Content regulation
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. (the photo is of James Madison, “father of the Constitution”)

What is this?

First Amendment
“Marketplace of Ideas” – Supreme Court says ideas and opinions should **compete**.

Supreme Court ruling said, “There’s no such thing as a false **idea**” (what’s the difference in “ideas” and “facts”?).

First Amendment **encourages** disagreement.

For speech to be limited, there must be “a clear and present danger;” for example, you cannot deliberately incite a riot, or shout “Fire!” in a crowded theater.

Contrast with China.

President Obama censored in China

**Government Censorship**

First Amendment protects against **government** censorship, but broadcast management may exercise editorial control over reporters & performers.
We’ll cover the broad concept of libel (defamation by published or broadcast words that expose someone to public hatred or shame) as time permits.

Net neutrality (which we’ve discussed) is broadly a First Amendment issue (government control of information flow).
What’s prohibited on broadcast TV and radio?

Obscenity and Indecency

Obscenity is not protected by First Amendment; indecency is.

What is Obscene?

1973 Miller case defines as obscene “works which ... appeal to the prurient interest in sex ... and do not have serious literary, political or scientific value.” Also, “community standards” are taken into account.

Obscenity is therefore hard to prove; prosecution mainly restricted to child pornography.
Indecency in Broadcasting

Indecency defined as “language or material that ... depicts or describes ... in terms patently offensive ... sexual or excretory activities or organs.”

Broadcast TV and radio are the only media in which indecency is significantly restricted.

FCC fined Howard Stern’s show $2.5 million from 1990-04.

Pacifica Decision, 1978

George Carlin’s “Seven Filthy Words” routine was broadcast on Pacifica (public) radio in NY. Daytime broadcast; children in audience. Supreme Court upheld FCC fine imposed on station.

Seven dirty words
Janet Jackson, Bono and Cher

Fines for indecency increased sharply in early 2000s.

Reacting to complaints, FCC fined CBS stations $550,000 for “wardrobe malfunction” in 2004 Super Bowl halftime show.

After Bono incident, 2004, “fleeting expletives” became subject to fines.

Recent court decisions went against heavier FCC fines for “fleeting profanities and nudity.
Enforcement of FCC rules

Remember, we have discussed the “intrusiveness” of broadcasting; this is the basis of indecency rules.

FCC says indecency should be “channeled” to times when children not in the audience.

“Safe harbor” for indecency – 10 p.m. to 6 a.m.; “indecency” is allowed during those times.
Broadcasting vs. Print

TV and radio have fewer First Amendment rights than newspapers & magazines.

Broadcasting has unique attributes that justify limitations:

Channel scarcity – use of public airwaves; anyone may publish a newspaper.

Intrusiveness – broadcasting enters into every home; easy access for children.
First Amendment and other electronic media

Indecency on cable

Courts say cable is not as “uniquely intrusive as broadcasting.”

Cable is a subscription service, not as intrusive as broadcasting.

Therefore, *Pacifica* does not apply to cable; so, “indecency” is freer on cable.

Cable operators may prohibit indecency on public access channels.

On the other hand, must-carry rule is a limitation on the “speech” of cable systems.

So far, few limitations on Internet in U.S. Not as true in some countries.
What you “can’t say”

Libel

Libel is defamation by published (or broadcast) words that expose someone to public hatred or shame. “Actual malice” must be proved.

Libel suits can have a “chilling effect” on reporting.


Times v. Sullivan (1964) – public officials and public figures have less protection against libel.

Times v. Sullivan - short
Times v. Sullivan