Nat Effects: How the Internet Has Changed Abortion Law, Policy, and Process

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NET EFFECTS: HOW THE INTERNET HAS CHANGED
ABORTION LAW, POLICY, AND PROCESS

The issue has invaded state houses, political campaigns, church
document, talk shows, newspaper opinion pages, the Internet and
even the streets. Most recently, those latter two venues have
attracted considerable attention, for protests have escalated
from civil demonstrations to deadly violence.¹

Although abortion in America has remained an issue over
which this nation is divided, the methods activists use to voice their
views have continued to change and evolve. With the emerging
influence of technology, the Internet has become a new virtual
stomping ground for abortion demonstrators.² In the past four
years, several cases concerning abortion websites (both pro-life and
pro-choice) have been tried in federal court.³ One of the more
notorious cases involved a website which, as part of its propaganda,
reported the names and addresses of abortion doctors and included
a color-coded list of which doctors had been killed.⁴ Other cases at
the crossroads of abortion and the Internet include a 1997 case,
Sanger v. Reno,⁵ and a 1999 case, People of New York v. Operation
Rescue National.⁶ When these cases have been addressed in
academic literature, it has been in the exclusive context of free
speech, and in terms of "just how much protection speech in
cyberspace deserves." In the free speech context, these Internet
cases have been interpreted by some scholars to mean that "media
are changing rapidly, but ultimately, the underlying issues are
not."⁷

At the same time these cases were being decided, the Internet
was also playing a crucial, although unrelated, role in the rhetoric
surrounding the abortion pill, RU-486 (Mifepristone).⁸ Women in
America read on the Internet about how the drug was used in other

¹ Clay Calvert & Robert D. Richards, New Millennium, Same Old Speech: Technology
² Id. at 975.
³ Planned Parenthood of the Columbia/Willamette, Inc. v. American Coalition of Life
Activists (Nuremberg II), 244 F.3d 1007 (2001); People of New York v. Operation Rescue
⁴ Nuremberg II, 41 F. Supp. 2d at 1130.
⁷ Robert D. Richards & Clay Calvert, The "True Threat" to Cyberspace: Shredding the
⁸ Calvert & Richards, supra note 1, at 959.
⁹ See infra notes 78-94 and accompanying text (discussing Mifepristone and its
presence on the Internet).
countries, how the drug worked, and how it was a viable alternative to surgical abortion.\textsuperscript{10} Arguably, the wide availability of information, almost impossible in any other medium, played a significant role in the understanding of, and desire for, medical abortion procedures\textsuperscript{11} in America.

By looking at case law as well as the FDA’s approval of Mifepristone, the Internet has had quite an effect on abortion law, policy, and even the abortion process itself. For example, a woman can now research her abortion choices, choose her abortion clinic, and perhaps, in the future, take her abortion medication without leaving the safety of her home.\textsuperscript{12} In this way, the Internet has changed the abortion process. Although some scholars argue that the issues have not changed in relation to the abortion debate with the advent of the Internet,\textsuperscript{13} this proposition is limited to the discussion of constitutional free speech.

This Note, in taking a broader perspective, operates under the premise that the underlying issues are not the same. Underlying these cases is the new and different impact the Internet has had on abortion law, policy, and process. Due to the unique characteristics of “Internet speech,” courts are examining abortion websites differently than other abortion rhetoric. Grassroots organizations that produce abortion websites are using the Internet medium because it is different than traditional speech.\textsuperscript{14} Subsequently, viewers of these websites are gathering abortion information in

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\textsuperscript{10} See Samara Kalk, RU-486: A Local Teacher’s Experience, \textit{Capital Times}, Feb. 15, 2001, at A1 (discussing the impact the Internet had on an individual’s understanding of and decision to use RU-486); Margaret Talbot, \textit{The Little White Bombshell}, \textit{N.Y. Times}, July 11, 1999, § 6, at 39 (same). \textit{See generally All Things Considered, \textit{National Public Radio} broadcast, Sept. 28, 2000 (discussing how the “abortion pill” has been available in France for over twelve years and women in the United States have been anxious for RU-486 to enter the American market).}

\textsuperscript{11} The term “medical induction” refers to those abortions that are drug induced, which this Note calls “medical abortion.” In contrast, the term “surgical abortion,” or “instrumental evacuation,” refers to an abortion involving a surgical procedure. \textit{The Merck Manual} 2003-04 (Mark H. Bears, M.D. & Robert Berkow, M.D. eds., 17th ed. 1999); \textit{see, e.g.}, Talbot, supra note 10 (using terms “surgical abortion” and “medical abortion” and describing the two).

\textsuperscript{12} See \textit{infra} notes 79-88 and accompanying text (discussing how the Internet has made information and opportunities concerning medical abortion more available to women). It is important to note that at this time, buying or selling Mifepristone online is illegal in America. It is nevertheless possible, however, to purchase the drug online, and may be legal to do so in other countries. For more discussion on this issue, see \textit{infra} notes 112-24 and accompanying text.

\textsuperscript{13} \textit{See supra} notes 7-8 and accompanying text.

\textsuperscript{14} \textit{See Chris Gosnell, Hate Speech on the Internet: A Question of Context, 23 Queen’s L.J. 369, 422 (1998) (stating that “highly public cyberspaces may have powerful real world effects”).}
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ways never before possible with traditional methods of dissemination.\textsuperscript{15}

The first part of this Note provides a background for analyzing the relatively new nexus between the abortion debate and the Internet. This background information includes an examination of the characteristics of the Internet, how the Internet has been used by both sides of the abortion debate, and prominent cases concerning abortion and the Internet. The second part contains an in-depth analysis of two of the most prominent controversies at the Internet/abortion crossroads: The Nuremberg Files website and the RU-486 (Mifepristone) debate. The third part elaborates on the analysis in the second part, concluding the Internet has had an important effect on abortion law and policy in America. It also analyzes the future potential effects of the Internet on abortion, including the real and perhaps inevitable effect the Internet has had or will have, on the abortion process. This Note concludes with the suggestion that the impact of the Internet on the abortion issue needs to be accepted and understood by legislators, courts, and activists, as this impact is likely to increase as technology advances.

