

I asked MediaOne for assistance and advice, stating "I would greatly appreciate thoughts you might have on making these kinds of searches efficient and productive -- i.e. for web pages and people interested in things like "*universal health care*", "*disability*", "*handicap*", "*newspaper*", "*health care bill of rights*", etc."

MediaOne refused to provide me with assistance nor help. On the contrary, after I told MediaOne I was working on *disability and universal health* referendum issues, it censored my email, and then turned off my pre-paid internet access account. MediaOne's pretextual claim is that such internet searches for web pages and people interested in things like "*universal health care*", "*disability*", are "abuse" of the internet.

3. MediaOne Censors Email of Cambridge Citizens

MediaOne has admitted it engages in surreptitiously censoring email for customers in Cambridge. I learned of this when email correspondents called me on the telephone, saying their email to me had been blocked by MediaOne.

When I inquired about the email censorship, MediaOne admitted checking incoming email, and blocking email it doesn't like from reaching me or other Cambridge citizens. MediaOne refused to provide me with the censored emails, or a list of whose emails it blocks.

MediaOne censors email to Cambridge adult citizens as follows: On the internet, "domains" are the collective entities such as companies ("xyz.com"), organizations ("xyz.org"), groups ("xyz.net"), etc. Each domain may contain thousands or even millions of individuals (such as "aol.com" or "hotmail.com").

MediaOne examines incoming email to decide whether it likes email from various individuals.

When MediaOne decides it does not like email relating to one person, with a broad brush, MediaOne blocks all email from the entire domain (comprising perhaps many thousands of people). MediaOne thus selectively censors email, without permission, from all Cambridge citizens. As an illustration, if MediaOne decides it doesn't like email from "JohnSmith@xyz.org", MediaOne blocks all the email from everyone at xyz.org. Thus all Cambridge MediaOne customers are prevented from receiving email from anyone at xyz.com, because MediaOne doesn't like that one person.

MediaOne admits it has no articulated, objective standards for deciding whose email it likes or doesn't like. MediaOne admits it censors

email which is not obscene or otherwise illegal. MediaOne should not be making secret decisions to censor anyone's email.

I told MediaOne I wished to make a formal complaint regarding censored email. MediaOne refused to accept a formal complaint, and refused to stop censoring my email. A few days later, MediaOne canceled my internet connection entirely. MediaOne also refused a formal complaint regarding improper internet cancellation.

4. *MediaOne Censors Internet Access*

After I complained of First Amendment email and internet violations, on Thursday, February 11, MediaOne blocked my internet access without notice. Seeking to conceal and justify its reasons for censorship and discrimination, MediaOne has come up with numerous different reasons, each of which has proven untrue.

Running out of excuses, MediaOne finally simply claimed "you know what you did wrong". MediaOne refused to provide any further information, or unblock the internet service.

MediaOne's numerous false reasons, and refusal to document the actual reason, show that MediaOne's supposed public reasons for internet censorship, are an illegal pretext for discrimination and violation of rights of Cambridge citizens.

5. *MediaOne refuses City of Cambridge Inquiries*

Some at MediaOne have admitted that MediaOne's conduct is "illegal".

The Cambridge Office of Cable Television asked MediaOne to correct the problem of my censored email and blocked internet access. MediaOne refused to provide documentation or proof, to the Office of Cable Television, saying it was "confidential".

The Vice Mayor of Cambridge's office (also chair of the Cable Committee) asked MediaOne to correct the problem of my censored email and blocked internet access. MediaOne also refused to provide documentation or proof, to the Vice Mayor's Office, saying it was "confidential".

MediaOne's manager of governmental affairs has failed to return telephone calls to explain and correct its actions.

6. Public Right and Free Speech for Internet Access

The Internet is an international network of interconnected computers. It is the outgrowth of what began in 1969 as a military program called "ARPANET," and has received sponsorship from the National Science Foundation and other governmental agencies. The internet has received significant public funds and support.

Courts has repeatedly held that internet access is protected free speech. For example, the US Supreme Court recently noted in *Reno v. ACLU* that:

Anyone with access to the Internet may take advantage of a wide variety of communication and information retrieval methods. These methods are constantly evolving and difficult to categorize precisely. But, as presently constituted, those most relevant to this case are electronic mail ("e-mail"), automatic mailing list services ("mail exploders," sometimes referred to as "listservs"), "newsgroups," "chat rooms," and the "World Wide Web." All of these methods can be used to transmit text; most can transmit sound, pictures, and moving video images. Taken together, these tools constitute a unique medium—known to its users as "cyberspace"—located in no particular geographical location but available to anyone, anywhere in the world, with access to the Internet. . . ."

