

Education Technology Law

Preconference Session: ELA2010

Justin Bathon
University of Kentucky
Educational Leadership Studies



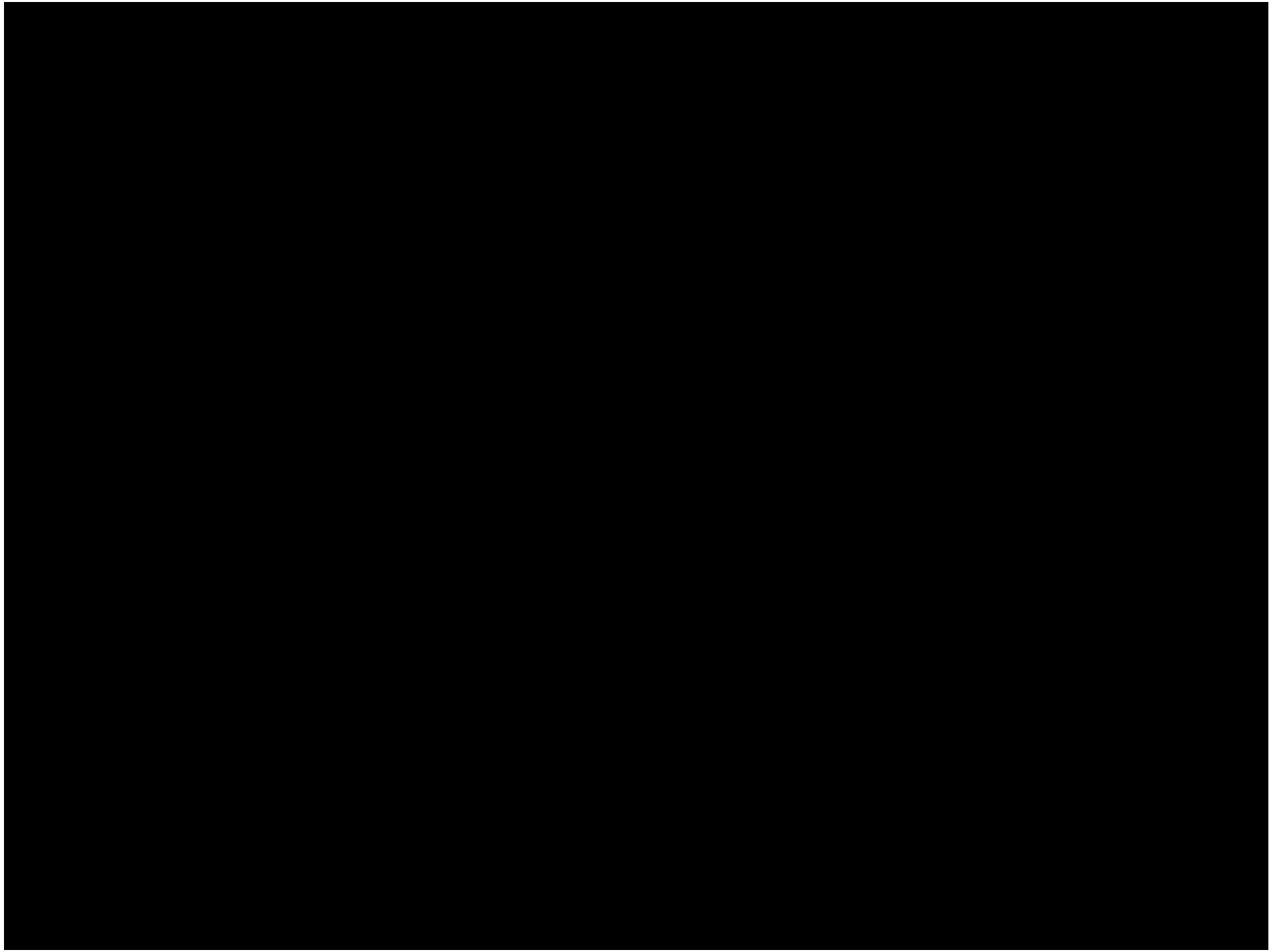
Introduce Ourselves

me

bias

I like Technology

Why?



<I>

It's a Global World



Dubai, UAE



Shanghai, China



Kuala Lumpur,
Malaysia



Sao Paulo, Brazil



Johannesburg, S.A.