\section*{BACKGROUND}

\textit{The Internet as a Unique Communication Medium}

To lay the foundation for this Note's argument that the Internet has changed the abortion debate, it is important to first establish the uniqueness of the Internet as a communicative medium. Approximately 300 million people use the Internet worldwide,\textsuperscript{16} each able to read and contribute to the massive amount of information available. According to a recent article in \textit{PC Magazine}, "[n]ot only does the Internet put a huge amount of information at our fingertips, it also makes active participation easy."\textsuperscript{17} Within the Internet, the World Wide Web is often touted as the most

\textsuperscript{15} For example, teens can access the Planned Parenthood website (www.plannedparenthood.org), and learn about everything from pregnancy prevention and abortion methods to sexually transmitted diseases. Instead of traveling to a Planned Parenthood facility (and possibly encountering protesters), teens can now learn about their options and their rights within the privacy of their own homes.

\textsuperscript{16} John Taschek, \textit{Computing is Coming Down to the Wire; Industry Trend or Event}, \textit{EWeek}, Sept. 18, 2000, at 83 (citing a recent Nielson study noting half of those users reside in North America).

\textsuperscript{17} Nancy Sirapyan, \textit{Politically Connected}, \textit{PC Magazine}, Sept. 19, 2000, at 135.
community-focused, information-rich subset that has emerged.\textsuperscript{18} Both the emergence of the Internet and its widespread use have caused lawmakers to try to assess what type of protection Internet communications deserve.\textsuperscript{19} Cases such as \textit{Reno v. ACLU}\textsuperscript{20} have established that, "[f]or the moment, speech... on the Internet and [World Wide Web] is accorded the highest level of First Amendment protection."\textsuperscript{21}

All of these characteristics help explain why the Internet has become the newest trench from which to fight the abortion controversy. Within this new marketplace of ideas, both sides of the controversy can reach new audiences, speak freely, and elevate their platforms.\textsuperscript{22} The extent to which the unique characteristics of the Internet play a crucial role in today's abortion debate is best seen by comparing two quotations concerning the Nuremberg Files website:

\begin{enumerate}
\item For a time, the internet appeared to provide a safe haven for both mainstream and radical thoughts whirling together to form a truly "uninhibited, robust, and wide-open" marketplace of ideas. That notion ended abruptly in February, 1999 when a Portland, Oregon jury ordered over 100 million dollars in damages against the creators of an anti-abortion World Wide Web site, thus triggering the next major battle over just how much protection speech in cyberspace deserves.\textsuperscript{23}
\item The widespread accessibility of information on the Internet has been touted as its most promising feature in promoting the marketplace of ideas concept. When this tool is used to disseminate personal information about individuals involved in abortion
\end{enumerate}

\textsuperscript{18.} \textit{Developments: The Law of Cyberspace: Communities Virtual and Real: Social and Political Dynamics of Law in Cyberspace,} 112 HARV. L. REV. 1586, 1592 (1999) [hereinafter \textit{Developments}]. "The World Wide Web enables Internet users to access 'websites' from computers around the globe. Generally, each site contains a directory of webpages, which frequently possess audiovisual and interactive capabilities and increasingly provide access to chat groups and bulletin boards related to the website's topic." \textit{Id.}

\textsuperscript{19.} \textit{See infra} notes 46-58 and accompanying text (discussing three primary cases tackling the nexus between protected communications and the Internet).

\textsuperscript{20.} 521 U.S. 844 (1988).


\textsuperscript{22.} \textit{See generally} Richards & Calvert, supra note 7; Melanie C. Hagan, \textit{The Freedom of Access to Clinic Entrances Act and the Nuremberg Files Website: Is the Site Properly Prohibited or Protected Speech?}, 51 HASTINGS L.J. 411 (2000) (discussing the uninhibited nature of the Internet and how this can be both a blessing and a curse). Also, the pro-choice websites of Planned Parenthood and NARAL, as well as pro-life websites such as Nuremberg Files, all indicate within their sites their hope of reaching more people through the World Wide Web.

\textsuperscript{23.} Richards & Calvert, supra note 7, at 291 (footnotes omitted).
services, including home addresses and information regarding children and spouses, at the same time describing these individuals as "baby butchers," the Internet's widespread availability becomes exactly the problem.\textsuperscript{24}

These quotations illustrate the controversy one website can bring to the abortion discourse, and how the characteristics of the Internet have created new possibilities and new problems for both sides of the debate. The specific ways in which the Internet has changed abortion law and policy are discussed in more depth below. With this foundation in place, a brief exploration into the current abortion climate is warranted.

The Current Abortion Climate

One area of concern in the modern abortion climate has been violence against abortion clinics and clinic workers.\textsuperscript{25} Picketing, threats of violence, and the murder of abortion doctors have reduced the number of abortion clinics across America.\textsuperscript{26} One study reports the decreased availability of abortion clinics means twenty-five percent of women seeking an abortion will have to travel a minimum of fifty miles to receive an abortion.\textsuperscript{27}

To curb clinic violence, Congress enacted the Freedom of Access to Clinic Entrances Act (FACE)\textsuperscript{28} and the Supreme Court upheld

\begin{itemize}
\item \textsuperscript{24} Hagan, \textit{supra} note 22, at 426 (footnotes omitted).
\item \textsuperscript{25} Calvert & Richards, \textit{supra} note 1.
\item \textsuperscript{26} David Whitman & Stacey Shultz, \textit{A Little Pill but a Big Dispute}, \textit{U.S. NEWS \& WORLD REP.}, Oct. 9, 2000, at 18, 19.
\item Proponents can now easily identify abortion providers, and the picketing, harassment, and incidents of violence — including the murders of three doctors — have thinned the ranks of clinics, hospitals, and physicians offering abortions in recent years. Nationwide, the number of abortion facilities fell from 2,380 in 1992 to 2,042 in 1996, the latest year for which statistics are available. \textit{Id.}; see also Nancy Gibbs, \textit{The Pill Arrives}, \textit{TIME}, Oct. 9, 2000, at 40, 42.
\item \textsuperscript{27} Gibbs, \textit{supra} note 26, at 42.
\item \textsuperscript{28} Freedom of Access to Clinic Entrances, 18 U.S.C. § 248 (2000).
\end{itemize}

Prohibited activities. Whoever

(1) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class or persons from, obtaining or providing reproductive health services;

(2) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person lawfully exercising the First Amendment right of religious worship;

or

(3) intentionally damages or destroys the property of a facility, or attempts to do so, because such facility provides reproductive health services, or
the constitutionality of fixed buffer zones around abortion clinics.\textsuperscript{29} Subsequent to the Supreme Court decision, state legislatures have either been trying to expand the buffer zone or shrink it, and state courts have been trying to determine exactly what is constitutional.\textsuperscript{30} Despite the legislative wrangling, FACE has apparently reduced the amount of clinic violence.\textsuperscript{31}

Despite the reduction in clinic violence, the Internet creates new dangers and concerns for those worried about easy identification and targeting of abortion clinics.\textsuperscript{32} Once the name and address of an abortion clinic is posted online, that information is made available to the world, and to any person with a desire to use that information in a criminal manner. Abortion websites, therefore, can have a very powerful real world effect.

