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# Free Speech 3.0: Student Expression in the Digital Age

A quick resource guide to First Amendment issues for students, parents, teachers, administrators and anyone else who cares about freedom of speech in high schools



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**McCormick Tribune Conference Series**

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# **Free Speech 3.0: Student Expression in the Digital Age**

Sponsored by McCormick Tribune Foundation

Free Speech 3.0: Student Expression In the Digital Age

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# Foreword

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**F**ree speech is one of the most treasured freedoms of the First Amendment. It is also a cornerstone of the McCormick Tribune Foundation, where we value not only the abstract right to speak openly but also the practical benefits of open dialogue around complex contemporary issues. This guide is the result of such a convening, recently the Foundation hosted a Free Speech in Schools conference, featuring a frank discussion by students, teachers, administrators, First Amendment experts and scholars around students' use of new media in schools. The hope in gathering stakeholders was to foster an exchange that would ultimately help schools deal with such questions in an informed, respectful way but also encourage students to learn more about their rights, as well as the inherent responsibilities, involved in exercising their right to free speech.

On one hand new media has opened up vast opportunities for personal expression and communication by today's young people, a very positive development with huge implications for our democracy. On the other hand, this explosion of personal, yet very public, communication has presented families, schools and broader communities with the dilemma of how to respond when it is deemed offensive or inappropriate. Our goal in hosting this conference was to create an open dialogue that would help schools across the country tackle these First Amendment issues in a fair manner by considering policies that, first and foremost, respect students' First Amendment rights. A critical issue involved whether or not limitations on free speech, even those imposed with the best intentions, should ever infringe on students' First Amendment rights. Some argue that students should be allowed to enjoy the right to express themselves only when they avoid disrupting class work or their broader school communities. Others assert that as citizens students should simply not have their First Amendment rights infringed upon. Who is right?

First Amendment issues in schools are increasingly being debated in part because there are no universal guidelines or simple answers regarding such issues. They tend to be resolved on a case-by-case basis, in courtrooms and schools across the country. In fact, as this guidebook is being released, the Supreme Court is considering a case, *Frederick v. Morse*, involving an Alaska teen who was suspended for off-campus speech during a school-authorized activity.

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Through our efforts to distribute this guidebook to high schools and individuals across the country we are fulfilling our Foundation's mission to advance the ideals of a free democratic society by investing in our children, communities and country. As a country, it is our responsibility to inspire young people to become civic leaders, to value, understand and protect their freedoms and to express with confidence their views on issues that impact them.

A number of people helped us along the way in hosting this conference and producing this guide. Special thanks go to the staff of J-Ideas at Ball State University, the executive agent for this conference, for the insight and expertise they brought to the topic. Director Warren Watson, along with his colleagues Angela Thomas and Gerry Appel, played an instrumental role in moderating and shaping the conference. And thanks go to writer Curt Hazlett for producing what we consider a meaningful yet easy-to-digest guide.

We must work together to encourage young people to understand and value the First Amendment. The lack of knowledge about the First Amendment among teens is correlated with students failing to practice their freedoms on a daily basis. If we don't correct this problem soon, it could prove dangerous to the future of our nation's civic health.

Sincerely,



Brig. Gen. David L. Grange, USA (Ret.)  
CEO and President of the McCormick Tribune Foundation

# Introduction

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Consider the implications of scholastic free expression in the Digital Age. Never before have there been so many ways to get your point across. The pen, the typewriter and the landline telephone have given way, in quick order, to desktop publishing, e-mail, cell phones, instant messaging, video sharing and social networking sites. And you can bet the engineers have even more in store for us.

All that change has been taken to heart by Americans and people around the world – especially young people who, unafraid of a little new technology, have made electronic communication a big part of their lives. But with the ability to speak so quickly to so many people has come an important question: What happens when someone doesn't agree with what you're saying?

Freedom of speech is among the most cherished of American rights, one that was guaranteed by the adoption of the First Amendment more than 200 years ago. Yet the First Amendment has been reinterpreted repeatedly since those days, and it seems as if it will come under even greater scrutiny as complex technology creates equally complex questions.

Let's look at just a few of the questions that affect students' rights within the education system:

- Should schools be forced to filter the Internet content that can be viewed on classroom computers, in effect censoring what students can access?
- Will someone you've never met – a government official or politician – get to decide what you can and cannot read?
- Do students have the right to post material on their MySpace pages that school administrators don't agree with?
- How far off-campus can the long arm of the principal reach when it comes to shutting down a student's opinion?

All of these questions and more add to the already considerable confusion about what constitutes free speech in the digital age.

This resource guide is intended to reduce the confusion. It's the result of Free Speech in Schools, a conference hosted by the McCormick Tribune Foundation in October 2006 in collaboration with the foundation's Freedom Museum, Journalism program and Ball State University's J-Ideas program.

The conference convened 42 participants with more than a little interest and expertise in scholastic free expression – First Amendment scholars, teachers, administrators and students, as well as representatives of youth media organizations.

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It was a lively get-together designed to air all sides of the debate about student expression. During two and a half days, the group agreed that while all the changes technology is bringing to society may pose a challenge, they also present some great opportunities – the greatest of which is the creation of a platform to give young people a bigger voice in the direction of their communities and their country.

But if those opportunities are to materialize, it will require everyone involved – students, educators, parents and the general public – to have a deeper understanding of the First Amendment and what it means. We hope this guide adds to that understanding.

The issues aren't always simple. As the saying goes, one man's ceiling is another man's floor; what one person believes is his right to do or say can sometimes seem like a bad or even dangerous notion to others. A student might think it's perfectly acceptable to blog about drug use at her school, but her principal might see it as encouraging others to try drugs.

Ultimately it may be the courts that decide, and they will base their decision on one of the foundations of our freedoms: the First Amendment.

This guide will point out some of the sore spots that exist between free speech and the need to protect society. We hope it will help you understand the issues at stake and, where possible, choose a course that is reasonable and in line within the First Amendment.

Don't expect it to provide a lot of clear-cut answers, because the issues are too complicated for that. In fact, many haven't yet been decided by the courts. Instead, the guide will offer a variety of places to turn for help whenever the next step seems uncertain.

It is important to talk about these issues. If democracy is to thrive, we need the freedom to speak our minds about matters that might anger others, including the government. If that freedom falters, all of our others will surely suffer.

# Chapter 1: Speaking Freely in the Digital Age

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*“Those who would give up essential liberty to purchase a little temporary safety, deserve neither liberty nor safety.”*

Benjamin Franklin

**W**hen Benjamin Franklin wrote those words in 1755, not even a visionary such as he could have predicted a time when messages would circle the world at lightning speed or some intangible pathway called the Internet. After all, even the typewriter wouldn't be

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***“Do the rights of students stop at one end of an Internet connection?”***

**Warren Watson,  
director of the J-Ideas  
program at Ball State  
University**

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invented for another 118 years and Franklin himself was just beginning to study a weird phenomenon called electricity.

But Franklin's thoughts about liberty are just as important today as they were in colonial times. His point, in fact, is a timeless one – that the freedom to exercise our rights must be protected, however strong the rationale may be for curtailing them.

Exercising our rights is crucial in troubled times like these. Everywhere we look, it seems as if someone is pushing to limit someone else's ability to say or hear something, whether it's in the interest of fighting terrorism, thwarting online sexual predators or combating drug abuse.