"From the publishers' point of view, it [the Internet] constitutes a vast platform from which to address and hear from a world-wide audience of millions of readers, viewers, researchers, and buyers. Any person or organization with a computer connected to the Internet can "publish" information. Publishers include government agencies, educational institutions, commercial entities, advocacy groups, and individuals. Publishers may either make their material available to the entire pool of Internet users, or confine access to a selected group, such as those willing to pay for the privilege. . . ."

"The Government estimates that "[a]s many as 40 million people use the Internet today, and that figure is expected to grow to 200 million by 1999." (34) This dynamic, multifaceted category of communication includes not only traditional print and news services, but also audio, video, and still images, as well as interactive, real-time dialogue. Through the use of chat rooms, any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox. Through the use of Web pages, mail exploders, and newsgroups, the same individual can become a pamphleteer. As the District Court found, "the content on the Internet is as diverse as human thought."

MediaOne has violated free speech, constitutional protections, non-discrimination, and numerous other statutory protections.

7. MediaOne violates License with Cambridge

MediaOne has also violated its license with the City of Cambridge.

MediaOne is licensed to provide telecommunications access in Cambridge pursuant to a license with the City of Cambridge, and various statutes. In its license with Cambridge, MediaOne agreed:

"14.3. Nondiscrimination. Licensee shall not discriminate against any person in its solicitation, service or access activities on the basis of race, color, creed, religion, ancestry, national origin, geographical location within the City, sex, sexual preference, disability or handicap, age, marital status, or status with regard to public assistance. Licensee shall be subject to all other requirements of federal, state, or existing local laws, regulations and all executive and administration orders relating to nondiscrimination through the term of this Final License."

"12.6. Nondiscrimination. The Licensee shall not deny or delay service or use of communications facilities or otherwise discriminate against Subscribers or Users on the basis of age, race, creed, religion, color, sex, sexual preference, handicap, national origin, or marital status."

"14.8. Laws and Codes: Licensee shall comply with all applicable local, state and federal laws, codes, rules and regulations."

MediaOne further agreed in its license to a local complaint procedure in Cambridge:

"12.10 Complaint Resolution Procedure

"a. Licensee shall establish an internal procedure for the final resolution of billing disputes and complaints by Subscribers. Licensee shall submit a written description of this procedure to the City within five months prior to System Activation.

"b. Notwithstanding the foregoing, the City Manager or his or her designee, if he or she determines it to be in the public interest, may investigate and adjust, settle or compromise any multiple complaints or disputes brought by Subscribers arising from the operations of the Licensee"

MediaOne further agreed that failure to comply with the complaint procedure is grounds for fines, revocation and termination of its contract with the City of Cambridge: See §§ 14.14.1, 14.15, and 14.19. Thus,

- 1) In violation of its license with Cambridge, MediaOne has refused to implement a complaint resolution procedure for email censorship and internet blocking, as required by its license. See § 12.10.a above.
- 2) MediaOne has also refused the efforts of the City of Cambridge, working through its Office of Cable Television and Office of the Vice Mayor and Chair of the Cable Committee, to correct these abuses. See § 12.10.b above.

An appropriate resolution is for the City of Cambridge to instruct MediaOne to cease and desist immediately. If MediaOne fails to comply, the license is breached, and may be assigned to another carrier.

8. *MediaOne Sells Cambridge Subscriber Information*

It should be noted that, although MediaOne claims to adhere to privacy regulations mandated in the City License, in fact it admits to selling and transferring information about Cambridge Subscribers to others for profit. See Protection of Subscriber Privacy in § 12.11, and contrast with MediaOne policy:

"We screen requests to use our mailing list to ensure they are appropriate and typically provide names and addresses of subscribers to third parties as often as requested." MediaOne Subscriber Privacy Notice.

9. *Discussion and Conclusion*

Preventing prior restraints of speech is an essential component of the First Amendment's free speech guarantee. See Freedman v. Maryland, 380 U.S. 51, 58 (1965). "Permitting government officials unbridled discretion in determining whether to allow protected speech presents an unacceptable risk of both indefinitely suppressing and chilling protected speech." Even unprotected speech cannot be censored by administrative determination absent sufficient standards and adequate procedural safeguards. See Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546, 562 (1975).

It is inappropriate for the City of Cambridge to entrust email and internet censorship and blocking decisions to a private vendor, MediaOne. Cambridge cannot avoid its constitutional obligation by contracting out censorship decisionmaking to a private entity. Such abdication of its obligation is made even worse by the undisputed facts described here.