\textbf{The Use of the Internet in the Abortion Debate}

The number of websites focusing on abortion rights and information is as staggering as the amount of websites on virtually any subject of public significance.\textsuperscript{33} There are a few sites, however, due to their national recognition, that warrant overview. By examining these sites, a viewer can begin to see the breadth of information concerning abortion readily available on the Internet,

intentionally damages or destroys the property of a place of religious worship, shall be subject to the penalties provided....

\textit{Id.} at § 248(a).

\textsuperscript{29} Madsen v. Women's Health Ctr., 512 U.S. 753, 770 (1994); Calvert & Richards, \textit{supra} note 1, at 977-78.

\textsuperscript{30} Calvert & Richards, \textit{supra} note 1, at 978.

In Colorado, for example, the state's highest court in February 1999 affirmed the constitutionality of an eight-foot buffer zone around individuals entering or leaving a clinic. This time the floating bubble zone, the very kind struck down by the United States Supreme Court as too burdensome on speech, was enacted by a legislature rather than ordered by a judge. Colorado's high court found enough of a difference to bring it within constitutional boundaries.... Similar attempts to create buffer and floating bubble zones have occurred in the last few years in Massachusetts, Texas, Arizona, and New Jersey with mixed results.

\textit{Id.} (footnotes omitted).

\textsuperscript{31} Hagan, \textit{supra} note 22, at 416. "Overall clinic violence, including bomb threats, arson, death threats and stalking, still plagues approximately 25% of clinics, with this figure down from approximately 52% of clinics in 1994." \textit{Id.}

\textsuperscript{32} \textit{See infra} notes 51, 61-74 and accompanying text (discussing the Nuremberg Files website and the concern that evolved from the threats originating from this site). \textit{See generally} Whitman & Schultz, \textit{supra} note 26 (discussing how easy identification of abortion clinics has contributed to fewer abortion clinics available).

\textsuperscript{33} The Internet has become an almost inexhaustible network of websites. In 1998, it was estimated that there were "20,000 websites coming online every month." Peter Economy, \textit{How to Attract Business via a Website}, \textit{TRAINING & DEV.}, May 1, 1998, at 97, \textit{available at} 1998 WL 10952756.
and can begin to understand why many women are using the Internet to learn more about their reproductive choices and the political movements concerning those choices.

An individual seeking information on abortion would not have to search online for long before he or she found information from both pro-life and pro-choice activists.\textsuperscript{34} The National Right to Life organization has a prominent site that contains information on "when life begins," partial birth abortion, medical facts concerning abortion, and many other issues.\textsuperscript{35} Moreover, the National Right to Life organization asks visitors to subscribe to an e-mail list which they call, "a way to bring crucial, time sensitive material to our grass-roots supporters."\textsuperscript{36}

Individual state chapters of pro-life organizations, such as Florida Right to Life, have also established websites.\textsuperscript{37} One of the more controversial right to life websites is the Nuremberg Files, a website so controversial that its location on the Internet changes regularly.\textsuperscript{38} This website will be discussed in depth in later sections of this Note.

Pro-choice advocates also use the Internet to disseminate their message. The Abortion Rights Activist is a website proclaiming it has been "serving the Pro-Choice community online since June 19, 1995."\textsuperscript{39} The purpose of the website is simple: "to provide information to the pro-choice community, to others with an interest in abortion and abortion-related issues, or to women seeking an

\begin{footnotesize}
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\item[38] Nuremberg Files Website, at http://www.ru486registry.com/atrocity/index.html (last visited Mar. 12, 2001). This website is the location of the entire Nuremberg Files Website as of March 12, 2001, even though the URL would indicate it is only the location of the RU-486 registry. The location of the website changes frequently.
\item[39] Over twenty Internet Service Providers have removed the site, saying it did not comply with the service agreement, or violated a law or regulation. George M. Kraw, \textit{Net Loss: A Pair of Rulings Raises Questions About Governmental Control of Speech on the Net}, INTELL. PROP. MAG., Mar. 1999, LEXIS, Nexis Library, Magazine Stories; Sharon Lerner, \textit{The Nuremberg Menace}, THE VILLAGE VOICE, Apr. 10, 2001, at 48; see also Nuremberg Files Website, \textit{Is Neal Horsley the Most Censored Writer in America? Look at the Evidence}, at http://www.ru486registry.com/articles98/ajc-lore.htm (last visited Mar. 12, 2001) (expressing the opinion that Mindspring, OneNet, BellSouth, Media3, and many other Internet Service Providers have "censored [Neal Horsley's] work when Planned Parenthood and their allies began screaming their hysteria").
\end{footnotes}
\end{footnotesize}
abortion."\textsuperscript{41} Another website, Abortion Clinics Online, gives a non-comprehensive listing of abortion clinics by state and by category: medical, surgical, or late-term.\textsuperscript{42} Planned Parenthood also has a comprehensive site which, in addition to providing question and answer sections concerning medical and surgical abortions,\textsuperscript{43} provides "the safe place in cyberspace for teens to talk about sexual health."\textsuperscript{44}

These sites, both pro-life and pro-choice, are a mere sampling of the information available online. Informational websites concerning abortion are not only utilized by the community at large, but are also often referenced in written publications as a method of finding further information on the topic.\textsuperscript{45} These websites have become a part of the information cycle in this country and in others, and should not be ignored as to their potential impact.