Those are worthy fights, of course. But as Franklin suggested, there is often a tug-of-war between security and liberty. Forbidding people to publish the details of an anti-terrorism program might make it easier for the government, but it raises the question of whether Americans have a right to know what their elected officials are doing.

At the center of such arguments lies the First Amendment. Written by Americans who didn't like being ordered to do things against their will, it is the source of five of our most deeply held rights:

- Freedom of religion
- Freedom of speech
- Freedom of the press
- The right to peaceably assemble
- The right to petition the government to settle grievances

Those five freedoms have guided our government for more than two centuries.

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But the First Amendment also is a source of never-ending conflict about how freely we should be able to express unpopular, controversial or unsubstantiated viewpoints.

Since 1791 the First Amendment and its 45 words have been argued about endlessly. The rise of the digital age is making that argument even louder.

### Fact Box

#### ***The First Amendment in its Own Words***

*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.*

As early adopters of new technology, young people have found themselves at the center of the conflicts. Consider the reaction to social networking sites such as MySpace and Facebook, whose users can create Web sites to exchange personal information with others.

Because social networking sites also have attracted online sexual predators who use them to lure potential victims, the U.S. House of Representatives approved a bill called the Deleting Online Predators Act (or DOPA) in 2006 that would restrict access to social networking sites from schools and libraries that receive federal funding. Its wording is broad, though, and if it – or any variant – eventually is passed by the new Congress it would restrict access to blogs and to sites like Amazon.com, which have bonafide educational uses. Opponents say that amounts to censorship of Internet speech.

Sometimes the rights of students to express themselves are directly at stake. Brandon Buessink, a Missouri high school junior, was suspended in 1998 after he criticized teachers and administrators on his personal Web page using vulgar language. He sued to overturn the suspension and the case – ***Beussink v. Woodland R-IV School District*** – was heard eventually in U.S. District Court, where the suspension was ruled unconstitutional.

The court said the school did not "show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint," the judge wrote. That Buessink was rude was not the point, the court found.

To learn more about the Beussink case and others involving the Internet and student free speech, you can visit **Landmarkcases.org**, a site designed

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to help educators and students understand the impact of important legal cases. A description can be found at [www.landmarkcases.org/tinker/activity.html](http://www.landmarkcases.org/tinker/activity.html).

It is often said that the power of the press belongs to the person who owns a press. But with the technology at our disposal these days, nearly everyone can find a way to spread news or opinion. No printing plant (or television station) is required. In a sense, we've returned to the early days of the American colonies, when people exchanged views while perched on boxes in the village green and individual pamphleteers spread the news of the day.

### Fact Box

#### ***In Favor of Free Speech?***

*How aware are high school students, teachers and principals of their First Amendment rights? Not aware enough. The 2006 Future of the First Amendment study, funded by the John S. and James L. Knight Foundation's High School Initiative, found that only 27 percent of students personally think about the rights it guarantees. Fifty percent of the teachers and 56 percent of the principals surveyed said they think about those rights.*

*The study also asked if people should be allowed to express unpopular opinions. Yes, said 83 percent of students, 97 percent of teachers and 99 percent of principals. But when asked if newspapers should be allowed to publish stories without government approval, only 51 percent of students said they should – a reply given by 80 percent of the teachers and principals. ([www.firstamendmentfuture.org](http://www.firstamendmentfuture.org))*

Yet having the ability to express an opinion can sometimes raise a related question: Do you have the right to say whatever is on your mind? If a student blogs about controversial issues like teenage pregnancy, can the high school take action? Put another way, "At what age are we free to communicate?" wonders Gene Policinski, the executive director of the First Amendment Center.

Of course, many free speech issues are unrelated to technology: Whether a student can be suspended for wearing a T-shirt criticizing homosexuality, for instance, or for advocating the legalization of marijuana at an off-campus event. Add those issues to the mix and you have the potential for wide-

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spread confusion about the differences between free speech and irresponsible conduct. [More on those cases in chapter 5].

With all these challenges and ambiguities, it would seem that First Amendment issues should be growing more important in the eyes of students. Unfortunately, research shows that's not the case.

Dr. David Yalof, an associate professor at the University of Connecticut, conducted a survey of 110,000 high school students, teachers and administrators to determine their attitudes toward the First Amendment. The research found alarmingly little knowledge of the protections it offers, especially among students.

Yalof discovered in 2006 that 45 percent of the high school students he surveyed believe the First Amendment goes too far in the rights it guarantees, up from 35 percent two years earlier. The same feeling was shared by 33 percent of the high school faculty he surveyed, up from 29 percent two years before.

Think about that: At a time when the opportunities for free speech are growing exponentially, nearly half of the students Yalof surveyed believed the instrument that protects their right to speak is a little over the line.

But some young people are strong supporters of First Amendment rights. The survey found that bloggers think more often about freedom of speech than others do. In fact, 59 percent of the bloggers he surveyed believe newspapers should be free from censorship.

To read more about Yalof's research and other resources on free speech issues for students, check out the John S. and James L. Knight Foundation's Future of the First Amendment Web site, **[www.firstamendmentfuture.org](http://www.firstamendmentfuture.org)**.

A word here about generalizations: While some free speech fights are rooted in self-serving actions or politics and are fed by ignorance of the First Amendment, most are not that simple. They shouldn't be viewed as comic book struggles between good and evil.

Usually the conflicts result from genuine worries on the part of school administrators and public officials about safety and student welfare. That's particularly true in matters involving the Internet, where concerns about sexual predators and obscene content are very real.

Joan Bertin, the executive director of the National Coalition Against Censorship, acknowledges that student protection is necessary, but not at the expense of a vital exchange of ideas.

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“Just as the behaviors we fear online are familiar, so are the solutions,” Bertin has written. “The concerns of parents and free speech advocates alike would be served by discussion, not overheated rhetoric; fact-based debate, not fear-mongering – techniques tested by every generation faced with adapting to whatever passed for innovation at the time.”

### **Stories from the Frontline**

#### **John Stapelfeld, Principal, Hudson High School, Hudson, Mass.**

*John Stapelfeld has been principal of Hudson High for 26 years. In that time, he has worked to give students a more active role in guiding the school, teaming up with the First Amendment Center to help accomplish that.*

*Stapelfeld has had one high-profile brush with the First Amendment. A group of students formed a conservative club and announced its meetings on posters throughout the school. One of them included an Internet link to the High School Conservative Clubs of America that took visitors to photos of people being beheaded.*

*Stapelfeld balked at that. He allowed the posters, but insisted the link be removed because of the raw violence it showed. Soon afterward, he and school department were sued for violating the students’ First Amendment rights. The case was still pending at the end of 2006.*

*The principal stands by his decision. “This has had great ramifications in our community. Whether it was the right decision or not, it was the right decision for parents who saw those beheadings,” he said.*

*His advice on such matters is to “get parents involved in where you’re going, whether it’s around legislation or what’s going on the school.”*

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### **Additional sources of information:**

**The Electronic Frontier Foundation**, a non-profit group that advocates for freedoms in the “networked world,” offers links to current and former legal cases with First Amendment implications at [www.eff.org](http://www.eff.org).

**“Cyber Rights: Defending Free Speech in the Digital Age,”** by Mike Godwin, published by MIT Press; 426 pages. Godwin, counsel to the Electronic Frontier Foundation, is a backer of online civil liberties and argues that coming to grips with the power of the implications of the Internet will be one of the great challenges of the coming generation. Available at [www.amazon.com](http://www.amazon.com).

