
Interstate Obscenity Definition Act

Obscenity is not protected speech under the First Amendment and is prohibited from interstate or foreign transmission under U.S. law. But obscenity is difficult to define (let alone prosecute) under the current Supreme Court test for obscenity: the “Miller Test”.

The origins of the Miller test date back to 1957 when the Supreme Court gave us its “prurient interest” test laid out in *Roth v. United States*. According to the Roth court, material was not considered obscene, unless “to the average person, applying contemporary standards, the dominant theme of the material taken as a whole appeals to the prurient interest.” For the next 20 years, the court struggled with refining its *Roth* test causing strong dissents, court splintering, and lower court confusion at the applicability of the standard. In 1973, the Supreme Court sought a new test for “obscenity” in *Miller v. California*. The Miller test defines speech/expression as “obscene” if:

- (1) the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest;*
- (2) the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and*
- (3) the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.*

As we consider the application of the Miller Standard to the internet, we run into serious challenges. Which “contemporary community standards” should be applied? Or what “applicable state law” should be applied to determine patent offensiveness?

Because the internet is a “channel or instrumentality” of interstate commerce, Congress’s current obscenity prohibitions are severely diminished. In response, Sen. Lee is proposing the Interstate Obscenity Definition Act (IODA), which would establish a national definition of obscenity that would apply to obscene content that it transmitted via interstate or foreign communications.

Bill Specifics:

Specifically, IODA:

- Defines “obscenity” within the Communications Act of 1934 as content that:
 - (i) taken as a whole, appeals to the prurient interest in nudity, sex, or excretion,
 - (ii) depicts, describes or represents actual or simulated sexual acts with the objective intent to arouse, titillate, or gratify the sexual desires of a person, and,
 - (iii) taken as a whole, lacks serious literary, artistic, political, or scientific value.
- Strengthens the existing general prohibition on obscenity in the Communications Act (47 U.S.C 223(a)) by removing the “intent” requirement that only prohibits the transmission of obscenity for the purposes abusing, threatening, or harassing a person.

For more information concerning this bill or to be added as a cosponsor, please contact Joel Wellum (joel_wellum@lee.senate.gov) or Sophia Bagley (sophia_bagley@lee.senate.gov) in Senator Lee’s office.