

CENTER FOR DEMOCRACY AND TECHNOLOGY

CDT

Prospectus

To: Funders and Sponsors
From: Jerry Berman
Re: The Center for Democracy and Technology

I. Overview

The policy staff of Electronic Frontier Foundation is in the process of establishing the Center for Democracy and Technology (CDT), an independent 501(C)(3) public interest policy organization to focus on developing and implementing public policies designed to protect and enhance individual liberty and democratic values in new digital media. The CDT will be directed by former EFF policy staff and will work in close cooperation with the Foundation on public policy matters and other joint projects.

II. 1995 Policy Activities

The Center for Democracy and Technology plans to work on privacy, security, free speech, access to public information, and open network issues through a series of individually funded projects.

A. Digital Privacy and Security Working Group

Under the direction of Jerry Berman, the CDT will coordinate the Digital Privacy and Security Working Group (DPSWG), a coalition of over 50 computer, communications, and civil liberties organizations and associations working on communications privacy and security issues.

CDT, on its own and through the DPSWG, will vigorously monitor the implementation of the newly enacted Digital Telephony Statute, "The Communications Assistance for Law Enforcement Act of 1994." The law contains procedures for privacy organizations and industry to intervene with respect to standards setting, cost reimbursement, and privacy protection. It is essential that we work to insure that the spirit and intent of the bill are adhered to and use every opportunity to enforce public accountability and to make government reimburse industry for meeting statutory wiretap capability and capacity requirements.

In addition, CDT will continue its strong opposition to mandatory government escrowed encryption. Despite the announced reexamination of policy, the Administration has indicated its intention to pursue government escrowed encryption, national cryptography standards, and other policies which pose significant threats to privacy and innovation in digital media.

To continue our policy efforts to end export controls on cryptography, CDT will state its views in the context of the National Research Council's study. CDT will present its input through briefings, presentations, consultations, and testimony at regional public hearings. CDT will also work with DPSWG members to educate the new Congress on these critical security and privacy issues.

B. The Privacy Forum

Under the direction of Janlori Goldman, CDT Deputy Director, CDT will operate an ongoing Privacy Forum to serve as a common ground where public interest groups and business organizations can explore policy options for resolving *transactional, database and communications privacy issues* posed by new technologies.

The Forum will bring together key privacy, consumer and business interests on an on-going basis to explore issues based on a *mutual commitment* to find solutions that strike a balance between privacy and fair information practices and other important public interests, including:

- access to public information;
- free speech and the free flow of information;
- maximizing consumer choice;
- fostering business innovation in the information economy, and;
- the development of a multimedia information superhighway.

The Privacy Forum agenda will revolve around a series of in-depth consultations on pressing privacy policy issues. The goal of the Forum is to create a working entity of business and privacy representative engaged in serious policy dialogue on issues. The Forum is designed to minimize political posturing in favor of striving for a common ground. At the same time, the Forum will act only as a Forum. It will not take positions in its own name nor require participants to reach consensus on any issue. The Forum is committed to developing and publishing policy option papers which give *full consideration to competing policy alternatives*.

C. Health Care Privacy Reform

CDT, under the direction of Janlori Goldman and Deirdre Mulligan will continue its work on Health Care Privacy Reform, a project funded by the Hartford Foundation.

D. The Interactive Working Group

Under the direction of CDT Deputy Director Danny Weitzner, CDT will coordinate the work of the Interactive Working Group in 1995. The IWG is a joint effort of major on-line service providers (America Online, Compuserve, Ziff-Davis Interactive, Delphi, Prodigy), legal experts (both practicing attorneys and scholars), and civil liberties groups to work together to develop policies and guidelines designed to maximize First Amendment values, privacy, commerce, and innovation in the rapidly developing national and global information infrastructure.