**“Free Speech in the Digital Age,”** a video debate examining both the reasons for protecting speech and for limiting it, can be viewed on the Annenberg Classroom’s Resources for America’s Teachers Web site at [www.annenbergclassroom.org](http://www.annenbergclassroom.org).

## Chapter 2: Social Networking: Friend or Foe?

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In just a few years, social networking sites like MySpace, Xanga and Facebook have grown into massive “aggregators of eyeballs” – places where vast numbers of people can form social ties by sharing their interests online. Millions of people, many of them young, use the sites to express their ideas and broaden their horizons in the process.

That sounds pretty positive. Who isn’t in favor of broader horizons?

But social networking sites have more than a few critics – people who would like to see tight restrictions on their use in schools and libraries. Because of that, they have become a point of contention in the debate about online free speech.

One problem, as everyone knows by now, is that sexual predators learned early on that they could find victims by scrolling through their online profiles

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***“We have always had this reaction [to restrict] new forms of communication. Yes, there will be abuses. But it will work out. Don’t shut down this incredible new tool.”***

**Gene Policinski,  
executive director of  
the First Amendment  
Center**

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and exchanging messages with them, then arranging to meet them in person. It is a problem that worries law enforcement officials. In fact, Attorney General Alberto Gonzales estimates that at any given moment as many as 50,000 sexual predators are online in the United States.

Concerns go beyond safety. One is that too many people, addicted to virtual socializing, might become detached from their real communities – their schools, towns and families. Another is the “echo chamber effect,” which can occur when people communicate mainly with those who share their own beliefs.

According to Melinda Messineo, an associate professor of sociology at Ball State University, there is a danger that people who listen only to those with whom they agree will be cut off from the debates and dialogues that are necessary for democracy to exist.

Still another problem is the potential for irresponsibility created by the use of anonymous postings.

That’s what happened in 2006 at Clark High School in San Antonio, Texas, where a group of students, angered at being disciplined by Assistant Principal Anna Draker, created a fake MySpace page on which they posted lewd comments about her, illustrated with doctored photos. Draker responded by suing two of the students and their parents for defamation and libel.

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(To learn more about this incident and its impact, visit the Student Press Law Center Web site at [www.splc.org](http://www.splc.org).)

If the Texas case moves forward, the court will decide whether the First Amendment gives those students the right to make lewd and untrue comments about someone else. But this incident and others like it point to the need for responsibility when it comes to new forms of expression. With no one to supervise postings in advance, the need for knowledge about the limits of free speech is more important than ever.

The abuse of social networking by sexual predators has led to a wider controversy. A bill, the Deleting Online Predators Act (DOPA), was approved by the House of Representatives in 2006 and sent to the Senate for action. It would require schools and libraries receiving federal funding to prohibit

### Fact Box

#### ***Voted Most Popular***

*More than 200 social networking sites can be found on the Internet. The biggest, MySpace, says it has more than 70 million users, 40 million of whom log more than an hour on the site each week. Here are the most visited sites, as ranked by the Nielsen/NetRatings research firm in 2006: 1. MySpace, 2. Blogger, 3. Classmates Online, 4. YouTube, 5. MSN Groups, 6. Yahoo! Groups, 7. MSN Spaces, 8. Xanga.com*

access to social networking sites that allow users to create profiles containing personal information.

Critics of the bill say its definitions are too broad. They say it would prevent students from accessing sites with educational merit, like Yahoo and Amazon, which offer user profiles and discussion forums – two characteristics the bill would ban. They also note that many schools use blogs as teaching tools and that some public libraries have their own MySpace pages designed to serve younger readers. Finally, they point out that social networking sites allow users to organize to help worthwhile social and political causes.

Whether DOPA will ever become law is debatable. The original DOPA Bill, passed by the House, died in the Senate in late 2006. However, Sen. Ted Stevens' (R-AK) has introduced what's being called "DOPA Jr.," Protecting

## Social Networking: Friend or Foe?

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Children in the 21st Century Act. Even if it doesn't, pressures to restrict Internet access seem likely to continue. Once again, the debate highlights the tension between the desire to protect young people and the need for a free exchange of information.

Backers of Internet restrictions see social networking as a potential threat that must be countered by laws and regulations. Others, including the American Library Association, believe the best approach is to educate young people about social networking in much the same way as they are taught to drive – in the presence of trained supervisors.

The debate about social networking centers on free expression. The antithesis of free speech is censorship – the government control of ideas and information. If government agents such as public schools block certain kinds of information, they are engaging in a form of censorship.

In this case, blocking access means that students will be prevented from using certain kinds of Internet-based applications – blogs and “wikis” among them – that might encourage learning. That might not be much of a problem for students with Internet access at home, but what about those who are less well off and don't have a PC in their bedroom?

Judith Krug, director of the ALA's Office for Intellectual Freedom, sees irony in efforts to restrict Internet access to controversial material. “We would remove these sites from the very places where kids could learn how to use them responsibly,” she said.

### **For more information:**

**The American Library Association.** The ALA has opposed efforts to restrict access to Internet sites. You can read its position by following the “Issues and Advocacy” link at [www.ala.org](http://www.ala.org)

**The National Coalition Against Censorship** offers information on censorship issues in classrooms and on the Internet. Visit its Web site at [www.ncac.org](http://www.ncac.org) and follow the link to “Education.”

### **Stories from the Frontline**

#### **Dennis Brown, Teacher, Huntley High School, Huntley, Ill.**

*Dennis Brown's first reaction to research showing a lack of interest in the First Amendment among young people was to think back to his own youth.*

*"When I read that kids don't care about the First Amendment, I thought, well, I didn't care either. To be perfectly honest, we never would have thought about writing an article critical of the administration. I was worried about going to homecoming."*

*He cares now. Brown is a high school teacher and the faculty adviser to the student newspaper and yearbook. In the past 10 years, he said, he's learned a great deal about free expression.*

*"As adviser, it is my job to teach students how to properly express themselves," he said. He urges them to be responsible and professional by setting standards and teaches the impact of cases like **Tinker** and **Hazelwood**.*

*Through it all, he has found that students do indeed care about free speech. "For all the gloom about the First Amendment, I walk out of school very excited about what the students are doing," he said.*

*He'd like to see more instruction on the safe and responsible use of the Internet, including what constitutes harassment. "Students are much more mature than I expected. But they need to be shown that with their rights comes responsibility."*

## Chapter 3: The Fight Over Filters

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**M**ost of us would agree that the Internet can be a rude place – a cyber-bazaar filled with rough language and even rougher photos. As an open marketplace, it's been that way since its beginning.

As might be expected, a lot of people don't like that. They want to keep young people in particular from being able to read or see what they consider inappropriate material. That has led to efforts over the years to find ways of blocking such content – a push that culminated with the passage of the Children's Internet Protection Act in 2000.

CIPA, as that law is widely known, requires schools and libraries that receive certain federal funding to install Internet filtering software on computers that can be accessed by students. Specifically, it requires filters that are designed to block "visual depictions that are obscene, child pornography or harmful to minors."

Shortly after CIPA was signed into law, the American Library Association and several other groups moved to block it with a lawsuit that went all the way to the Supreme Court. They lost, and CIPA was upheld.

The ALA and others object in principle to any kind of censorship, believing that people should be able to read whatever material they want to without government interference. In addition, they note that academic freedom is supported by the First Amendment.

