Blues are involved on the Net, on August 29, 1996, the House of Blues in conjunction with LiveConcerts.com did a live cybercast of the H.O.R.D.E. festival.\textsuperscript{160} AudioNet, one of the largest radio sources on the Net, has secured rights to Internet carriage of radio broadcasts in the NCAA Men's College Basketball Tournament through 2001.\textsuperscript{161} On January 20, 1997, The Federal Network Inc. provided live coverage of the 53rd Presidential Inauguration from its website.\textsuperscript{162} FedNet provides live audio broadcasts of simultaneous events from the United States Senate and House of Representatives including floor debates, committee hearings and press conferences.\textsuperscript{163} Even college hockey has joined the fray, as the NCAA provided live coverage of the Division I college hockey championships over its web site in 1997.\textsuperscript{164} Given what's already on the Net, the possibilities are endless in terms of the type of programming to be found.\textsuperscript{165}

Diversity on the Internet doesn't begin and end with broadcast-type sites. There's a lot on the Web, sites for men, sites for women, sites for minority groups such as African-Americans,

\textsuperscript{152}See generally, ASCAP Issues Its First Performance License for Computer Transmissions of Music on the World Wide Web, ASCAP PLAYBACK MAGAZINE, July-August 1995; ASCAP LICENSE OPENS DOOR TO PC-BASED DIGITAL RADIO INDUSTRY, AUDIO WEEK, July 3, 1995. The license enabled Radio HK, which is owned by Heijne/Kaufman Advertising of Mexico del Rey, California, to air a program outlining SPIN magazine's 10th anniversary.

\textsuperscript{154}Radio HK can now utilize everything copyrighted by ASCAP.

\textsuperscript{156}Quote from Terrafilm president David Samuel, whose company programs more than 35 full-time Internet music stations. See generally, The DJ Space Station's of Multiple Formats, BILLBOARD, July 6, 1996.

\textsuperscript{158}For a more complete description of radio on the Web, including a worldwide perspective, see Thomas Hopkinson's two-part story Radio Goes Wild on the Web, MUSIC & MEDIA, March 16, 1996, at p. 16, and June 29, 1996, at p. 8.
Asians, Hispanics, and more. Information-driven sites made up of mostly visual information also have the potential to include audio clips, so the possibility exists for all Internet sites to be "broadcasters," but unlike over-the-air broadcasters, and even internet-only broadcasters which emulate traditional radio stations. [A] continuing problem, [though], is the technology gap that exists in the minority community.\(^{166}\) One survey suggests that only 5 percent of the Internet's users are African-American, 3 percent are Hispanic and 3 percent are Asian. The bulk of the users--87 percent—are white.\(^{157}\) One could make the inference that minorities are underserved, and that Internet programming and influence look very much like the broadcast radio landscape. The difference is the potential the Internet affords. As more people are exposed to it, it follows that more people will use it on a regular basis.

Nevertheless, the number of minority-oriented Web sites is on the rise. Estimates of the number of sites vary. Currently, a number of efforts are underway to bring ethnic groups online.\(^{168}\) The joint effort of "MSBET" will deploy entertainment video clips to a target audience of African-Americans between 12 and 40 years old.\(^{169}\) Content for the new venture will focus much of the informational and entertainment-based programming on the BET Cable Network, including news and perspective and music-video shows.\(^{170}\) There are a number of other African-American oriented sites on the Web.\(^{171}\) Some other examples include the "Universal Black Page," with an assortment of information on African-American history, art, music, entertainment, society and businesses; "A Deeper Shade of Black," which features a rich black history database; and "NetNoir," a site that among other things, features black music and links to the black protest movement.\(^{172}\) Another interesting approach is the use of Internet as a teaching tool and aid in public schools;\(^{173}\) this could be an early success story and testament for the universal service concept.

There are now a number of sites targeted toward the Hispanic population. Several magazines, including El Andar and the Texas Hispanic Business Journal, keep Web sites. So do businesses and business groups, such as the Hispanic Chamber of Commerce, and political groups such as the Mexican-American Legal and Educational Fund.\(^{174}\) Other Latino sites include "LatinoLink," which contains news and chat areas of interest to Latinos, and "Hispanic Online," the site of Hispanic Magazine, which features articles from the printed magazine and links to other sites.\(^{175}\)

\(^{166}\) Shilo M. Poole, PERSONAL TECHNOLOGY: New window on the world: Once scarce, black-oriented sites on the Internet are increasing. THE ATLANTA JOURNAL AND CONSTITUTION, November 8, 1996, at p. 01P.

