

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 First Amendment to the United States Constitution

The words above were written over 220 years ago by the Framers of the Constitution. Many things in society were much different compared to today. The country's population totaled 3.9 million people, compared with over 300 million in the United States today. Most people lived on farms and lived in ways that may seem foreign to us today. The Framers of the Constitution lived before electricity, radio, television, the Internet, and cell phones, and iTunes. The Constitution's writers could not have possibly anticipated the changes technology would bring to our lives, yet somehow, this document has endured and still stands as one of the most important documents in the history of the United States. How does the Constitution guide and protect us in the midst of today's challenges—some 220 years since it was written—in light of all of these revolutionary developments?

One interesting challenge for the U.S. government has been to reinterpret the Constitution as technology evolves. When they included freedom of speech and the press in the First Amendment, the Framers wanted to ensure that information and ideas could be freely shared—even when those ideas or that information might make government officials look bad. The Framers knew that in order for a democracy to survive, citizens must have the power to examine its government's actions and demand reforms whenever it abuses its powers.

Does this mean that we are free to express our thoughts online without having to worry that the government will punish us for what we share? Or does the Internet pose a threat to the stability of the government, and should the First Amendment be interpreted more strictly and in favor of some censorship?

The First Amendment does not protect *all* speech. The Supreme Court, for example, has ruled that people do not have the right to yell, "Fire!" in a crowded theater if there is no fire. Words that create a "clear and present danger" are not protected under the First Amendment. This was detailed in a 1919 decision and described by Supreme Court Justice Oliver Wendell Holmes, Jr. If someone did, people would panic and could get hurt. Speech that creates a dangerous situation is unlawful and is not protected.

Dangerous speech is not the only speech that is addressed in the First Amendment. It also protects and limits the printed word. Naturally, people in power like it when reporters make them look good. Therefore, powerful people sometimes try to prevent reporters from publishing unflattering information. This is called *prior restraint*, because the people in power are trying to stop reporters ahead of time. The Constitution's Framers expected this to happen, because corrupt leaders had behaved this way countless times in history. That is why freedom of speech is so important in a democracy. How can citizens hold government officials accountable if they do not know what is really going on? They can't! And if those officials get too powerful, democracy dies. For this reason, the Supreme Court has ruled repeatedly that prior restraint is unconstitutional.

So, how should the First Amendment apply to the Internet? Are there limits on what can be published that still allow for the free flow of information in a democracy? Should people be able to post information that proves government officials have lied? Or should the government be able to censor, or restrict, certain information?

In 2010, the website WikiLeaks made headlines around the world because it posted classified documents from the U.S. government. The website posted e-mails from vice presidential candidate Sarah Palin as well as the membership list of the British National Party. The website also accused a Swiss Bank of illegal operations at their Cayman Islands branch. The newspaper the *New York Times*, as well as other world papers such as Britain's *The Guardian*, began to use the classified documents as sources for articles. They also reposted the text of some of them. Included in the classified documents were battlefield communications from the Iraq and Afghanistan wars.



WikiLeaks.org, an independent company that posts unedited documents for free viewing, made headlines in 2010 when it posted emails from the vice-presidential candidate in addition to other classified documents,

Many people thought that this put soldiers in danger. As a result, the U.S. Justice Department threatened to sue WikiLeaks for publishing classified documents. The big question today is whether a publisher can be brought to trial for posting leaked information. And if so, does that publisher have any protections under the First Amendment?

WikiLeaks did not provide a commentary on the released documents, as a journalist would. Instead, it posted them as primary source documents for readers to interpret. WikiLeaks did not break into any government databases or steal private emails. Instead, someone leaked (handed over) the information to WikiLeaks. In a sense, WikiLeaks posted information that was passed to them in the same way newspapers publish information from different sources.

The world of journalism has been turned upside down by this controversy. WikiLeaks has been called a terrorist organization by some because it has made military information public. WikiLeaks is an international company, not based in the United States, which may make it impossible for the U.S. government to prosecute. The U.S. government has, however, indicted the individual who leaked the documents to WikiLeaks.

If the U.S. government does decide to prosecute the company, it could make the publication of classified information a crime. If this were to happen, would the free speech and press clauses of the First Amendment have any real meaning?

Proof of the power of the Internet can be readily seen in attempts of other governments, such as China, to limit access to the Internet. Free speech can be viewed as a challenge to the government. Oppressive governments might try to limit free speech in order to maintain control and power. This is why free speech and a free press are essential in any democracy. Free speech, though guaranteed by the First Amendment, is not without some limits and regulations, as you have learned. This issue raises a key question for our times: Should our government have any power to regulate what gets published on the Internet?

After reading the passage, answer the following questions:

1. Which example from colonial America could be compared to the WikiLeaks situation today?
 - A. publishing George Washington's plan of attack plan on British troops
 - B. reprinting Paul Revere's drawing of the Boston Massacre
 - C. reprinting the Constitution to be read in each colony
 - D. publishing a letter to the editor of the Philadelphia Enquirer on state's rights

2. Why is yelling "fire" in a crowded theater illegal when there is no fire?
 - A. It violates people's freedom of speech.
 - B. Speech that is untrue is always illegal.
 - C. It creates a risk to the safety of others.
 - D. It was outlawed by the first Supreme Court.

3. What information did WikiLeaks publish that upset U.S. government officials?
 - A. satellite images of Earth
 - B. names of people who voted in the last election
 - C. addresses of foreign businesses
 - D. classified government documents

4. Do you think the *New York Times* is at fault for using WikiLeaks documents to report on classified documents? Explain your answer, and use specific details from the reading passage to support your opinion.