MediaOne concedes that it does not have established, public criteria by which MediaOne makes its censorship and blocking decisions. MediaOne has refused to provide the criteria it uses to block email and internet access. In fact, MediaOne's Policy is completely lacking in standards. It is also undisputed that MediaOne does not base its blocking decisions on any legal definition of obscenity or even on the parameters of the City of Cambridge's non-discrimination and public access policies. MediaOne concedes that there is neither any attempt nor the ability by MediaOne to apply a legal test. Thus, on this evidence, neither MediaOne nor the City of Cambridge has satisfied the first prong of First Amendment prior restraint analysis, establishing adequate standards.

In addition, the email and internet censorship policy also fails to include adequate procedural safeguards. The three minimum procedural safeguards required are (1) a specific brief time period of imposition before judicial review; (2) expeditious judicial review; and (3) the censor bearing the burden of proof.. The email and internet censorship policy, as carried out by MediaOne, is inadequate in each of these respects.

Although Cambridge and MediaOne are under no obligation to provide Internet access to Cambridge Citizens, they have chosen to do so and are therefore restricted by the First Amendment in the limitations allowed on patron access. MediaOne apparently claims a broad right to censor the expressive activity of the receipt and communication of information through the Internet with an ad-hoc policy that (1) is not necessary to further any compelling government interest; (2) is not narrowly tailored; (3) restricts the access of adult patrons to protected material just because MediaOne disagrees with it; and (4) provides inadequate procedural safeguards to ensure prompt judicial review. Such a Policy offends the guarantee of free speech in the First Amendment and is, therefore, unconstitutional.

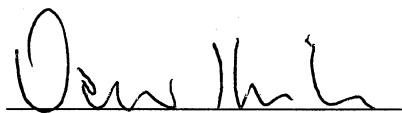
Therefore, I respectfully request that the City of Cambridge, through its City Council and City Manager, Order MediaOne to:

- 1) cease censoring email for Cambridge Citizens
- 2) cease blocking internet access for Cambridge Citizens
- 3) restore all my email and internet access promptly.

If MediaOne fails to immediately comply, I respectfully request that the City of Cambridge declare MediaOne's license breached, revoke it, and assign MediaOne's license to another company, for the benefit of all Cambridge residents.

Thank you.

Respectfully Submitted,



David Hoicka

cc. Press

This Petition is brought, based on David Hoicka's exercise of his right of petition under the constitution of the United States or of the Commonwealth of Massachusetts, see Mass Gen. Laws 231, § 59H.

1999 FEB 18 P 4: 57
OFFICE OF THE CITY CLERK
CAMBRIDGE, MASSACHUSETTS

David Hoicka Tel. 617-547-4000
Box 390986 Central Square
Cambridge, MA 02139-0011
February 18, 1999

To The Honorable, the Cambridge City Council, the City Manager,
and City Clerk

I am writing to request that First Amendment and discrimination
problems relating to MediaOne be corrected.

Email & Internet Censorship, and Disability Discrimination, by MediaOne

1. Overview – MediaOne violates civil rights and Cambridge License

Over the past few weeks, I've been trying to use the MediaOne
cable internet licensed by Cambridge to research *disability and health-*
care on the internet. MediaOne has censored my email, blocking me
from receiving email from people, and, after I complained, retaliated by
turning off my internet access completely. I have learned that MediaOne
frequently censors and blocks email of Cambridge residents.

In censoring email and internet access, MediaOne violated rights,
the law, and breached its contract with the City of Cambridge. The City
should enforce MediaOne's license and/or revoke it, and transfer it to
another company that will protect the rights of Cambridge residents.

2. Background – MediaOne censorship

After my *Universal Health Care* Ballot Referendum won by a factor
of 8 to 1 in Cambridge last November 3, I've been studying on the
internet how to conduct a *universal health care* referendum through the
entire state. I've also worked to help provide *disability* contact
information – emails and websites – on behalf of a disabled person.

So I've used web search engines to look for web pages and people
interested in things like "*universal health care*", "*disability*", "*handicap*",
"*newspaper*", "*health care bill of rights*", etc. Since there are millions of
people in Massachusetts, I've tried to make these searches as thorough
as possible. I've been using a number of different multi-search engine
web search tools that I mostly downloaded from PC Magazine (a popular
computer magazine sold at newsstands). I discussed all of this with
MediaOne.

Consent Communication #50

A communication was received
from David Hoicka, transmitting
concerns regarding Email and
Internet censorship and disability
discrimination by MediaOne.

In City Council February 22, 1999

PLACED ON FILE