\textit{An Overview of Litigation Involving Abortion Websites}

One final area warrants exploration before beginning an analysis of case studies and conclusions: recent litigation concerning abortion Internet sites.

In \textit{Planned Parenthood of the Columbia/Willamette, Inc. v. American Coalition of Life Activists,}\textsuperscript{46} the constitutionality of the content of the Nuremberg Files website was addressed as well as the constitutionality of various anti-abortion posters created by the same group, the American Coalition of Life Activists.\textsuperscript{47} The United

\begin{itemize}
\item \textsuperscript{41} The Abortion Rights Activist, About this Site, at http://ww1.cais.com/agm/main/about.htm (last visited Dec. 13, 2000).
\item \textsuperscript{43} Planned Parenthood: Abortion, at http://www.plannedparenthood.org/ABORTION (last visited Oct. 30, 2000).
\item \textsuperscript{44} Planned Parenthood: Research Information, at http://www.plannedparenthood.org/research/index.html (last visited Oct. 30, 2000).
\item \textsuperscript{45} See, e.g., Wes Allison, \textit{Pill may not Revolutionize Abortions}, ST. PETERSBURG TIMES, Sept. 17, 2000, at 1A (including a section entitled, "Online information: These Internet sites offer more information about the abortion pill"); Mary Powers, \textit{"The Pill" Better Late than Never; Many Unaware of Emergency Contraception}, THE COM. APPEAL, Nov. 15, 1999, at C1. It lists:
\begin{itemize}
\item Websites with... information: "Princeton University's Office of Population research operates a Web site dedicated to emergency contraception.... The Henry J. Kaiser Family Foundation... has a Web site at http://www.kff.org. Click on the reproductive and sexual health section. The American Medical Women's Association Web site also has information. Go to http://www.amwadoc.org and click on the sex and sensibility section.
\end{itemize}
\item \textsuperscript{46} \textit{Nuremberg I}, 41 F. Supp. 2d 1130 (D. Or. 1999).
\item \textsuperscript{47} \textit{Id}.
\end{itemize}
States District Court for the District of Oregon ruled both the website and the poster were threats under the FACE Act.\(^48\) The court ordered a permanent injunction\(^49\) against the defendants, to be coupled with a jury verdict of over $100 million.\(^50\) As stated by Richards and Calvert, "[t]he jury clearly viewed the Nuremberg Files web site as an implicit invitation to do violence to the individuals listed."\(^51\) On March 2001, the United States Court of Appeals for the Ninth Circuit disagreed, holding the Nuremberg Website did not rise to the level of incitement under the First Amendment, and vacated the verdict of the lower court.\(^52\) Both the lower court and appellate cases, as well as the website underlying them, will be discussed in more depth in the next section.

In \textit{Sanger v. Reno}, Planned Parenthood of New York City (PPNYC), along with other pro-choice organizations, intended "to use interactive computer services to transmit or receive abortion related information prohibited under the [Communications Decency] Act."\(^53\) Although they had not been prosecuted yet, the plaintiffs were seeking a pre-enforcement ruling. The court held that, "[b]ecause plaintiffs have not demonstrated any hardship resulting from a denial of review at this time, plaintiffs' pre-enforcement facial challenge to the constitutionality of the Act on First Amendment grounds is not ripe."\(^54\) The court, however, did discuss the nature of the Internet and referred to the \textit{ACLU U v. Reno} decision in stating, "it would not be technically feasible for a single entity to control all of the information conveyed on the Internet."\(^55\)

In the 1999 case, \textit{People of New York v. Operation Rescue National},\(^56\) the plaintiffs attempted to prevent the defendants from engaging in protest outside of the abortion clinics in violation of the FACE Act.\(^57\) Although this was primarily a procedural holding, the discussion in the case showed the important role an Internet site can have in establishing a potential violation of the FACE Act. As the court explains:

\begin{itemize}
\item \textit{Id. at 1154.}
\item \textit{Id. at 1155.}
\item Hagan, \textit{supra} note 22, at 411-12.
\item Richards & Calvert, \textit{supra} note 7, at 293.
\item \textit{Nuremberg II}, 244 F.3d 1007, 1020 (9th Cir. 2001).
\item \textit{Id. at 165.}
\item \textit{Id. at 163.}
\item 69 F. Supp. 2d 408 (W.D.N.Y. 1999).
\item \textit{Id.}
\end{itemize}
ORN (Operation Rescue International)) also maintains an Internet site in its organizational name, www.orn.org, on which it posts announcements of the upcoming events that it is planning, including exhortations to participate. Plaintiffs have submitted copies of these newsletters and printouts from the Internet site pertaining to the events that gave rise to this suit.... As this Court has previously held, an association that produces and distributes literature encouraging participants to protest at abortion clinics, that has official spokespersons and designated leaders who organize and plan its activities, that possesses a mailing address and telephone number, and that engages in correspondence "possesses adequate characteristics of a legal entity to be enjoined or held in contempt."

These cases show how abortion websites are slowly making their way into legal controversies. Some of these cases, such as People v. Operation Rescue, illustrate the manner in which a website can contribute to the legal understanding of an association or entity. Others, such as the Nuremberg cases, show the manner a website can contribute to the legal and illegal actions of a grassroots movement.

By examining the nature of the Internet and the modern abortion controversy, exploring the substance of some key abortion websites, and briefly exploring three court cases that address abortion websites, the foundation has been laid to understand the way these websites have begun to affect abortion law, policy, and process. Two illustrative cases — the Nuremberg Files website and the recent legalization of Mifepristone — will clarify the impact of the Internet on the abortion debate.