Recent events underscore the importance of working together in the next several months on the following matters:

- **Indecency Rules:** Determine how on line services, sysop, and Internet access providers are setting up services for access by adults and minors; develop industry practices to avoid inappropriate legislation such as that now under consideration for controlling TV violence; and hold a consultation on issues and problems posed in March 1995.
- **Transactional Privacy Guidelines:** Prepare a briefing book of existing transactional privacy guidelines; draft alternative privacy policies for discussion; and hold a consultation on appropriate guidelines in February 1995.
- **New Content Regulation Regime for Interactive Media:** Develop a white paper addressing problems of content regulation in interactive media; contrast intrusive content regulation which exists in broadcast media today, with a possibility for more user-centered, less intrusive regime for new media; hold a consultation on this issue in June 1995.

All of these efforts combined lay the conceptual groundwork for what many of us hope will be called the Electronic Communications Forwarding Act. In recognition of the unique role played by online service providers, we hope for a statutory definition of the appropriate responsibility of carriers for content, consistent with free flow of information and the First Amendment. Given the many uncertainties of the political climate at the moment, it is hard to know when the opportunity to work on such legislation might arise, or kind of the resources necessary to participate in such an effort. Nevertheless, we believe that it is important to begin a vigorous discussion of these issues.

E. Electronic Freedom of Information Project

In 1995, CDT will work on legislation to establish an Electronic Freedom of Information Act. The Administration will introduce its own proposal and the

Senate Judiciary and House Government Operations Committees will reconsider S 1782 which passed the Senate last year with bipartisan support.

F. Open Platform Infrastructure Initiative

When the 103rd Congress returns to consider telecommunications legislation, the Center will be at the core of the debate over the public interest in the development of the Information Infrastructure. Center staff, all of whom have had substantial involvement in the telecommunications debate over the last several years, will monitor the legislative developments to assure that the following values are served:

- Affordable access to high-speed, switched, digital services available at nondiscriminatory rates and terms;
- Nationwide access to interconnected network services for rural and urban areas alike.

The Center will also work with other public interest organizations and industry groups to identify options for assuring continued access to non-commercial programming and information sources.

G. Network Architecture and Democracy Study Project

As the public policy debate about the National Information Infrastructure continues, CDT, working with non-profits, and others who share free speech and diversity goals, will strive to expand and enlighten the debate over the relationship between various network architecture options and democratic values. CDT believes there is a critical need for independent research and analysis which reflects on the health, vitality, and growth of the Net. Critical technology options are often overlooked by both policy makers and public interest organizations because the sources of technical information are generally limited to the very network owners and operators who are the subject of any given policy debate. If the NII is to be a true open platform, public policy must be guided by independent technology assessment undertaken with open platform goals in mind.

CDT proposes to establish the Network Architecture and Democracy Study Project in order to track and analyze technology and market trends in the growth of the Net. The study will be undertaken as a joint project with the Electronic Frontier Foundation, the Benton Foundation, and the Progress and Freedom Foundation.

III. Center Project Funding

The Center will draw on a range of corporate and foundation funding to complete the activities described in this prospectus. In addition to this documents, Center staff is in the process of preparing a in-depth proposal and budget for each individual project. Each project will be funded independently, so only those activities that receive full funding will be completed.

CENTER FOR DEMOCRACY AND TECHNOLOGY

Memorandum

December, 1994

To: Interested Persons

From: Jerry Berman

Re: Project on the First Amendment and Content Regulation in New Interactive Media

I. Goal of the Project

The goal of the Project is threefold: (1) to change the terms of the debate on government regulation of commercial and non commercial speech content in new interactive media (e.g. on line information services delivered over telephone, cable, or other network delivery systems); (2) develop an alternative policy framework for interactive media which can serve traditional public purposes behind content restrictions in ways which maximize speech opportunities for all but sharply reduce the rationale for direct government prohibitions or censorship of commercial and non-commercial speech; (3) and conduct an education campaign to build a broad consensus in favor of advocating this approach in the public policy arena.

Traditionally restrictions on speech content in electronic media are based on First Amendment doctrine developed for mass broadcast media where viewer/listener control has been minimal and channel-scarcity created a rationale for government content control to serve public interest objectives. These characteristics provide the underpinnings for current prohibitions on commercial tobacco advertising and restrictions on alcoholic beverage advertising and sexually explicit fare. It is also the rationale for on-going congressional efforts to restrict violent and indecent television and cable programming and establish similar restrictions on similar content available on new interactive on-line services such as America-on-Line and the Internet.