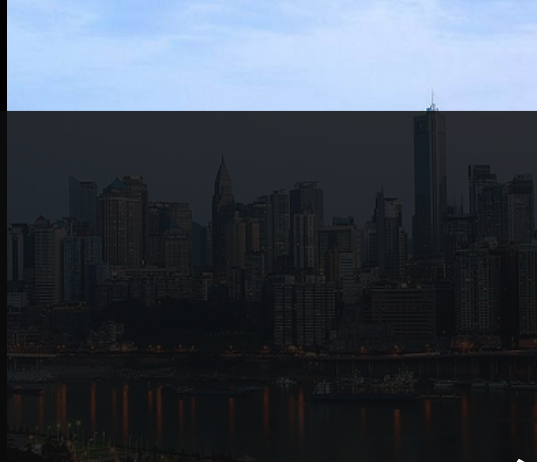


Seoul, South Korea

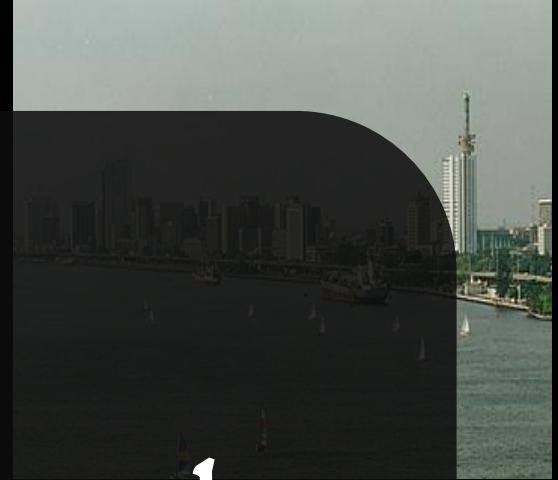
What Happened to the Third World?