CASE STUDIES

The Nuremberg Files website

Discussed briefly above, the Nuremberg Files website warrants further detail and discussion not only because of the attention it has attracted (both politically and legally), but also because of the bold and often disturbing content of this site. The Internet allows for the use of visual queues, written text, audio, animation, and video; websites can be a sensory experience. The Nuremberg

58. Id. at 414.
59. See infra notes 61-77 and accompanying text.
60. See infra notes 78-94 and accompanying text.
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website uses visual images and strong language in an effort to push the anti-abortion agenda.61

The most controversial section of the website is the list of abortion advocates and their personal information. "The Nuremberg Files website lists 524 individual names in long lists separated into six categories. In addition to doctors and clinic owners, the lists include members of Congress, police officials, the President [Clinton] and Vice President [Gore], and all the present Supreme Court Justices who support abortion....62 Accompanying the names of the individuals is all of the information the website curators are able to gather concerning those individuals, including addresses, phone numbers, names of family members, social security numbers, and even license plate numbers.63 Names on the list are coded as to whether a pro-choice individual on the list is still alive and working (black), physically wounded (gray), or killed (struck through).64 This website found its way into court because these lists appeared to many viewers, and especially to pro-choice individuals included on the lists, as a hit list.65 For example:

The Nuremberg Files and its operator, Neal Horsley, a Georgia computer programmer, gained media attention shortly after the October 1998 sniper shooting of Dr. Barnett Slepian, a Buffalo, New York abortion physician. Dr. Slepian's name was crossed off the list soon after his murder, leaving many to wonder whether a connection existed between those who operated the site and those who committed the killing. Horsley claimed, however, that the site is merely used to collect evidence on abortion doctors in the hopes that if abortion is outlawed, these doctors will be put on trial like the Nazi war criminals of Nuremberg. In response to questions regarding the practice of

61. Nuremberg Files Website, supra note 38. The homepage of The Nuremberg Files contains images and text with dripping blood, contains links such as "Horrible Picture Smuggled From Baby-Butcher Lab," and "Click Here to See the List of Baby Butcherers and a Few of the People who have been Killed Since the Supreme Court Legalized Baby Butchering in the USA." Id.


64. The Nuremberg Files List, supra note 63 (listing includes women who have died from complications following abortions, with their names appearing "struck through"); Hagan, supra note 22, at 414; Richards & Calvert, supra note 7, at 292; Scott, supra note 62.

65. Scott, supra note 62; Richards & Calvert, supra note 7, at 292; Calvert & Richards, supra note 1, at 975.
crossing out names, Horsley stated that these categories are meant to show that "the legalized war of abortion is leading to a crescendo of domestic terrorism. When I scratch out a name, I'm saying 'I told you so.'" In an interview just prior to Dr. Slepian's murder, Horsley responded to questioning regarding how he would feel if a murderer used his site to pick a victim, by stating, "I wouldn't be surprised. The situation we're looking at inevitably incites certain people to take the lives of those who are killing children."

As previously noted, the Nuremberg Files website was challenged in court, and was originally found to be a violation of the FACE Act. The plaintiffs in that case, including Planned Parenthood, won a $107 million verdict from the lower court. This verdict was vacated in March, 2001. Planned Parenthood is planning on appealing the Ninth Circuit decision. The actual effect of any verdict against the Nuremberg website and its creators is questionable; regardless of verdicts rendered against the website (including injunctions), its content, tone, and presence on the Internet has not significantly changed. In fact, the site has been expanded to include an entire section related to RU-486 with the inclusion of a new "list": doctors, hospitals, and clinics that prescribe RU-486. As stated on the website,

[expanding on the Nuremberg Files that preceded this RU486 Registry, this website will attempt to create a database of those baby butchering "doctors" and their closest blood cohorts in hopes that the American people will overcome the demonic forces presently enslaving this nation and will finally prosecute the purveyors of death listed herein.]

67. See supra notes 48-49 and accompanying text; Gey, supra note 62, at 542.
68. Gey, supra note 62, at 551.
69. Nuremberg II, 244 F.3d 1007, 1020 (9th Cir. 2001); Award is Overturned in Abortion Doctors Case, N.Y. TIMES, Mar. 29, 2001, at A23.
70. Lerner, supra note 39, at 49.
71. Nuremberg Files Website, supra note 38.
72. Id. Neal Horsley defiantly explains that, "[w]e have learned how to be shut down one day and be up and running the next." Id.; see also Lerner, supra note 39, at 49 (reiterating the persistent presence of the Nuremberg Website on the Internet).
74. Id. Contra Bill Berkowitz, Invitation to Terrorism, IN THESE TIMES, Feb. 19, 2001, at 8 (stating that, "[a]t its core, Horsley's RU-486 registry is another open invitation to terrorism").
Certainly, this new RU-486 website indicates the creators of the Nuremberg Files have not been slowed by court decisions, and in fact have continued to expand their battle in the electronic forum.

As a corollary to the Nuremberg website, however, many pro-choice websites have used their bandwidth to warn others about the Nuremberg website, and to further their own message against this website and its potential illegality. These messages have in turn made their way into Congress. For example, the National Abortion Rights Action League (NARAL) helped guide a legislative amendment that would prevent those who have violated the FACE Act (such as the creators of the Nuremberg website) from filing for bankruptcy as a mechanism of avoiding the large monetary verdicts brought against them. The amendment was in response to the bankruptcy pattern established by the defendants in the Nuremberg Case who were originally faced with a $107 million verdict.

**RU-486**

Although the legalization of RU-486 is a relatively recent occurrence, the role of the Internet in this aspect of the abortion issue is already beginning to appear. A closer examination of RU-486 and the Internet’s contribution to the rhetoric is important because it offers insight into how the Internet will affect other emerging movements, legalizations, and changes in the abortion climate.

To begin, a story shared by one reporter illustrates the most common role the Internet will probably play in the RU-486 movement:

On the day I spend in Schaff’s Rochester office, his last medical abortion patient is a 28-year-old secretary from a little upstate town who cares most of all about the privacy this method affords her.... She has been reading about mifepristone on the Internet and anticipates much of what the counselor has to tell her. “I didn’t want to go to a clinic and have to walk through a big line of protesters,” she says, without hesitation, when I ask her why she didn’t choose a surgical abortion. “I

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76. NARAL Resources, supra note 75.
77. Id.
78. RU-486 was approved by the FDA in September of 2000. See Reproductive Choice issues, at www.naral.org/issues_ru486.html (on file with author).
liked the idea of going to a hospital, of nobody knowing why I was going.\textsuperscript{79}

In many ways, the story of this twenty-eight year old woman may tell the story of many women seeking abortion alternatives: a desire for privacy, confidentiality, and safety. How better to explore those alternatives than to go online; to an environment where a woman can explore choices without having to be exposed to protesters or other members of the public. Similarly, just as the Internet shields women from protesters and violence (which she may be exposed to if she seeks information from a clinic), so too RU-486 attempts to shield women from the same threats.