Beyond that, they say there are problems with the software that often causes valuable educational material to be blocked along with the intended targets. To understand the issue, let's dig a little deeper into how filtering software works and who controls it.

Filtering programs first hit the market in the 1990s in response to concerns about increasing numbers of controversial sites on the fast-growing Internet, including pornography and hate speech. The programs were developed by private companies under such brand names as SurfWatch and Cyber Patrol. Eventually the field was joined by big companies like AOL, Symantec and McAfee.

Some of the earliest programs worked by blocking just about everything on the Internet except a pre-approved list of sites – an approach called "whitelisting," a clunky and restrictive method if ever there was one. Eventually, the software became more sophisticated by blocking content that appeared on "blacklists" – areas specifically selected as inappropriate.

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The exact type of material blocked depends on how the software is written, but in general, the programs look for “objectionable” words or phrases – “porn,” for instance – or broad categories such as “hate speech” and “violence.” The specific processes used to judge the material are usually known only to the company producing the software.

That’s troubling to critics of Internet filtering. They point to hundreds of instances in which the software “over-filters” the content and prevents people from seeing information they have every right to read.

“Filters give a false sense of security,” the ALA’s Judith Krug told the Free Speech in Schools conference. “They are mechanical. They can’t tell the difference between valid sites and those the filter recognizes as lewd.”

Here are just a few of the problems researchers have found, reported in “Internet Filters: A Public Policy Report,” a research report written by Marjorie Heins, Christina Cho and Ariel Feldman and published by the Brennan Center for Justice at New York University’s School of Law ([www.brennancenter.org](http://www.brennancenter.org)):

- A program called SmartFilter prevented computers from accessing the Declaration of Independence, Herman Melville’s *Moby Dick* and a government anti-drug brochure titled “Marijuana: Facts for Teens.”
- SurfWatch blocked access to the University of Kansas’s Archie R. Dykes Medical Library, having detected an offensive term for lesbians.
- X-Stop, in an ironic twist, blocked access to a Carnegie Mellon University Web page that listed banned books.
- The WebSENSE filter for some reason interpreted the Web site of the “Keep Nacogdoches Beautiful” cleanup project in Texas as a sex site, and tossed “The Shoah Project”, a site dedicated to remembering Holocaust victims, into the banned category of “racism/hate” material.

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***“You should be able to read what you choose, whatever the medium.”***

**Judith Krug, director of the Office for Intellectual Freedom at the American Library Association**

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## The Fight Over Filters

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It's easy to see how this could be a problem if you're researching a term paper on the school library's computer. Back in 1999, The *New York Times* reported that a filter called I-Gear, developed by Symantec Corp., had prevented students at New York's Benjamin Cardozo High School from searching for information on breast cancer, AIDS, eating disorders and child labor. And it appeared that the filter had an ideological bias: pro-abortion sites were blocked, but anti-abortion sites were not.

Such problems raise questions about how Internet filtering decisions are made. The answers aren't clear, since filtering companies are secretive about the software "algorithms," or programming rules, they use in determining what will be blocked and what won't.

The problems have been so widespread that some wealthy school districts have rejected federal funding in order to offer unrestricted Internet access. Schools that need the money can't make that choice. Others have implemented the barest minimum of filtering required by law – for instance, by not enabling the "hate speech" portion of their filter.

The issue has a dollars-and-cents impact. "It takes a lot of resources for a district to install and implement these filters," Marjorie Heins told the McCormick Tribune Foundation conference.

"That could go to core educational needs. And not everyone is going to know about filtering. Censorship can become the default setting, not free

### **Stories from the Frontline**

#### **Jake Sanches, Student, Huntley High School, Huntley, Ill.**

*Jake Sanches, editor in chief of his high school's newspaper, **The Voice**, has learned about censorship the old-fashioned way – by being censored. He stood up to the challenge and he prevailed.*

*Sanches wrote an editorial critical of a school board member, who heard about it before it could be published. The school board member complained, and the administration refused to allow the papers to be distributed. So they sat at Jake's house.*

*Meanwhile, a local newspaper ran a story about the censorship. Within a few days the district superintendent reversed course and allowed the papers to be distributed 10 days late.*

*"It shows how much people don't know about student press rights," Sanches said. "The school administration backed down. They saw the power."*

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expression. And who's making these decisions? Private companies that won't say how they are making them."

School administrators' opinions vary, but many see filtering as the result of an understandable impulse – the desire by parents and community groups to protect young people from the often unsettling and destructive material that can be found online.

Mike Heger, the technical director at Johnsburg High School in Illinois, is on the front line of the issue. His school started filtering in 1998 because of parental pressure and now has a six-page filtering policy. "When parents complain, you get action," he said.

### Fact Box

#### ***A Wide Web Indeed***

*How big is the Internet? No one knows for sure, but two computer scientists estimated in 2005 that there were 11.5 billion Web pages in existence – a number that surely has grown by now.*

*Those pages would be next to useless if no one knew what was on them. That's where search engines come in. The biggest of them, like Google, are "crawler-based," meaning that their computers constantly send out "crawlers" (also called "spiders") that read Web pages and follow all the links on them, a process that is repeated every few months. The information they collect is then indexed and matched up to whatever incoming requests the search engine receives.*

Johnsburg High School chooses to filter only what is required by CIPA. Because the process is imperfect, it has a backup policy of requiring that an adult be present in every room equipped with Internet access.

But Heger noted that tech-savvy students often do end-runs around the filters by employing so-called proxy sites, of which there are hundreds. In essence, the sites fool the filter into thinking the material is acceptable. "Ultimately the only solution is not to rely on filters, but to educate children about the Internet," Heger said.

One final note on filtering: CIPA permits schools and public libraries to disable blocking if it is requested as part of "bona fide research." That was important to Supreme Court Justice Anthony Kennedy, who supported the law; he wrote that if administrators and librarians refused to unblock access, the law could be open to another challenge.

## The Fight Over Filters

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Yet in a 2004 study, the American Library Association and the Center for Democracy and Technology found that only 64 percent of the approximately 50 libraries they surveyed would disable filtering if they were asked to, and that only 20 percent would disable it for minors.

### What Can You Do?

If you are involved with your school's discussions about filtering, here are some recommendations excerpted from "Internet Filters: A Public Policy Report," the study by the Brennan Center for Justice:

- Avoid filters with categories that reflect an ideological point of view. Such filters are fine for use in homes or churches, but not in public applications.
- Look for filters that allow topics or sites to be easily unblocked.
- Since CIPA only requires the blocking of obscenity, child pornography and material that is "harmful to minors," the "sexually explicit" category of any filter is the only one that must be activated.
- Create a simple process for changing incorrect or unnecessary settings.
- Quickly disable the filtering if an adult requests it or if a minor asks under the permitted provisions of CIPA.
- If a site is blocked, create a default page that educates users on the filtering process and tells them how to request that it be disabled.
- Teach online safety and Internet literacy. (More about this in the next chapter.)

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### **For more information:**

**“Internet Filters: A Public Policy Report”** is available online at the National Coalition Against Censorship site at <http://www.ncac.org/internet/filters.cfm>.

**The Federal Communications Commission (FCC)** is responsible for enforcing the Children’s Internet Protection Act. You can read an overview of the law at [www.fcc.gov/cgb/consumerfacts/cipa.html](http://www.fcc.gov/cgb/consumerfacts/cipa.html).

**The American Library Association** offers background information and links to CIPA resources at [www.ala.org/ala/washoff/WOissues/civilliberties](http://www.ala.org/ala/washoff/WOissues/civilliberties).

