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## Obscenity

The case of Miller v. California, 413 U. S. 15, 27 (1973) is the case where the Supreme Court has laid down a three-prong test called the “ Miller Test” to determine if a work is obscene. The Miller Test is composed on the following questions: 1.) whether the average person who shall apply cotemporary community standard will find that the work when taken in its entirety appeals to the indecent interest; 2.) whether the work describes a sexual conduct that is patently offensive and violates a particular statute; and 3.) when the work when taken in the holistic approach is inadequate of literary, artistic, or scientific value (Clark 52).   
The Miller test was devised in order to “ strike a balance between the interests of civic communities while in the exercise of conventional police powers that coincide with the Constitutional right to free speech” (Fee 1691). However, the test has been proven to be more favorable to the pornography industry than the previous intention of its framers. In actual practice, it is extremely impossible to prosecute uncompromising pornography under the Miller test even in some of the presumed conservative communities. This is caused by various factors which include the requirement of unanimous jury verdicts, the “ quantum of evidence needed to sustain conviction in criminal cases is guilt beyond a reasonable doubt” (Fee 1691), which is difficult to achieve. Hence, the trial tactics of the rich pornography industry is to hire the best lawyers to provide them legal defenses. These tactics involve money because they use media to raise doubts in the minds of jurors about whether their own instinctive judgments on what will fall within the definition of “ prurient appeal” and “ patent offensiveness” (Fee 1691). As a result, there is a high probability that prosecuting obscenity will be futile as there are many state prosecutors who have given up on the fight against obscenity (Fee 1691).   
In the case of Ashcroft v. ACLU, the Supreme Court discussed the interesting issue by the collision of the Internet to the Miller test, where is an average person, who will be applying the community standards will the material as a whole, and with respect to the minors who have access to the pornographic internet websites is equivalent to the definition provided by law. Under the Child Online Protection Act (COPA), the agency has the responsibility to decide whether internet pornography is obscene will meet the requirements of the local juries and can influence the internet content (Sarat 125). The definition of the term “ harmful to minors” will cover the standard obscenity, but it also embraces a much broader category of harmful material (Fee 1691). Thus, the act of COPA by referring to the language of the Miller obscenity test by adding the phrase “ with respect to minors” will be able to fully explain the scope of what is harmful to minors. The material is subject to the restriction only if 1.) Such material shall be considered appealing to the indecent and lascivious interest with respect to minors by using the set community standards; 2) Such material is deliberately offensive with respect to minors through the application of community standards; and 3.) There is absence of serious social value for minors (Fee 1691).   
The issue in this case is whether the local juries should be given the power to set the community standards for internet content. The Supreme Court held that is not necessary to establish a new set of regulation for the determination of obscene internet materials since majority of the justices have voted in favor of the Miller (Sarat 125). Further, the Supreme Court ruled that COPA is constitutional because it makes it illegal for commercial publishers on the internet to provide any material that is “ harmful to minors” without a facility that have an age-verification screen (Fee 1691).   
In the similar case of Nitke v. Ashcroft, the lower court held that the Communications Decency Act (CDA) has gone beyond the extent of what should be covered by the regulation of the transmission of material on the internet of what is perceived to be obscene in some communities, but not all communities (Fee 1699). Hence, the court is mandated to take necessary measures to analyze whether the CDA obscenity provision is constitutional and does not violate the protected speech of the people. Here, the district court has made a presumption that the potential geographic variation in the application of the Miller test has the possibility to over step beyond protected speech because some communities claim that “ what is not patently offensive or appealing to the prurient interest of other conservative states, may not be the same in all other communities” (Fee 1699). In effect, the court’s interpretation is that protected speech accepts that the mere liberality of some material by some communities makes it constitutionally protected (Fee 1699). Therefore, the court implied that every publisher has the constitutional right to publish on the internet any material that its own local community will tolerate, such imposes materials will be considered offensive and obscene by other states.   
However, in the later case of U. S. v. Library Association, the Supreme Court voted in favor of the decision in a grant program for libraries which mandates them to “ install filtering software on the internet terminals of the library”(Sarat 125). It was held further that the First Amendment is not violated when the libraries will decide what books are to be circulated even if it was customers’ option to decide what books to use. Thus, installing the software on computers is less restrictive to patrons because the software can be turned off if the patron shall request it (Sarat 125). However, this case has not set a precedent the criteria on how community standards should be applied to what has been perceived to be an obscene material.   
Although the time-honored community standard that has been laid down in the case of Miller has been observed for the past twenty three years, such standard has become outdated that there is need to revise or update the Miller Test in order to reflect new technology. This is a sound decision because there are some issues which can no longer be addressed by the Miller test due to the unique qualities of such as borderless and undefined of internet materials which has the tendency to cause harm to the public, especially the minors. The impossibility in the application of the test must be considered by the Supreme Court to establish new set of standards that will bring up to date the Miller test to regulate obscene materials on the internet.   
Chui argues that the information superhighway is part of the technology and communications revolution that has been introduced in modern times that has been recognized all over the world (205). Since the nation is moving towards the new millennium, the society evolves in an environment where geographic boundaries to information have the tendency to be obsolete since it is nearly impossible to regulate communities separately from the rest of the nation (Chui 205). Hence, due to inadequate geographic boundaries to address the issues on the community standard on obscenity law since computers have the ability of to communicate with other computers in various locations. Thus, the exchange of communication from one computer user to another user from different jurisdictions can enter in anyone’s computer systems without the system operator’s knowledge. In addition, these system operators have no means to know what standards exist in the community to which data or information has been transmitted (Chui 205). Therefore, the use of local community standards currently being used today do not have the ability to determine if there are crimes that are being committed since the system operators are left unaware if there are certain laws that have been violated. Chui suggested that it is vital to create an enhanced national standard for obscenity in order to resolve the growing difficulties presented in the past obscenity jurisprudence rendered by the Supreme Court, as the nation embarks the modern communications age (205). At present, the local communities are having a difficult time to find which materials are offensive in order to prosecute the website owners and the bulletin board operator for violating the obscenity standards set by law.   
However, setting a national standard can affect some tolerant communities to raise their standards to comply with the community standards (Laird 1525). Aside from the constitutional issue and the fact that there is none of the justices gave their vote to support the setting of a national community standard, while some tolerant communities in the case of New York City and Las Vegas have no other choice but to conform to the national community standard being applied to the internet (Laird 1525). Hence, this will put these states on the spot as they are obligated to raise their community standards to be able to meet the standards of the national average. In fact, the Miller Court has initially expressed this issue the first time it was made known to the public. Therefore, the materials found tolerable in some states that do not fall within the bounds of the national criteria will be forced to comply with the standards to uphold the police power of the states. Thus, there are instances when obscenity statutes cannot prevail when rights of individuals to access obscene material is restricted. This can affect the freedom of expression of other local states.   
Fee stated that the setting of national standard to regulate obscene materials spreading the internet may be pose constitutional problems following the arguments in applying the Miller Test (1691). The constitutional issues that may be raised are the following: 1.) That publishers on the internet will not be given sufficient notice of the community standards in every state of the country; 2) Such national standard will encourage forum-shopping in filing cases by prosecutors; 3.) It will be politically unfair to permit majority of the conservative communities to set the rules in internet communication by implementing their own community standards; and (4) The national standard will affect the freedom of speech that is guaranteed under the Constitution (Fee 1691).   
It is still recommended that setting a national standard is deemed the most viable solution to resolve the conflict. This will guarantee changes that will regulate on a national level the information superhighway and modern communications technologies that have the ability to interconnect the nation and the rest of the world (Chui 216). This is despite of the fact that setting a national standard will be subjected to criticisms due to inaccuracies and imprecision. However, the fact that a national standard has the tendency to comply with the notice requirement to each citizen of the country because there will only be a single standard that will be followed by the distributor’s community and the recipient’s community (Chui 216). The national standard will even have the power to apprise the operators in order to guarantee the equal protection for outsiders, in spite of the venue where violators shall be prosecuted.