The abortion pill... was promoted as a way to move abortion from clinics, which attract sidewalk protesters and sporadic violence, and into the more private doctor's office or the patient's home. The pill would address the personal and the political of a decades long controversy – and perhaps start to defuse it.\textsuperscript{80}

Mifepristone, what RU-486 will be called in America, works in the early weeks of pregnancy to block hormones "vital to sustaining pregnancy."\textsuperscript{81} Most literature suggests the entire process requires three doctor visits,\textsuperscript{82} although the process requires fewer visits in Europe.\textsuperscript{83} The process is explained by Shultz:

During the initial visit a woman is examined; if everything is ok, she takes three mifepristone (brand name: Mifeprex) tablets. Two days later, she returns to the physician's office for a dose of misoprostol. Most women experience intense cramping and heavy bleeding soon after taking the second drug... The embryo is usually expelled within 24 hours of taking the pills; a follow-up visit two weeks later confirms that the pregnancy has ended. In

\textsuperscript{79} Talbot, \textit{supra} note 10; see Kalk, \textit{supra} note 10, at 1A (telling a similar story of a thirty-year old woman who researched RU-486 online before deciding to choose medical abortion over other surgical alternatives).

\textsuperscript{80} Jean Marbella, \textit{RU-486 is Mired in Debate on Abortion}, CHI. SUN TIMES, June 18, 2000, at 26.

\textsuperscript{81} Abortion pill approved: RU-486 expected to be available within a month, \textit{RICH. TIMES-DISPATCH}, Sept. 29, 2000, at A1.


\textsuperscript{83} Gail Vines, \textit{Contraceptives?: There's a Revolution Going on in Birth Control for Men and Women. But the Drug Companies have all but Abandoned Research...}, \textit{NEW SCIENTIST}, Apr. 30, 1994, at 36 (noting that in France, a medical abortion using RU-486 required only two office visits).
some cases, a surgical abortion is necessary because the abortion has not been completed or bleeding is too severe.\textsuperscript{84}

Although the use of Mifepristone in the United States will be a new occurrence, the drug has been used widely in Europe for some time.\textsuperscript{85} Including the United States, there are now ten countries that have approved RU-486.\textsuperscript{86}

One main difference between RU-486 and a surgical abortion is the type of doctor qualified to administer the "abortion." The standard used with RU-486 is whether the doctor is able to detect pregnancy, and whether the doctor is able to perform the surgical abortion or refer the individual to a location where the surgical abortion can be conducted if the medical abortion is not a complete success.\textsuperscript{87} The standard used with surgical abortions, in contrast, is much higher.\textsuperscript{88}

Besides providing a source of information concerning medical abortion for those women considering such a procedure, the Internet has played two other important roles with regard to RU-486: acting as campaign tool for the hopeful approval of the drug, and as activist tool for exposing those who may prescribe the drug. In terms of the former, because other countries had approved the drug over a decade ago, women in America were able to read and learn about the drug long before it was approved in America.\textsuperscript{89} Knowing Americans are "wired," groups like The Population Council used their websites to inform Americans about the new drug three years ago, in hopes of garnering political support for the drug.\textsuperscript{90}

The later, exposing potential RU-486 providers, is a role feared by many advocates of Mifepristone.\textsuperscript{91} As already discussed, the creator of the Nuremberg Files website has created a new online "Registry" for any doctors who are prescribing the abortion drug.\textsuperscript{92}

\textsuperscript{84} Shultz, supra note 82.
\textsuperscript{85} Marbella, supra note 80 (stating that "RU-486 has been used by more than 500,000 women in Europe[, and o]nly one death has been associated with the drug"). For example, France approved RU-486 over a decade ago, in 1988. Id.
\textsuperscript{86} Abortion pill approved, supra note 81.
\textsuperscript{87} David France & Debra Rosenberg, The Abortion Pill, NEWSWEEK, Oct. 9, 2000, at 26, 29; Gibbs, supra note 26, at 41.
\textsuperscript{88} Gibbs, supra note 26, at 41.
\textsuperscript{90} FDA's Nod for 'Abortion Pill' Gives Birth to PR War, O'DWYER'S PR SERVS. REP., June 1997, at 1.
\textsuperscript{91} See infra notes 92-94 and accompanying text.
\textsuperscript{92} See supra notes 73-74 and accompanying text.
And pro-life-activists are warning they’ll discover who is prescribing it and expose them “doctor by doctor,” says the Rev. Flip Benham, director of Operation Save America (formerly Operation Rescue). “If there’s any doctor in any city that thinks he can prescribe this and have any degree of anonymity, he is mistaken,”... “They want to put their practice in jeopardy, they can start prescribing this pill.  

Although pro-life activists warned they would attempt to create such lists, it was through the Internet that this intimidation tactic was first realized.  

By examining the Nuremberg Files website and the passage of RU-486 in America, the varied ways the Internet has become immersed in the abortion climate of America becomes clear. Unlike the manner in which the Internet has invaded almost every aspect of society, however, the way in which the Internet has invaded the abortion debate is unique. The Internet has arguably changed abortion law, policy, and process in America. The following conclusions in part three help elucidate this point.  

CONCLUSIONS

Conclusion 1: The Internet has had an effect on abortion law and policy and on the constitutional understanding of freedom of “Internet speech.”  

In analyzing the effect of the Internet on abortion law, the following perspective is an important one to remember: “We have only begun to encounter the communities that cyberspace makes possible and to apply our legal principles and rules to the unique situations created by Internet-enabled interactions. Legal rules will certainly affect which communities thrive and which fail....”  

Indeed, it would be naïve to think a new system (the Internet), which has become part of the American institution, would not be affected by one of the oldest and most revered institutional systems in America: the rule of law. Within the abortion debate, the nexus between these two areas is important.

