

A graduate student at the University of California, Berkeley recently sued the federal government for unfairly limiting his freedom to discuss his research. The student, Daniel J. Bernstein, has developed an equation for encrypting information that could be used to scramble messages on the Internet or other computer networks. Federal regulations associated with the Export Administration Act define "technical data" very broadly to include "information of any kind that can be used, or adopted for use, in the design, production, manufacture, utilization, or reconstruction of articles or materials." The regulations also define "export" of data to cover not only the actual shipment or transmission of technical data out of the United States, but also "any release of technical data in the United States with the knowledge or intent that the data will be shipped or transmitted from the United States to a foreign country." Mr. Bernstein says in his lawsuit that he wants to publish a paper on his work as well as software based on his equation. He also wants to discuss his research at mathematics conferences.

Has Mr. Bernstein been unfairly deprived of his freedom to discuss his research? If so, why? If not, why not?

(reported in the Chronicle of Higher Education, 3/3/95)

MODERATOR'S ANSWER: Mr. Bernstein has been unfairly deprived of his freedom to discuss his research. The federal regulations invoked to prevent him from publishing articles and presenting papers on his research are stated so broadly that they give the government virtually unrestricted authority to censor communications on technical matters. A free society cannot give government officials this kind of blanket control. To justify restricting dissemination of Mr. Bernstein's equation the government would have to demonstrate harms related to such discussion that are so severe and imminent as to preclude any reasonable countermeasures.

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