Panama City, Panama



Singapore, Singapore



Lagos, Nigeria



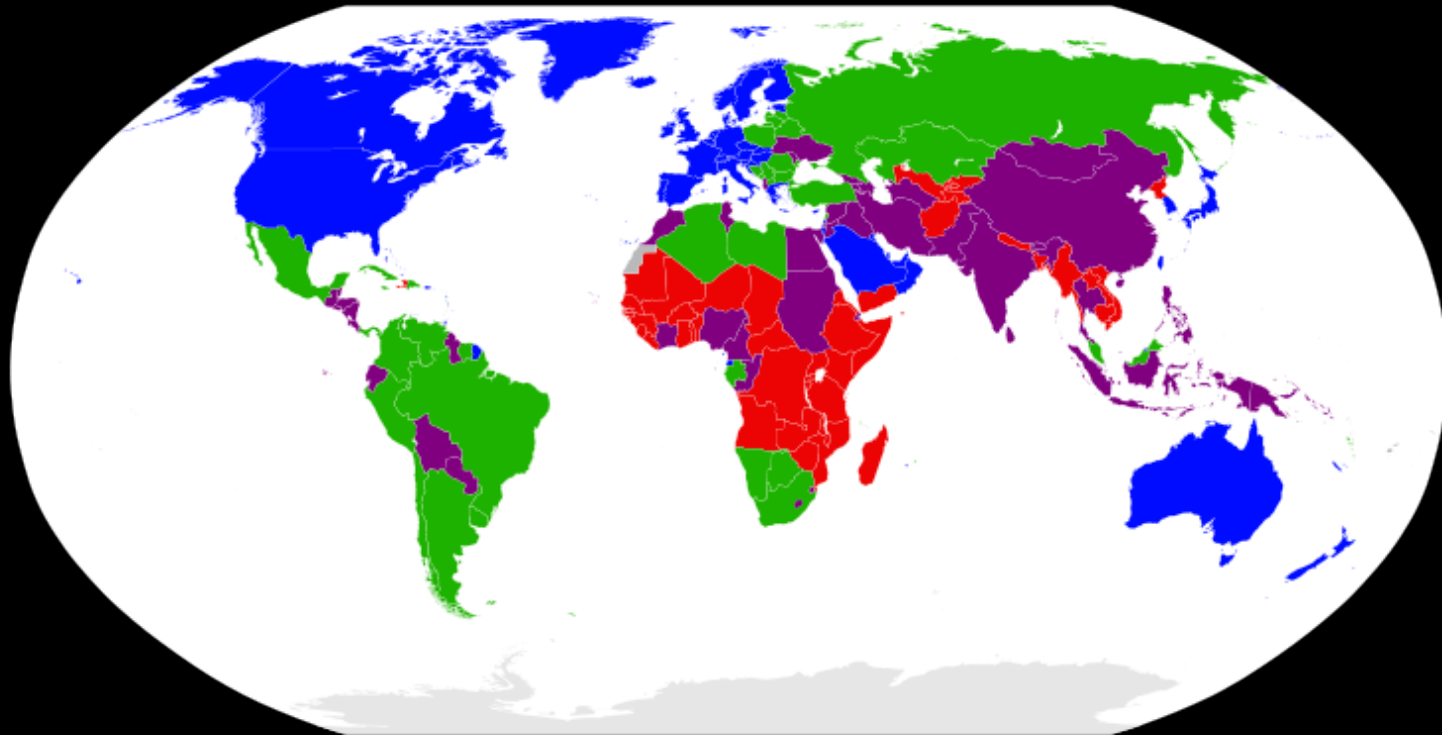
Auckland, NZ



Manila, Philippines



Mexico City, Mexico



2006 World Bank Income Groupings

- High income
- Upper-middle income
- Lower-middle income
- Low income

Bangladesh, With Low Pay, Moves In on China



China is now losing manufacturing jobs to other developing economies.

Bangladesh has become a major manufacturing hub in the region.


By VIKAS BAJAJ


Published: July 18, 2010

GAZIPUR, Bangladesh — The road from the Bangladeshi capital, Dhaka, narrows repeatedly as it approaches this town about 30 miles north, eventually depositing cars onto a muddy, potholed lane bordered by mangroves and small shops.

But this is no mere rural backwater. It is the sort of place to which foreign manufacturers may increasingly turn, if the rising wage demands of factory workers in [China](#) prompt companies to seek new pools of cheap labor elsewhere.

Already, in factories behind steel gates and tall concrete walls, tens of thousands of workers, most of them women, spend their days