93. France & Rosenberg, supra note 87, at 28.  
94. In researching this Note, I found the RU-486 Registry online before the drug was ever prescribed in America, and almost immediately after the FDA’s decision to legalize the drug.  
95. Developments, supra note 18, at 1609.
The first conclusion can be analyzed within the context of the Nuremberg Files website. The legal issue of this case was whether the Nuremberg website constituted a true threat under the FACE Act.\footnote{Nuremberg I, 41 F. Supp. 2d 1130 (D. Or. 1999).} Because the defendants used the Internet, the gravity of the threat became exacerbated due to the reality of unlimited dissemination.\footnote{Hagan, supra note 22, at 439.} Some scholars speculate that the reasoning behind the large jury verdict was the jurors felt posting the content online increased the potential for harm (thus elevating the speech to a true threat).\footnote{Id.} Even the Ninth Circuit stated that, "[b]y publishing the names and addresses, [they] robbed the doctors of their anonymity and gave violent anti-abortion activists the information to find them."\footnote{Nuremberg II, 244 F.3d 1007, 1013 (9th Cir. 2001).} Nonetheless, the Ninth Circuit reversed the lower court ruling.\footnote{Id. at 1020.} The Nuremberg cases, when viewed in tandem, have added context to the definition of a true threat under the FACE Act, and more importantly, have established that the content of a website can indeed constitute a true threat (even though the Nuremberg website did not rise to the level of a true threat in this case).\footnote{Id.; Jason Schlosberg, Judgment on “Nuremberg”: An Analysis of Free Speech and Anti-Abortion Threats made on the Internet, 7 B.U. J. SCI. & TECH. L. 52, 71 (2001).} This evolution is significant to both Internet and abortion law, and opens the door for future litigation concerning similar websites or for other claims against new Nuremberg web pages. Ultimately, decisions such as those in the Nuremberg cases could alter the legal understanding of what constitutes a "buffer zone" around abortion clinics.\footnote{"However, until [Nuremberg], FACE had only been used to combat threats made during face-to-face communications. Because the threatening communications in [Nuremberg] were made via a web site, the dynamics of the situation have changed." Id. (footnotes omitted).}
The Internet is also affecting the abortion debate on the legislative front. As Republicans attempt to restrict use of Mifepristone, they are considering legislation that would create a confidential governmental “registry of providers.” In so doing, however, they have had to keep in mind the unintended consequences of the Internet:

[A] provision under consideration by Coburn and his aides would require the creation of a registry of providers — a list of doctors who may prescribe the abortion drug. In the past, antiabortion groups have posted on the Internet the names of physicians and clinics performing abortions. “The registry is intended to give the government knowledge of providers,” said John Hart, an aide to Coburn. “There may be a way to do it and avoid some of the obvious problems.”

In Michigan, the Internet has been considered, and even included, in state abortion legislation that requires “[a woman to] receive information about the nature of her abortion as well as other options at least 24 hours before the procedure.” Recently, Michigan passed another bill regulating how that information should be received, and concluded that an abortion provider’s fax or private Internet site is insufficient. “A woman must get the word through a state sponsored Web site, by certified mail, or in person, even if it means taking additional time off work.” These two legislative examples illustrate the effect of the Internet: so many individuals are using the Internet that its effects and impacts must be addressed in legislation.

104. Id.
105. Id.
106. Id.
107. Id. (emphasis added). Although a private Internet site was considered insufficient for information, the Michigan legislature concluded that a state sponsored website was sufficient. This legislation affirmed the significant role the Internet can have in the abortion process.
The Internet, in addition to the areas discussed above, is having an effect on abortion policy in America. Special interest groups often head the policy debate, and the same holds true for the abortion controversy. These public policy efforts have expanded from the political action committees of Washington, D.C., to the digital community. Planned Parenthood spent several million dollars in 2000 sending out political e-mail messages in hopes of impacting voters in the presidential and congressional elections.

Also during the 2000 presidential election, NARAL established an on-line campaign exposing “George W. Bush’s Anti-Choice position” through the use of banner advertisements on prominent newspaper websites. NARAL used these banners as part of their “public education campaign” and as “just one part of NARAL’s comprehensive campaign to make sure the American public knows his true position.”

This discussion warrants the conclusion that the Internet has become part of legislation, policy initiatives, and even the establishment and modification of legal standards. In this respect, the unique nature of the Internet and its effect on a political movement cannot be ignored. Can the uniqueness of the Internet, however, extend into actually altering the abortion process? As the following analysis will indicate, the answer may be yes.

Conclusion 2: The Internet has the potential to significantly alter the abortion process in America

Information can lead to revolution, and the question today is whether the amount of information available on the Internet concerning abortion is substantial enough to create such a revolution in the abortion process in America. The president of Planned Parenthood has said the following concerning the abortion information available on the Internet:

[M]ore people are more knowledgeable about their reproductive lives and what is available to them. “There has been an explosion of information on the Internet, and more information is readily available to more people. As health-care consumers,

108. Virtually all major pro-choice and pro-life lobbying groups have an online presence in addition to their physical presence in Washington D.C. See, e.g., http://www.naral.org.
109. Jill Lawrence, Going all out to get the Vote: Internet’s Potential to Increase Turnout is Unproven, USA TODAY, Oct. 30, 2000, at 4A.
111. Id.
women believe they have a right to know, and they ask more questions."112

In other countries, the Internet has even more drastically altered the reproductive choice process.113 In New Zealand, a website offers women free morning-after pills "no questions asked."114 The group also is planning on expanding their offerings to RU-486 (currently illegal in New Zealand).115 In Taiwan, thousands of women are also obtaining RU-486 from the Internet, even though online sales in Taiwan of the abortion drug are illegal.116 Moreover, in an effort to curb online illegal sales, the Taiwan Health Department approved the use of RU-486 in hopes that making the drug legal would help prevent illegal, and potentially unsafe, distribution of the drug.117 The question then becomes: could the Internet have a similar effect in the United States that it had in New Zealand and Taiwan?

In terms of Mifepristone, the FDA made its regulatory guidelines clear, and has stipulated it is to be dispensed only by doctors, not by pharmacies.118 If the guidelines concerning Mifepristone were to change, however, and a woman could fill the prescription at the pharmacy, then she could feasibly order the prescription on-line.119 The thought may seem far-fetched, however other note-worthy drugs can already be purchased over the

113. See infra notes 114-15 and accompanying text.
117. Id. "The central government's Department of Health yesterday approved the use of the controversial abortion pill RU-486, conceding that a ban on the drug had not stopped women from taking it to end unwanted pregnancies." Id.
118. Gibbs, supra note 26, at 41-42.

