

2008

## Porn Air

Timothy Zick

*William & Mary Law School*, tzick@wm.edu

---

### Repository Citation

Zick, Timothy, "Porn Air" (2008). *Popular Media*. 195.  
[https://scholarship.law.wm.edu/popular\\_media/195](https://scholarship.law.wm.edu/popular_media/195)

- Concurring Opinions - <http://www.concurringopinions.com> -

## Porn Air

Posted By [Timothy Zick](#) On September 2, 2008 @ 11:00 am In [Current Events, First Amendment, Privacy](#) | [4 Comments](#)

I'm delighted to be back at Concurring Opinions. As I did during my last visit, I plan to write primarily about First Amendment issues. During work on my book, [Speech Out of Doors](#) <sup>[1]</sup>, I was immersed in some of the more traditional aspects of expression – public forum issues, face-to-face expression, acts of public protest, and regulation of public expression. I've been thinking lately about the extraordinary transformation of the First Amendment, particularly during the last decade or so. The very meanings of "speech," "assembly," "petition," and "press" have been significantly altered, primarily as a result of technological and communicative advances. Among the changes are a variety of new forms of speech, online protests and assemblies, an increasingly Web-based politics (i.e., online fundraising, the YouTube debates, the recent Obama vice presidential text), and of course the phenomenon of a "citizen press."

One significant aspect of this expressive transformation involves the mobility of expression. In an [article](#) <sup>[2]</sup> and in the final chapter of my book, I examine some of the ways in which mobile computing technologies are transforming the communicative environment and the First Amendment. It is, of course, a tremendous convenience to be able to access the Web from wherever one happens to be. As well, new technologies can facilitate "smart mobbing," public social networking, and spontaneous gatherings. But always-on access will occasionally expose us – in some cases fleetingly, and in others in a more intrusive manner – to the communicating and viewing habits of others. A few years ago I recall reading news reports about "drive-by porn" – the visible display of pornographic images on video monitors inside vehicles. Phone service providers in the U.S. have been much slower than their counterparts in other parts of the world to allow sexually explicit content to be accessed through their services. But given the market for such content, how long will this be the case? And now some airlines are making wireless Web access available [on flights](#) <sup>[3]</sup>. This is welcome news for passengers who wish to remain connected in the air. But it has raised the concern that some passengers will access sexually explicit content in flight. This will render some passengers "captive" to expression they (presumably) will not want to see (and possibly hear). The airlines apparently plan to have flight attendants monitor Web use, and presumably intervene when "inappropriate" content is accessed. Some brief thoughts on "Porn Air" after the jump.

First, is this really going to be a problem? Will passengers access pornographic content in the close quarters of the airline cabin? After all, pornography exists in many physical forms; there do not seem to be any instances of passengers flipping through Playboy and Penthouse in flight. One would expect that most passengers would feel socially constrained in such an environment, and that they would defer such viewing at least until they arrived at their hotels or other destinations. But there will undoubtedly be exceptions. Prior to entering academia, I was part of the trial team that defended the [Children's Internet Protection Act](#) <sup>[4]</sup> (CIPA). CIPA requires that schools and public libraries receiving certain federal funds install content filters on Internet terminals. In the course of defending CIPA, I examined the viewing habits of (anonymous) patrons at various public libraries across the United States and interviewed many librarians. Many library patrons seemed to have no reservations about viewing pornography in the public spaces of the library. I have also seen a few customers in coffee houses viewing pornographic content in full view of other customers (including children). Perhaps these people believed they were being discrete. Perhaps they did not care. In any event, it seems that although this is not likely to be a common occurrence or issue, at least some small number of passengers will view sexually explicit content in the air.

Assuming in-flight porn surfing will occur, what if anything can or should be done about it? It certainly seems irresponsible, not to mention potentially dangerous, for the airlines to simply let the passengers settle any disputes about viewing habits themselves. On the other hand, do we really want flight attendants monitoring or regulating access to Web content?

Suppose a passenger is offended by suggestive but non-sexually explicit content? Will that passenger possess something akin to a heckler's veto? There is, of course, technically no First Amendment issue here (assuming flight attendants are not required to monitor usage pursuant to some government mandate). But this scenario does place both passengers and flight attendants in a rather awkward and potentially adversarial position with regard to personal viewing habits. And, as was the case in some library systems, it could engender a hostile work environment for some flight attendants. Most importantly, perhaps, it seems unwise to add this task to those flight attendants are already expected to perform. In short, having flight attendants act as content monitors does not seem like a workable or wise solution.

Assuming, again, that social norms are not sufficient to deter this behavior, is there a technological or physical fix that might relieve flight attendants from monitoring the use of mile-high Wi-Fi? As in the library setting, perhaps a content filter of some sort might be feasible and workable on planes. But as in libraries, there are bound to be complaints about blocked sites. How will those be resolved? One of the proposed solutions in the library context was to affix "[privacy blinds](#)"<sup>[5]</sup> to the public terminals, thus preventing passersby or nearby patrons from seeing what was on the screen. Headphones would obviously solve any audio intrusions. Perhaps these, or some [other technological solution](#)<sup>[6]</sup>, are the most appropriate response. These are issues that will likely have to be addressed in other contexts in which once "private" content and communication are transported into public places.

(Hat tip to Chris Borgen of [Opinion Juris](#)<sup>[7]</sup> for bringing this issue to my attention.)

---

Article printed from Concurring Opinions: <http://www.concurringopinions.com>

URL to article: [http://www.concurringopinions.com/archives/2008/09/porn\\_air\\_1.html](http://www.concurringopinions.com/archives/2008/09/porn_air_1.html)

URLs in this post:

[1] Speech Out of Doors: <http://www.amazon.com/Speech-Out-Doors-Preserving-Amendment/dp/product-description/0521731968>

[2] article: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=956160](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=956160)

[3] on flights:

<http://www.cnn.com/video/#/video/bestoftv/2008/08/26/pn.policing.porn.airlines.cnn>

[4] Children's Internet Protection Act: <http://www.fcc.gov/cgb/consumerfacts/cipa.html>

[5] privacy blinds: <http://www.compshade.com/>

[6] other technological solution:

[http://www.halfbakery.com/idea/Computer\\_20monitor\\_20privacy](http://www.halfbakery.com/idea/Computer_20monitor_20privacy)

[7] Opinion Juris: <http://opiniojuris.org/>

[8] : <http://klauswerner.com/2008/07/airberlin-boardservice-mit-wixvorlage/>

Copyright © 2010 Concurring Opinions. All rights reserved.