 FACEBOOK

 TWITTER


RECOMMEND

 SIGN IN TO E-MAIL

 PRINT

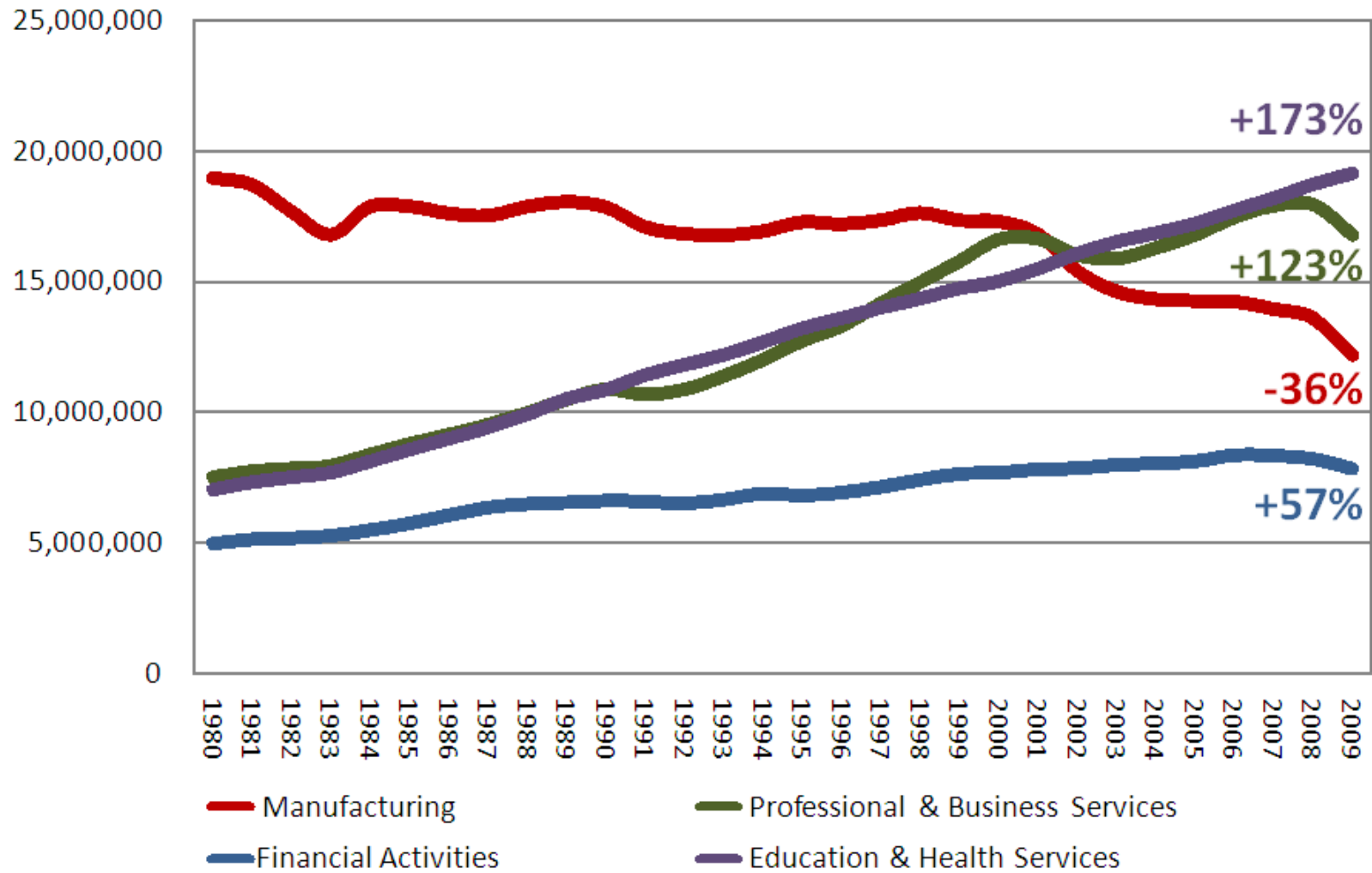
 SINGLE PAGE

 REPRINTS

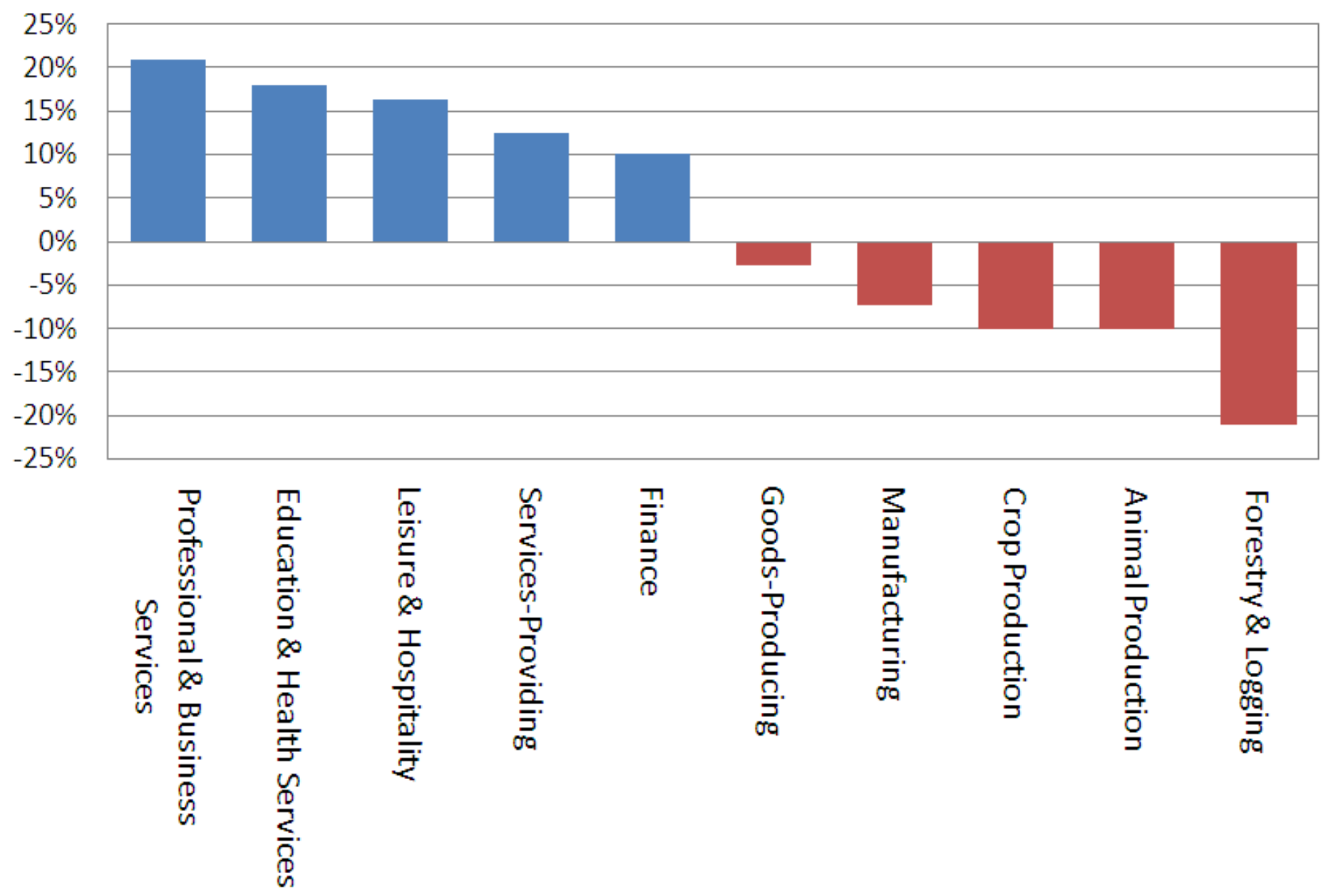
 SHARE

NEVER LET

EMPLOYMENT BY SECTOR United States, 1980 to 2009



Kentucky Workforce Projections, 2006-2016



Given I:

Globalization is real.

Assembly line manufacturing jobs are
not coming back.