**“Documentation of Internet Filtering Worldwide”** is a scholarly examination of filtering techniques by Jonathan Zittrain and Benjamin Edelman of the Berkman Center for Internet & Society at Harvard Law School. It can be found at <http://cyber.law.harvard.edu/filtering/>

**PBS TeacherSource** hosts a social networking blog called Learning.Now that explores how technology and Internet affect teaching and learning. It’s at [http://www.pbs.org/teachersource/learning.now/social\\_networking](http://www.pbs.org/teachersource/learning.now/social_networking).

## Chapter 4: Getting Smart about the Internet

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The digital age has made a lot of people nervous. As we saw in Chapter 3, parents are concerned about what their children can read and see online and are pushing for ways to protect them.

Educators feel the heat too. Consider the changes that have taken place in the student press. It was once unthinkable that student journalists would write about teenage pregnancy and sexuality. Even if they did, chances are the student newspaper's adviser wouldn't have permitted it to be published. Now, in an era when students can write and disseminate whatever they want on blogs, high school journalists are pushing the old limits.

Against this backdrop of change, more and more people are worried about a backlash that would include more censorship. The concerns about what young people read, say and do are creating an atmosphere in which the easiest fix would seem to be more and tougher restrictions.

In their report "Media Literacy: An Alternative to Censorship," Marjorie Heins and Christina Cho note that censorship in the name of protecting youth is nothing new: "Attempts to censor gangster movies in the 1930s, crime comics in the 1950s and TV violence today have produced an almost unending series of laws, regulations and proposals for restricting the art, information and entertainment available to youth. The advent of the Internet – a medium in which young people are often better versed than their elders – has only intensified these concerns."

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***"The First Amendment plays a central role in our society. To be able to use one's voice effectively is a skillset, and the responsibility of educators is to give all the people the skills they need to be heard."***

**Sam Chaltain, Five Freedoms Project**

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But there is another way to offer protection – one that is more in keeping with Americans' **First Amendment** rights. It is called media literacy.

Media literacy actually has been taught for decades. It began with efforts to teach critical thinking – the careful evaluation of the messages contained in newspapers, books, magazines, television, films and advertising. The digital age has added more layers to the challenge.

When it comes to digital communication, media literacy tries to teach students from an early age how to evaluate and interpret what they read and see. The idea is to provide tools to safely and constructively navigate the online world.

## Free Speech 3.0: Student Expression in the Digital Age

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Young people schooled in media literacy learn how to separate the valuable information online from the useless and harmful material found there. They discover that the “truths” offered up by online sources are often quite the opposite, and that social networking sites and chat rooms have dangerous downsides that can be easily avoided.

In short, they become smarter information consumers.

Betsy Hedberg, a teacher and curriculum writer, notes in her book *The Web-Savvy Student* that such critical thinking skills need to be applied to online material if the Internet is to be used effectively and safely. Among the subject matter she believes needs to be taught:

- How to interpret URLs
- Choosing Web sites that are suitable for research
- Evaluating online advertising and marketing
- Evaluating Web sites
- Creating Web sites
- Spotting bogus Web sites
- Searching the Web
- E-mail and chat rooms
- Finding opposing viewpoints on the Web

Of course, interpreting the media is only part of the challenge. In an era when more students are offering their views – whether by blogging, podcasting or writing for the high school newspaper – it’s crucial that they understand the First Amendment. It is the key to knowing what can safely be said.

Not all speech is protected. As the old adage goes, you can’t yell “Fire!” in a crowded theater – unless, of course, it’s on fire. You can offer an opinion about someone, but publishing “facts” about them when you know they aren’t true can earn you a libel suit. And some forms of expression can really land you in trouble. When a group of protesters burned a small model of the Cleveland Indians’ mascot outside the ballpark, they believed the First Amendment gave them the right to declare that the mascot was racist: They were arrested anyway. While the Ohio Supreme Court ruled that they had a right to burn the model, it ruled that the arrests were valid because the fire threatened the public’s safety.

## Getting Smart about the Internet

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Being literate in the ways of the media has never been more important. What students don't know – either about what they read online or write about on a blog – can have troublesome repercussions.

The stakes are high, because the changes brought about by the digital age can have a huge benefit for society – provided those innovations are not derailed by a wave of restrictions.

“Social networking sites and blogs are a blessing, not a problem,” says Kevin Bankston, an attorney with the Electronic Frontier Foundation. “This is the most expressive generation ever. These are the most powerful tools we have to engage students and get them to express themselves.”

### **Stories from the Frontline**

#### **Antwaun Sargent, Student, Mather Law Academy, Chicago**

*Antwaun Sargent has always been involved in school activities, and a few years ago one of them provided an unintended lesson in free speech.*

*His school's civics club was looking for a speaker when someone got the idea of inviting Lyndon LaRouche. LaRouche is a controversial figure to say the least – a conspiracy theorist, perennial presidential candidate and convicted felon.*

*But the club's sponsor didn't like the choice of speaker and later resigned after the students refused to back down. That forced the club to dissolve.*

*For Sargent, it was a lesson in rights and power – one with high stakes.*

*“If students don't understand that they have rights and that principals are not all powerful, they won't become involved with the democratic process or journalism,” he said. He adds that too many of his fellow students already feel a sense of resignation.*

*“My thing is, how do you get students to understand that we have power, and that it's something we can exercise? I don't think there's enough being done to show that. You don't just become politically active at 18.”*

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### **For more information:**

**The Free Expression Policy Project**, part of the Brennan Center for Justice at New York University's School of Law, links to a variety of free-expression sites and provides an online version of "Media Literacy: An Alternative to Censorship," a report by Marjorie Heins and Christina Cho. You can read it and other research at [www.fepproject.org/policyreports/medialiteracy2d.html](http://www.fepproject.org/policyreports/medialiteracy2d.html).

**PBS TeacherSource** offers a directory of media literacy resources on such topics as advertising, Internet safety and Web site evaluation. Visit it at [www.pbs.org/teachersource/media\\_lit/related\\_study.shtm](http://www.pbs.org/teachersource/media_lit/related_study.shtm).

**"Voices for the First,"** the Web site of the Illinois First Amendment Center, offers free guides and materials dealing with free speech, including teacher curriculum guides on CD. Visit it at [www.Illinoisfirstamendmentcenter.org](http://www.Illinoisfirstamendmentcenter.org).

**Project Look Sharp**, a program sponsored by Ithaca College, provides materials and training for media literacy efforts. It's at <http://www.ithaca.edu/looksharp>.

## Chapter 5: The Legal Landscape

Late in 1965, 13-year-old Mary Beth Tinker decided to protest the war in Vietnam. She, her brother John and their friend Christopher Eckhardt wore black armbands to their schools in Des Moines, Iowa. All three were promptly suspended.

But that wasn't the end of it. "My parents set the example of living your beliefs," she said. So they sued to overturn the suspension.