The Internet can strengthen the relationship between provider and patient by empowering the patient with accurate and immediate knowledge about his/her specific condition and the medications that they have been prescribed. An informed patient can return to their doctor with focused questions that can result in more efficient treatment.

Id.
For example, "the FDA has not required that doctors be specially certified to prescribe the male impotency drug Viagra. The drug, associated with several dozen deaths, can be purchased over the Internet." Women can already research their reproductive choices, find a clinic that best suits their needs, and find support and counseling online. If women could order their "abortion" prescription online then every part of the reproductive choice process would be put in the hands of the woman, in a safe and private environment free from protests and intimidation. Moreover, both sides of the abortion debate could abandon the physical showing outside of clinics. This prospect is already one hope of Mifepristone supporters: "Mifepristone may 'turn the tide against anti-choice intimidation,' because doctors who don't offer surgical abortion can use the pill in private offices instead of protester-targeted clinics."

One limitation of the above scenario is American women currently are required to be in a medical office for the phases of the medical abortion procedure. If women could fill their own prescription, however, two key advantages would emerge. First, creating Nuremberg-style registries of doctors ordering Mifepristone would be more difficult, thus protecting those health care providers bravely doing their jobs and serving their patients. Second, those seeking abortions could improve the privacy and safety of their abortion process, by filling the prescription in the privacy of their own home and having the drug shipped directly to them. Regard-

120. Online pharmacies such as Drugstore.Com and Familymeds.com, supra note 119, can fill almost any prescription, as long as its authenticity can be verified. See Drugstore.com, supra note 119 ("You can mail your prescription to us, transfer from your current pharmacy, or have your doctor phone or fax your prescription to us."); see also Familymeds.com, supra note 119 (describing verification procedures and the ease, safety, and privacy of ordering prescriptions online).

121. Marbella, supra note 80, at 26; see also viagra.com, at http://www.viagra.com (last visited Feb. 17, 2002) (stating that "even though millions of men suffer from erectile dysfunction (ED), it remains a very personal condition. This is why many men decide to fill their prescription online after visiting their doctor."). The same interest in privacy over sexual and reproductive issues exists for women to whom RU-486 has been prescribed. Indeed, these interests go beyond "personal privacy" and involve a fear for personal safety.

122. See supra notes 34-45 and accompanying text (describing the services and content available at online abortion websites, both pro-choice and pro-life).

123. Abortion pill approved, supra note 81.


125. This scenario is not void of difficulties. First, Nuremberg-style websites and their underlying activists could target the specific women who are filling their prescriptions online. As it is a single prescription, however, the feasibility and efficacy of targeting the woman may be low enough to make "targeting" not worthwhile. Second, more needs to be understood about the safety of taking one or both of the Mifepristone doses at home. If this could be done safely, women would finally be free from the "abortion clinic environment."
less of how many trips to the doctor the woman may still need to make, the ability to order the drug increases privacy and empowerment over the process. The above conclusions are rooted in both reality, involving current trends and theory, and future speculation. It seems clear, however, the Internet has begun to alter, and poses the potential for significantly altering, the abortion process as it is currently known in America.

CONCLUSION

The ability of online users to interact in sophisticated ways, forming "virtual communities," may be what most differentiates the Internet from past developments in communications technology. Internet technology enables people to "meet, and talk, and live in cyberspace in ways not possible in real-space." It permits "many-to-many communication" unattainable with past technologies, which enabled only one-to-one or broadcast communication.\(^{126}\)

The Internet, as a communication breakthrough, cannot be overlooked in terms of its impact on abortion rhetoric and ultimately abortion law and policy. Although a few legal articles devoted to Internet abortion cases like The Nuremberg Files have concluded that the fundamental freedom of speech issues have not changed,\(^{127}\) there is another perspective from which to analyze abortion websites: as a new battleground for the abortion debate that has already impacted abortion law and policy. By examining the nature of the Internet, the current abortion climate, a sampling of abortion websites, and cases concerning the nexus between the Internet and abortion, an important relationship between technology and policy has developed. This development continued with an in-depth exploration of both the Nuremberg Files website and the RU-486 debate. Finally, this Note reached several important conclusions. The Internet has, in a quiet but significant way, changed abortion law and policy in America. As stated in relation to the *Reno v. ACLU* decision, "[i]t is likely, however, that all of these issues will emerge more than once as the Internet and WWW grow, evolve, and become increasingly assimilated into business, culture, and society."\(^{128}\)

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Just the ability to order a prescription, however, and take that prescription to the physician's office would destroy the traditional conception of an "abortion clinic."

126. *Developments*, supra note 18, at 1586 (footnotes omitted).
127. See supra notes 7-8 and accompanying text.
The impact of the Internet on the abortion issue therefore should not be ignored. Rather, it should be accepted by legislators, courts, and activists as the impact will only increase as technology proceeds. This Note has shown the impact the Internet has on the abortion debate can be as positive as it is negative. If used positively, the Internet could improve the safety of not only the woman seeking an abortion, but also of the abortion provider. Further, it could empower women in their reproductive choices and expand the available means by which women can exercise their rights. On the other hand, if the role of the Internet in the modern abortion climate is ignored, then the same Internet characteristics that bring information to the masses may also bring destruction. Without recognition of the impact of the Internet, websites like The Nuremberg Files will only continue to flourish, and remain unfazed by legal or contractual injunctions.

In previous years, grassroots movements in this country started underground, in hidden meeting rooms. Today, the Internet provides virtual space for those same types of meetings, with the same potential to effectuate change. As wisely stated in a recent article, "[s]ensible and thoughtful regulation of cyberspace — and its wide variety of group interactions — cannot proceed without careful attention to the Internet's nexus with community life, both virtual and real." The Internet's connection to the abortion debate needs this type of careful attention, because the net effects of the Internet on abortion extend beyond online rhetoric into real-life laws, policies, and ultimately, the abortion process itself.

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129. See generally Developments, supra note 18, at 1587 (stating that "[l]egislatures and courts have begun to encounter the Internet, as have legal scholars. The perspectives offered by lawmakers, judges, and scholars are all grounded in various premises about online life and its potential for 'virtual community.'").

130. Id. at 1609.