## Conclusion

It is proper to amend or revise the Miller Test to be able to set the new local standards that will set the boundaries of what is obscene or not. The internet can open the floodgates to several pornographic websites that can harm the community especially, the minors. In addition, the risk of unintentional violation will be high for website owners since there are certain kinds of information transfer situations where the obscene material is sent over phone lines with just one click of the button to any person indiscriminately (Chui 218). There is no defined notification of what exactly the community’s standards are in every state. The previous decades have shown huge advances in communications technology and raised the issue on whether “ Local” community standards are still in place. Based on this premise, there should be more uniform rules that have to be implemented in order increase awareness by introducing the national standard to identify which material is obscene or not (Chui 218). It is recommended that a new national standard should be set to review which among the materials are obscene and should be shut down. Therefore, due to the evolving means to transfer information using the internet, a national standard for must be clearly instituted that will flourish together with technology while still disallowing obscene materials to spread across other states (Chui 218).   
The presence of the internet has initiated the public interest to revisit the Miller test that will determine if materials are obscenity (Fee 1720). It is without a doubt that the same constitutional issues raised by the regulation of web obscenity are the same issues that are being argued for the past several decades. However, there are some points discussed in previous court decisions which failed to address the concerns using the internet and communications technology in accordance with the Miller Test. Therefore, it is strongly recommended that a national standard should be adopted that will create a single obscenity regulation to be followed by all stated. In order to establish the national policy on obscenity, the elected branches of government must be able to vote and decide how to regulate this class of publication. Regulating pornography and pornographic websites means working for the general welfare of society (Fee 1720).

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