A few years later, the Supreme Court's ruling in *Tinker v. Des Moines* set a clear standard for the free speech rights of students. In it, Justice Fortas disagreed with a lower court's belief that the school district acted

### Stories from the Frontline

#### **Mary Beth Tinker, Nurse Practitioner, First Amendment Activist**

*Thirteen-year-old Mary Beth Tinker helped change the course of Free Speech in America by insisting that she had a right to express her beliefs. Now a nurse practitioner, she still believes passionately in that right.*

*Tinker, her brother and a friend wore black armbands to their schools in 1965 to protest the Vietnam War. Their subsequent suspension marked the start of a legal battle that eventually had a profound impact on student expression rights.*

*Tinker said her family was harassed after the suspensions. "We were shocked and surprised to get a phone call on Christmas Eve saying that our house would be blown up by morning," she said. Red paint was thrown at the house.*

*But the family held tight. The Tinkers' parents told them stories "about brave people, and that was an example in our lives."*

*To Tinker, the First Amendment matters because "we want to foster adults who are educated in democracy, because that is the only way it can function," she believes. "A major tenet of democracy is that the affected people should have a voice in decisions. Kids today are facing dire circumstances, and they want to speak up about the issues in their lives."*

*The First Amendment gives them that right.*

*Tinker had this advice for those young people who find them in conflict over what they believe.*

*"Don't do the popular thing," she says. "Do what you believe in. Hang on even if you are doing something unpopular."*

*Good advice from a veteran of the free speech wars.*

## Free Speech 3.0: Student Expression in the Digital Age

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reasonably because it feared the armbands would cause a disturbance. “Any word spoken, in class, in the lunchroom or on the campus, that deviates from the views of another person may start an argument or cause a disturbance,” he wrote. “But our Constitution says we must take this risk.” The court ruled that such symbolic speech as black armbands was acceptable as long as normal school functions are not unreasonably disrupted.

It was a big victory, considered by many to be the most far-reaching decision ever for student free speech rights. But those rights have come under frequent challenge in the years since the *Tinker* case and in several notable cases have suffered setbacks.

To help understand the legal landscape these days, let’s look at some of the important cases of the past four decades and what they established.

### ***Tinker v. Des Moines (1969)***

The *Tinkers* and Eckhardt contended in their lawsuit that the school district had punished them for expressing their beliefs. A federal judge who heard the lawsuit decided in favor of the schools; the 8th U.S. Circuit Court of Appeals let that ruling stand. So the students appealed to the Supreme Court, which agreed to hear the case.

The justices voted 7-2 in favor of the students. In writing the majority opinion, Fortas said the “hazardous freedom” to express an opinion, even one that caused a disturbance, “is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious society.”

The upshot of the decision has come to be known as the *Tinker* rule, which holds that school officials can limit free speech only when it might substantially disrupt education or invade the rights of others.

David Hudson, an attorney with the First Amendment Center, notes that *Tinker* has come to be seen as the “high-water mark” of student First

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***“First Amendment rights . . . are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”***  
**Supreme Court Justice Abe Fortas delivering the court’s decision in the landmark *Tinker v. Des Moines School District* case, Feb. 24, 1969.**

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## The Legal Landscape

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Amendment rights. Unfortunately, he believes the courts have since backed away from the liberties supported by that case.

### ***Bethel School District No. 403 v. Fraser (1986)***

If the *Tinker* case advanced the cause of student free speech, *Bethel School District No. 403 v. Fraser* clearly set it back.

In 1983 Matthew Fraser gave a speech nominating a friend for student body president of their high school in Spanaway, Wash. The speech was marked by a string of sexual innuendos and he was suspended for violating the school's obscenity policy.

Fraser sued, and both a federal judge and an appeals court agreed with him that his speech was protected. The school district appealed to the U.S. Supreme Court.

The high court voted 7-2 to uphold Fraser's suspension, ruling that vulgar speech didn't deserve the same protection as did the political beliefs expressed in the *Tinker* case. "The penalties imposed in this case were unrelated to any political viewpoint," Chief Justice Warren Burger wrote for the majority.

Free speech advocates say the *Fraser* decision represents at least a partial weakening of the court's earlier position. It holds that not all expression has the same value and deserves the same protection.

### ***Hazelwood School District v. Kuhlmeier (1988)***

Student First Amendment rights were hit with a more powerful blow in 1988.

The student newspaper of Missouri's Hazelwood East High School, *The Spectrum*, was written by students in a journalism class. One edition contained stories on student pregnancy and the effect of divorce on students. As was his usual practice, the school's principal read the newspaper before publication and, in this instance, killed the stories.

Three students sued the school on grounds that their First Amendment rights had been violated. A federal court agreed and found that the *Tinker* standard had not been met – meaning that no disturbance could be expected as a result of the stories – and that the student paper was a forum for student expression and therefore protected by the First Amendment.

But when the case was appealed to the Supreme Court, there was a dramatic reversal. The justices held that schools are within their rights to

## Free Speech 3.0: Student Expression in the Digital Age

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to censor student newspapers "so long as their actions are related to legitimate pedagogical concerns" – meaning that they are related to teaching. The justices also distinguished between public forums and those that are not. Because it was a classroom tool, they said, *The Spectrum* was not a public forum and therefore not protected, as an off-campus newspaper would be.

In effect, the ruling created two standards for student free speech – one based on the *Tinker* case and the other on the *Kuhlmeier* decision. "If student expression is considered student-initiated, the *Tinker* standard of substantial disruption applies. If the student expression is school-sponsored, then *Kuhlmeier* applies," noted David Hudson of the First Amendment Center.

It was a troubling ruling for those who believe students have a right to report and write about their lives. But it doesn't mean that the First Amendment is dead in American schools. Notes the Student Press Law Center, "All public high school students still have some First Amendment protections that limit the ability of school officials to censor. No student or adviser should be willing to give up the battle against censorship."

### Fact Box

#### **Why Studying Pays**

*In 2003, Michigan high school junior Bretton Barber wore a T-shirt to school bearing a photo of President Bush and the words "International Terrorist." Fearing a disturbance, school officials sent him home, but not before one of them justified the action by citing **Tinker v. Des Moines School District**, the landmark case in which the Supreme Court ruled that students have free speech rights at school. Having done his homework, Barber pointed out that the official was quoting from the dissenting opinion, not the majority. (He was sent home anyway, but a federal judge later ruled that he was within his rights to wear the shirt.)*

In fact, a recent case shows that *Tinker* is alive and well. In 2006 an appeals court in Vermont upheld the right of a middle school student to wear a T-shirt bearing a message critical of President George W. Bush.

Zach Guiles' shirt called Bush the "Chicken-Hawk-in-Chief" and bore images of a martini glass, a marijuana cigarette and cocaine, referring to

## The Legal Landscape

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the president's alleged former substance-abuse problems. Officials suspended Guiles because it claimed the images violated the school's dress policy, which prohibits such imagery. A lower court judge ruled that the words on the T-shirt were protected by the First Amendment, but that the images were not.

The appeals court sided with Guiles. "The pictures are an important part of the political message Guiles wished to convey, accentuating the anti-drug (and anti-Bush) message . . . Applying *Tinker* to the facts of this case, we conclude that defendants' censorship of the images on Guiles's T-shirt violated his free speech rights," it said.

### The Road Ahead

There were two rulings in 2006 that also should be noted – *Harper v. Poway Unified School District* and *Frederick v. Morse*. We don't know at this writing whether they will stand, but the latter has been accepted for review by the Supreme Court. It's a good idea to check the Student Press Law Center Web site ([www.splc.org](http://www.splc.org)) and the "Timely News" page in the Take Action section of the McCormick Tribune Freedom Museum site ([www.freedommuseum.us](http://www.freedommuseum.us)) for updates.

### ***Harper v. Poway Unified School District***

Sometimes a court ruling seems to contradict what's come before. Some might think that's what happened in the case. But there are reasons for such apparent discrepancies, at least in the eyes of the judges involved.