This project will explore alternative regulatory models for new interactive media which, unlike mass broadcast media, feature abundant bandwidth and increased user control over content selected or available for viewing. In our view, these characteristics of interactive media both undermine the rationality and viability of government speech content restrictions and suggest an alternative "less intrusive" technological means

for achieving public ends since the media gives end users or viewers unprecedented control over the selection of content.

II. Activities

A. Phase I White Paper "New First Amendment Parameters for Content-Based Regulation in Interactive Media.

During the first six months of 1995, the new public policy group under my direction, the Center for Democracy and Technology, will prepare a White Paper on the rationale for adopting a different approach for content regulation in new interactive media. The paper will do the following:

- First, the paper will explain that interactive media, as contrasted with traditional broadcast media, will be characterized by an abundance of content carried over potentially unlimited numbers of channels. Instead of "mass" audiences with few viewer choices, interactive media, whether carried over telephone or cable networks, will feature very segmented markets based on numerous viewer choices.
- Second, the paper will demonstrate that, given this abundance of content and the way it is delivered to end users, traditional content restrictions, designed to be enforced by network content providers, is going to be difficult if not impossible to police or make effective without severely restricting the free flow of information. For example, the paper will describe the Internet, a network of networks, which has no central governance or gatekeeper to monitor and enforce content based restrictions. Equally important, the paper will show that America-on-Line and other such information service networks could only respond to potential legal liability for transmitting restricted content by censoring questionable content which, in effect, will have a "chilling effect" on the communication of lawful commercial and non-commercial content.
- Third, the paper will demonstrate the ability and potential of the new interactive media to increase user (especially parental) control over the content of media received into the home. For example, the paper will discuss easy to program lockout software; the ability of a receiver to read program coding carried with a signal and permit viewers to preselect what program coding or rating scheme they wish to view or permit their children to view. The paper will also discuss other technical means currently "on the drawing boards", such as video on demand which permit viewers to select different versions of the same video for viewing (e.g. the uncut version, or the airline version of a movie).
- Fourth, the paper will argue that the difficulty of enforcing content based restrictions versus the relative ease of empowering consumers

to choose what they (or their children) will access suggests a more effective, less intrusive means for serving the public interest in protecting minors or meeting multiple "community standards." Rather than the government enforcing community standards, each citizen should be afforded the opportunity and ability to choose or self-select programming consistent with their own particularized community standards.

- Finally, the paper will outline a regulatory model for non-mass media interactive services which (a) permits interactive service providers to transmit, without liability, all lawful content, commercial or non-commercial, provided that they (b) clearly identify the nature of the programming (adult, tobacco sponsored, general viewing, etc.) and provide subscribers user-friendly means for making viewer choices for themselves and their children.

B. Phase II: Interactive Working Group Consultation on the Draft White Paper.

In June 1995, we will convene the Interactive Working Group composed of the major on-line providers, civil liberties groups, academic and other legal experts, to consider and critique the paper. This will afford a selected group from industry, academia, and the policy community to augment and refine the paper.

C. Phase III. Public Education and Consensus Building

Once the White Paper is completed, we will engage in a series of meetings and consultations to secure broad endorsement of the paper by the liberal and conservative public policy groups, communications and computer industry companies and associations, and media advertising associations. While we are seeking and obtaining broad private sector support for the proposal, we will work with the coalition of endorsers to educate lawmakers to adopt this approach. In addition to the Interactive Working Group members, we will approach:

- **The First Amendment Coalition:** This is a coalition of broadcasters, cable companies, content providers, and civil liberties groups who have organized against congressional efforts to regulate violent programming. As participants, we will present the white paper for their consideration.

- **The Telecommunications Policy Roundtable:** This is a coalition of over 80 progressive oriented organizations, from the NAACP to the Consumer Federation of America, working for progressive telecommunications policy.