\(^{167}\) Id.

\(^{168}\) For example, Microsoft (MS) and Black Entertainment Television (BET) have teamed up to form "MSBET" in order to create a website that will be the premier online destination for black Americans. See generally, ETHNIC CONSUMERS OFFER NEW CHANCES FOR COMMERCE. Microsoft BET hope venture will be premier site for blacks. INTERACTIVE VIDEO NEWS, March 3, 1997.

\(^{169}\) Id.

\(^{170}\) Id.

\(^{171}\) Various articles show the actual number to be somewhere between 500-1000 sites. For a partial list of African-American sites, see generally, supra note 166; see also, Lynn Youngbluth, Pages focus on struggles, achievements; Black history in spotlight. CHICAGO SUN-TIMES, February 9, 1997, at p. 47.

\(^{172}\) Id.; see CHICAGO SUN-TIMES, February 9, 1997, at p. 47.

\(^{173}\) See generally, Cheryl Paterson. Some students in city schools study black history every day. THE CHATTANOOGA TIMES, February 19, 1997, at p. B3. This article describes how teens are learning about black history in school via the Internet.

\(^{174}\) See generally, Alina McKee, Latino Websites offer culture, entertainment in cyberspace. THE DALLAS MORNING NEWS, October 10, 1996, at p. 4C.

\(^{175}\) See generally, George March, MULTI-CULTURAL WEB THEY WEAVE. DAILY NEWS (New York), October 27, 1996, at p. 44.

\(^{176}\) Supra note 5.

\(^{177}\) Richard Bernstein's review in THE TAMPA TRIBUNE, September 15, 1996, at p. 4.
large. On the other hand, as with other media, it can be used for negative purposes. For the groups discussed in this article, namely traditional radio broadcasters and internet-only broadcasters, the Internet can be a vehicle to provide more diversity to listeners/users of the Net. With the Supreme Court's ruling CDA ruling, the Internet will presumably be free to develop in an unrestricted way. Time will tell...

What's interesting and perhaps unique is the fact that broadcasters could issue "parental advisory warnings" on their websites to indicate to users when indecent programming would take place. This might prove more feasible and efficient than audio disclaimers which listeners may or may not hear when tuning into a station in the middle of an indecent program. The visual disclaimer could stay on the website throughout the broadcast; perhaps the broadcasters could set up additional affirmative steps. The Internet potentially allows everyone the opportunity to become a "broadcaster," so to speak. And "to speak" is the key. The Internet will arguably allow for greater diversity; the doors are wide open for new and creative programming to develop from this new generation of "broadcasters,"

For traditional broadcasters, the Internet can be a vehicle to maintain current audiences, and to perhaps attract a larger audience by expanding their programming and offering creative, interactive websites. The Supreme Court ruling may lead to a new trend among traditional broadcasters adding internet-only services to their arsenals. The addition of narrower formats could help reach out to groups who are not currently being served by over-the-air broadcasters. The internet-only broadcasters could at some point in time outnumber traditional broadcasters and fill the void currently felt. The CDA ruling may expedite the growth of internet-only broadcasters, and possibly, to an increase in indecency-containing sites. As Judge Dalzell stated, "when has there been a time in history when so many people could potentially speak on the same medium, with relative parity and ease of access?"

The Internet's history has seen rapid growth in a relatively short period of time. The future is unpredictable, at best. From a legal standpoint, the law must evolve in such a way that it can be applied to the Net. Traditional laws of looking at media are not appropriate for this new technology. A whole new set of legal theories and regulation must be developed to cover everything from online commerce to privacy laws that must recognize the international and ethereal nature of the Internet. Issues such as indecency and music licensing/copyright laws have to evolve as well. The Internet is different from other media and should be regulated differently than other media. It would appear that the Supreme Court is making that a reality.

\[178\] See supra at 882. Judge Dalzell concludes that "indecent" speech will occur as a medium in which citizens from all walks of life have a voice. He says, "People should also protect the autonomy that such a medium confers to ordinary people as well as media moguls,"

\[179\] Rory J. O'Connor, Internet's history reveals its future will be unpredictable, SUN-NEWS (Myrtle Beach, SC), September 24, 1996, at p. A7.