As is often true, this case began with a controversial T-shirt. The one that sophomore Tyler Harper wore to Poway High School in California in 2004 read "Homosexuality Is Shameful" and "Be Ashamed, Our School Embraced What God Has Condemned." He wore it on a day that was intended to encourage tolerance of others.

Harper was told to stay in the school office all day. He did, but he also filed a lawsuit. Eventually, a federal appeals court decided 2-1 that the school was within its rights.

It might seem as though the statement on Harper's shirt should be protected in the same way as the one on Zack Guiles' shirt. But the court found the school's action was reasonable because it protected the rights of a vulnerable student population. Shirts bearing political opinions do not violate the rights of others, it held. The lone dissenter on the bench dis-

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agreed, saying there was no evidence that any gay student was harmed by the shirt.

At the McCormick Tribune Foundation conference, constitutional law scholar Linda Monk explained the thinking of the two courts. In the *Guiles* case, the court held that “students can use a wide palette” when it comes to expressing emotional intensity. In the California case, she said, the ruling reflected a belief that the school needed to protect gay students from being forced to attend school in a hostile environment.

### ***Frederick v. Morse* (aka “Bong Hits 4 Jesus”)**

The same three-judge panel that heard the *Harper* case decided another high-profile case in 2006 that, as of this writing, was headed for the Supreme Court.

Joseph Frederick, a student at Juneau-Douglas High School, attended an off-campus parade near his Juneau, Alaska, school in 2002. When Frederick unfurled a banner that read “Bong Hits 4 Jesus,” the school’s principal took it and suspended him for 10 days.

School lawyers said the principal acted because the banner promoted drug use and conflicted with the school’s anti-drug policy. But the 9th U.S. Circuit Court of Appeals decided unanimously that she had violated Frederick’s rights.

The judges, citing the 1969 *Tinker* ruling, wrote that speech occurring outside the classroom can’t be censored just because it conflicts with a school’s educational mission. The school’s lawyers want to hear the Supreme Court’s views on that.

To Linda Monk, the constitutional law scholar, the issue in this case is how far a school’s authority can reach outside the classroom. “The fundamental issue is jurisdiction,” she said. “To say to a student that essentially there is no limit to our jurisdiction over you is the death of the First Amendment.”

The Supreme Court will hear the case in its 2007 term. To see whether it agrees with Monk, check back with the Web sites of the Student Press Law Center, the McCormick Tribune Freedom Museum and the First Amendment Center.

## The Legal Landscape

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**To learn more:**

**The Student Press Law Center** offers legal assistance to students and the educators who work with them. Its Web site features resources, news and reports dealing with student free speech issues. It's at <http://www.splc.org>

**"Censorship of Student Internet Speech,"** a research paper written by the First Amendment Center's David Hudson, outlines developments in student free speech issues and examines Internet-related cases. It also describes the factors that school administrators should consider when deciding whether to regulate student speech on the Internet. It can be read at: <http://www.freedomforum.org/packages/first/censorshipinternetspeech/index.htm>

**The New York Civil Liberties Union** lists Web sites, court cases and articles dealing with freedom of expression. It's at [www.nyclu.org/stdt\\_foe.html](http://www.nyclu.org/stdt_foe.html)

## **Chapter 6: The Path Toward a Policy**

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It's no small task to create a school policy on student free expression that properly balances the need for protection and the First Amendment rights of students. To help guide those who are wrestling with that challenge, we asked some of the 42 participants at the McCormick Tribune Foundation's Free Speech in Schools conference to share their thoughts and advice on what should go into the process.

**Melinda Messineo, Ph.D.**  
**Associate Professor**  
**Department of Sociology**  
**Ball State University**  
**Muncie, Ind.**

The creation of a free speech policy that is specific enough to be useful, while at the same time flexible enough to apply to ever-changing technologies, is no small feat. It is for this reason that you should keep your efforts proactive instead of reactionary and grounded in the fundamental issues surrounding free speech.

If we are trying to protect this constitutional right, then we need to treat any threats to student free speech with the same vigor as we would threats to any constitutional tenet. If we are trying to protect children, then we need to provide them the skills to be truly media literate. This means not only knowing how to assess, evaluate, analyze and create what we typically consider media artifacts, but also to be critical consumers, and by extension creators, of social networking sites, blogs and other new media forms. A policy needs to empower young adults to be active and informed media consumers. Efforts to simply protect and shield students from that which is potentially offensive do little to develop these critical skills over the long term and threaten both the student and their constitutional rights.

## The Path Toward a Policy

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**Peter Levine**

**Director, CIRCLE**

**(Center for Information & Research on Civic Learning & Engagement)**

**University of Maryland**

Students should be given opportunities to work together and create digital products of value to their communities: for example, videos, online newspapers, podcasts, blogs, maps, research presentations and social networking sites. They should be supported and supervised in this work, which should involve explicit discussions of ethical questions such as privacy and civility. However, school administrators should not exercise prior censorship over students' products. Being given positive opportunities for creativity and service will make young people more responsible consumers of new media in their free time.

**Anna Draker**

**Assistant Principal**

**Clark High School**

**San Antonio, Texas**

What should an effective school policy include? There should be some form of consequence for defamation. There should be a set procedure for reporting crimes of any school employee or student and consequences for reporting a false crime. A lot of times a false crime against someone's name can be just as damaging as a real report. School policies should contain some form of victim's rights. When a student is bullying another student, the assailant might be removed from the campus. But a teacher or administrator who is being harassed by a student is forced to continue to work with the student at the same campus.

If we do not get policies in action quickly, the damages that are occurring with the abuse of social networking sites will be more severe.

My advice for those charged with making policy: We would not give a child the license to drive a car without going through classes and spending time with an experienced driver. So why are we giving 10- and 12-year-olds the license to travel the world on the Internet? We need to add an educational component to elementary and middle school that would teach students about their civil rights and the responsibilities of using the Internet.

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High school students should be able to test out of such a curriculum but need to show knowledge. There should also be a parental component just like there is with getting a driving permit.

**Marjorie Heins**

**Coordinator**

**Free Expression Policy Project Brennan Center for Justice**

**NYU School of Law**

**New York, NY**

Balancing the free speech interests of students and faculty against the legitimate pedagogical concerns of primary and secondary school administrators is always a difficult proposition. But free expression and critical thinking are, after all, at the core of the educational mission. Therefore, a free speech policy for schools should start with the principle that the free play of ideas is the "default" position, and suppression of speech must be justified by substantial government interests. In Justice Brennan's words, the First Amendment does not tolerate rules that cast "a pall of orthodoxy" over the classroom – and this goes for the halls and the schoolyard as well, and even more so for off-campus speech.

Here are a few principles to consider:

Off-campus speech, whether by teachers or students, is ordinarily entitled to full First Amendment protection. Only a compelling government interest justifies censorship or punishment. The one exception to this principle is a school-sponsored event (for example, an intermural debate contest or a teacher-supervised field trip), where the school should have the ability to punish disruptive behavior.

On-campus speech, except in the context of school-sponsored curricular activities, is governed by the *Tinker* standard. The school must have a factual basis to believe that material and substantial disruption of the educational process is imminent before punishing or suppressing independent student speech on campus (for example, leaflets, buttons and T-shirts bearing messages).

