

Spring 1999

## ERRATUM: Regarding Volume XV, Part One

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*Regarding Volume XV, Part One:*

Dear Professor Strossen and Mr. Kaufman:

It has been brought to my attention that there is a significant error in Professor Strossen's treatment of my remarks in her Foreword to the Journal's 1998 Symposium: "Should Cyberspace Be A Free Speech Zone?"

On page ix of her Foreword, Professor Strossen states that I dismissed the CDA as "obviously unconstitutional," a phrase that she places in quotes and repeats later in the same paragraph. As support, Professor Strossen cites to my remarks at page 50 of the Symposium. But, what appears at the cited page is a statement by me that begins "The CDA was obviously *held* unconstitutional . . ." (emphasis added), which is quite different.

In reviewing my files, I determined that although the rough transcript of the Symposium sent to me contained the phrase as it appears in Professor Strossen's Foreword, I was careful to correct the phrase to conform to my clear intent in making the remarks, and the corrected sentence appears in the transcript as printed. In addition, it should have been plain from the context of my remarks as they appeared in the original transcript that I was not acknowledging that the CDA was indefensible, since that portion of my statement dealt entirely with the issues confronting legislators *in light of* the statute's invalidation by the Supreme Court.

In transmitting the rough transcript to me on August 5 of last year, Denise Merna, the Journal's Managing Editor, made it clear that I had the opportunity to "review it for accuracy," and "make any necessary changes and corrections." My specific correction should have removed all doubt that I was not doing anything other than acknowledging the Supreme Court's holding in *ACLU v. Reno*. It is therefore disturbing that, despite the contrary contextual evidence and my express correction, Professor Strossen's Foreword nonetheless gives the readers of the Symposium the erroneous and unfair impression that I agreed that the CDA was, from the outset, unconstitutional. I am also at a loss to understand the purpose of

allowing the Symposium participants the opportunity to review their unscripted remarks if it is not in part to prevent such mistakes.

I understand that authors and editors are fallible, and that errors are an inevitable part of publishing. Nonetheless, I ask that you consider printing a formal acknowledgment that Professor Strossen's Foreword does not reflect accurately my remarks as printed in the Symposium.

I look forward to hearing from either or both of you at your earliest convenience.

Sincerely,

Jacob M. Lewis  
Special Counsel  
U.S. Department of Justice  
Civil Division - Appellate Staff

Dear Mr. Lewis:

The purpose of this letter is to confirm in writing the oral response I asked my Assistant, Lara Meinke, to convey to you immediately upon her receipt of your May 20, 1999 letter (I was out of town at the time, but she read it to me over the telephone).

I was distressed to learn that you had made a correction to the portion of your transcript that I quoted in my Foreword, since I had not been shown the corrected version. This, despite the fact that I requested the editors specifically to advise me if any portions of the uncorrected transcript to which I referred in my Foreword were subsequently modified. Accordingly, I quoted your explicit remarks as they had originally been transcribed and shown to me in the good faith belief that this transcription was accurate; I had no basis for believing that the transcription was inaccurate before receiving your May 20 letter. Moreover, I was not aware, in light of the larger context of your oral presentation, that this particular portion of the explicit transcript did not reflect your intent.

I assure you, I am not at all questioning what your intent was. I also assure you that my own intent had nothing to do with mischaracterizing your portion.

Believe me, I have no reason to distort either your words or your ideas. As indicated in my Foreword, many other advocates and defenders of the Communications Decency Act whom I have debated have clearly acknowledged after the fact that they realized all along that it was of dubious constitutionality. So, I could have made my point without any reference to you. In any event, I certainly did not state explicitly or intend to convey the much stronger — and, I believe, qualitatively different — assertion that you or any other CDA proponent thought that “the CDA was indefensible,” to quote your letter. Therefore, even though the error in the publishing process is lamentable, and I share your concern about that, I doubt that any reasonable reader would (mis)interpret the original transcribed version of your remarks as suggesting that you or any other CDA defender actually considered it to be “indefensible.”

As you know, as soon as I learned of your letter, I immediately asked the new officers of the *New York Law School Journal of Human Rights* to publish promptly either that letter or any other form of correction you might deem appropriate, along with my letter of explanation for an error that was completely innocent on my part, but for which I nevertheless sincerely apologize. I should also note that, having worked closely with the students who handled the publication process, I have no doubt that their failure to call your correction to my attention was also an innocent error.

Thank you again for your valued contribution to this significant symposium issue.

Very truly yours,

Nadine Strossen  
Professor, New York Law School  
President, American Civil Liberties Union

*The editors and staff at the New York Law School Journal of Human Rights would like to apologize to Professor Strossen, Mr. Lewis and to our readers for any misunderstanding.*