## The Path Toward a Policy

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Under the Supreme Court's *Hazelwood* decision, administrators can censor speech in school-sponsored curricular activities such as newspapers produced as part of a journalism class. But having the power to censor does not mean that exercising this power is good educational policy. Particularly at the high school level, student publications should not be censored by administrators. Student journalists should be guided by a faculty adviser in matters of style, accuracy and ethics.

The Supreme Court's *Bethel v. Fraser* decision gave school administrators the power to punish or censor "indecent" or "lewd" student expression at on-campus school-sponsored events. But again, the power to censor does not necessarily translate into good educational policy. Schools should consider adopting a policy that respects student speech at school-sponsored events, even if it is sometimes provocative, unless the *Tinker* standard of material and substantial disruption is met.

**John Stapelfeld**  
**Principal**  
**Hudson High School**  
**Hudson, Mass.**

My advice to policymakers relative to student access to technology during the school day, particularly the Internet, would be to place more trust in the fact that the vast majority of students will "do the right thing" and abide by the school's appropriate use policies. As a progressive educator, I accept the fact that students will take an active role in their education and utilize all educational opportunities at their disposal, including the Internet, to move their education forward.

**Joan Bertin**  
**Executive Director**  
**The National Coalition Against Censorship**  
**New York, NY**

When we are asked to address actual censorship disputes in schools, we rely on both broad philosophical principles and practical considerations to try to persuade educators that there are ways to respect the free speech rights of students that also enhance the educational experience.

## Free Speech 3.0: Student Expression in the Digital Age

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### *General principles*

Freedom of speech is a fundamental human right celebrated throughout the world. The United Nations Universal Declaration of Human Rights states that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Few other countries, however, provide the level of protection for free speech that the First Amendment to our Constitution guarantees to all Americans.

Free speech is revered not only because it is essential to individual self-fulfillment and to the advancement of knowledge. It is also essential to democracy, which depends on an enlightened citizenry capable of expressing informed opinions and judging the performance of elected officials. Speech, to be valuable, must also be informed. Therefore, universal access to free public education has long been viewed as a corollary to free speech in realizing democratic ideals.

A major role of the public schools, therefore, is to train students to participate responsibly in the democratic form of government. According to the Supreme Court, "The classroom is peculiarly the 'marketplace of ideas.' The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers "truth out of a multitude of tongues, [rather] than through any kind of authoritative selection."

Most professional educational organizations strongly promote free expression and academic freedom as necessary to the educational process. Access to a wide range of views and the opportunity to discuss and dissent are all essential to education and serve the schools' legitimate goals to prepare students with different needs and beliefs to contribute and participate in adult society.

### *Practical considerations*

Controversy in school is inevitable. Public schools must serve the educational needs of a diverse student body with different backgrounds, abilities and beliefs. They instruct students in a wide range of subject areas and teach a variety of skills, and they must accomplish all of this in a safe envi-

## The Path Toward a Policy

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ronment that promotes learning. In such a situation, controversies over what is “appropriate” or “offensive” are inevitable. Acceding to the demands of one interest group only encourages more demands. The removal of a single book from the curriculum or school library is often followed by attacks on other books. School boards have been pressed to revise the science curriculum, the content of history courses, sex education, drug and alcohol education, and self-esteem programs.

Challenging as these circumstances may be, principles derived from the Supreme Court’s First Amendment decisions provide important guidance, particularly:

- Educators enjoy wide latitude in exercising their professional judgment and fulfilling their educational mission if their decisions are based on sound educational and pedagogical principles and the informed judgment of professional educators, and if they serve the school’s educational mission.
- Decisions are vulnerable if motivated by hostility to unpopular, controversial, or disfavored ideas; by the desire to enforce conformity to a particular ideological, political or religious viewpoint; or by an authoritarian response to students’ genuine interests in discussion and debate on a legitimate, if controversial, topic of interest.

**Sam Chaltain**

**Project Coordinator**

**The First Amendment Center’s Five Freedoms Project  
Washington, DC**

A good policy reminds all members of a school community of the Three R’s of the First Amendment: Our individual Rights under the law, our civic Responsibility to guard the rights of others – especially those with whom we most deeply disagree – and our mutual commitment to debate our differences with Respect.

## **Chapter 7: The Conference Participants**

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## The Conference Participants

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## Free Speech 3.0: Student Expression in the Digital Age

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## The Conference Participants

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## Free Speech 3.0: Student Expression in the Digital Age

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# About the McCormick Tribune Conference Series

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For more than 15 years, the McCormick Tribune Foundation has partnered with local, national, and international experts to convene top-quality discussions on a range of subjects.

## **Recent McCormick Tribune Foundation conferences include:**

- *Challenges to U.S. National Security - Interests, Threats, Strategy and Forces*  
In partnership with the U.S. Military Academy, the U.S. Naval Academy and the U.S. Air Force Academy
- *Philanthropy and the Media*  
In partnership with The Center on Philanthropy at Indiana University
- *Next Steps in Election Reform*  
In partnership with The League of Women Voters
- *Law Amid the Ruins: Doing Business After Disaster*  
In partnership with the National Strategy Forum and the American Bar Association
- *The Military-Media Relationship 2005: How the Armed Forces, Journalists and the Public View Coverage of Military Conflict*  
In partnership with the Center for Media and Security
- *The Field of Early Childhood Education Professional Development: Implications for Teaching, Research and Policy*  
In partnership with the Erikson Institute

# About the McCormick Tribune Foundation

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The McCormick Tribune Foundation is one of the nation's largest charitable organization and encompasses:

- Five grantmaking programs: citizenship, communities, education, journalism and special initiatives
- Cantigny Park and Golf
- Three world-class museums: First Division Museum at Cantigny, the Robert R. McCormick Museum, and the new McCormick Tribune Freedom Museum.

A focus on children, communities and country unites the foundation and its many parts and keeps us true to our mission of advancing the ideals of a free and democratic society.

For more information about the foundation and its efforts, please visit [www.McCormickTribune.org](http://www.McCormickTribune.org).

# **McCormick Tribune Conference Series Call for 2008 Conference Proposals**

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The McCormick Tribune Foundation constantly seeks to build on the quality and tradition of our Conference Series by addressing a range of timely and challenging issues.

Academic institutions, policy experts, and public, nonprofit and private sector professionals from all fields are welcome to submit proposals for our next conference season.

For detailed submission guidelines, application instructions and to print a hard copy of this report, please visit our website at [www.McCormickTribune.org](http://www.McCormickTribune.org)

Proposals must be received no later than July 2, 2007, to be considered for conference support.

We look forward to your ideas!



## **About the McCormick Tribune Foundation**

The McCormick Tribune Foundation is a nonprofit organization committed to making life better for our children, communities and country. Through its charitable grantmaking programs, Cantigny Park and Golf, Cantigny First Division Foundation and the McCormick Tribune Freedom Museum, the Foundation is able to positively impact people's lives and stay true to its mission of advancing the ideals of a free, democratic society. The Foundation is an independent nonprofit, separate from the Tribune Co., with substantial holdings in the Tribune Co. For more information, please visit our Web site [www.McCormickTribune.org](http://www.McCormickTribune.org).

## **About J-Ideas**

J-Ideas, based at Ball State University, is a national institute dedicated to excellence in youth journalism, First Amendment awareness and media literacy.

J-Ideas worked with the McCormick Tribune Foundation in conceiving, developing and carrying out the Free Speech in Schools conference.

For more information about J-Ideas, please go to [www.jideas.org](http://www.jideas.org)