< /I >

< 2 >

Technology is Changing Information

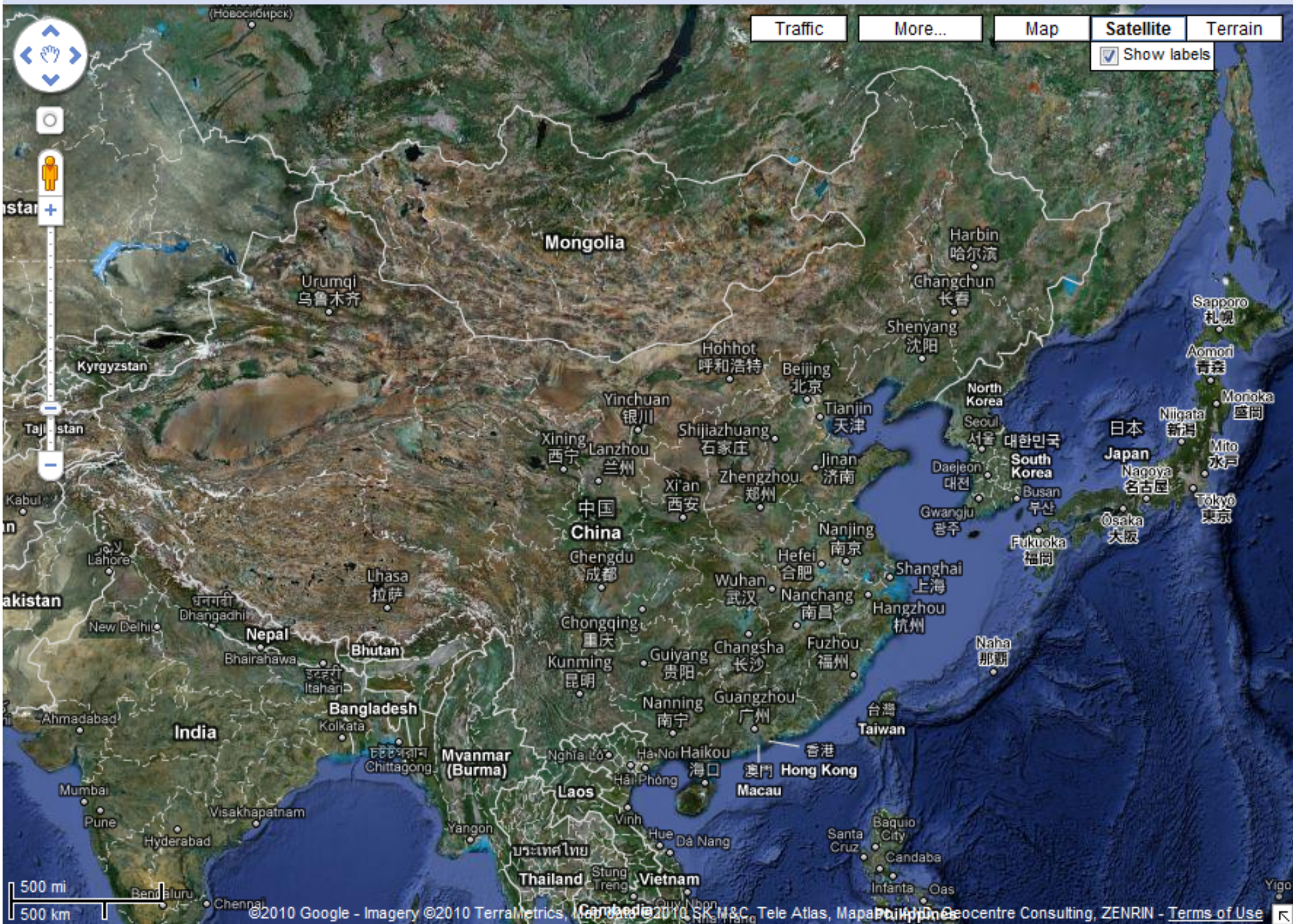


Information \neq Physical Space

CHINESE EMPIRE & JAPAN.

THE NEW CENTURY GLENNEN ATLAS 1903





WORLD BOOK

- The Official Source for Knowledge.com
- THE PRACMILENIA VISUAL DISK REFERENCE
- 1 A
- 2 B
- 3 C
- 4 C
- 5 D
- 6 E
- 7 F
- 8 C
- 9 H
- 10 I
- 11 I
- 12 L
- 13 M
- 14 N
- 15 P
- 16 Q
- 17 S
- 18 S
- 19 U
- 20 U
- 21 W
- 22 W

- WRITE MARK
- THE CAUSE OF PHIL
- THE M
- COGNITISM & PSYCHOLOGY
- COGNITISM & PSYCHOLOGY
- Course Evaluation
- Golden Bough
- WORLD MAP
- WORLD MAP
- WORLD MAP
- WORLD MAP

WIKIPEDIA

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3 256 000+ articles

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フリー百科事典

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Die freie Enzyklopädie

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Polski

Wolna encyklopedia

690 000+ haseł

Italiano

L'enciclopedia libera

678 000+ voci

Русский

Свободная энциклопедия

525 000+ статей

Português

A enciclopédia livre

560 000+ artigos

Nederlands

De vrije encyclopedie

598 000+ artikelen



search • suchen • rechercher • szukaj • ricerca • 検索 • zoeken • buscar • busca • поиск • sök • 搜索 • søk • cerca • haku • пошук • hledání • keresés • ara • căutare • 찾기 • serçu • søg • بحث • cari • suk • tìm kiếm • hl'adat' • претрара • paieška • חיפוש

English















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This is not a change of degree



A shift has occurred in the underlying technological paradigm.

Given 2:

Information will never be the same.

Information enterprises will have to
change or become obsolete.

$\langle 1/2 \rangle$

<3>

The Web is Useful



Web @ 1995 = Boring





amazon.com

eHarmony®

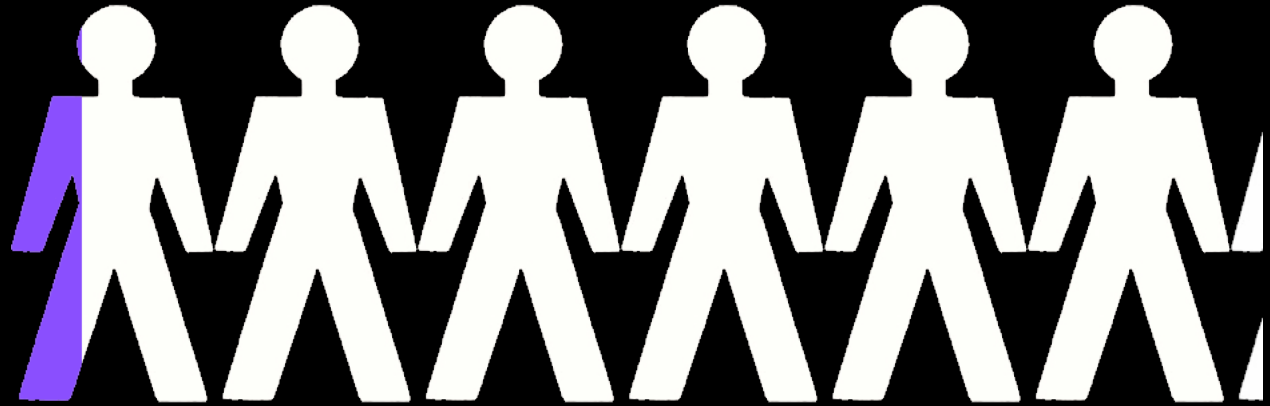


We found useful
stuff to do too

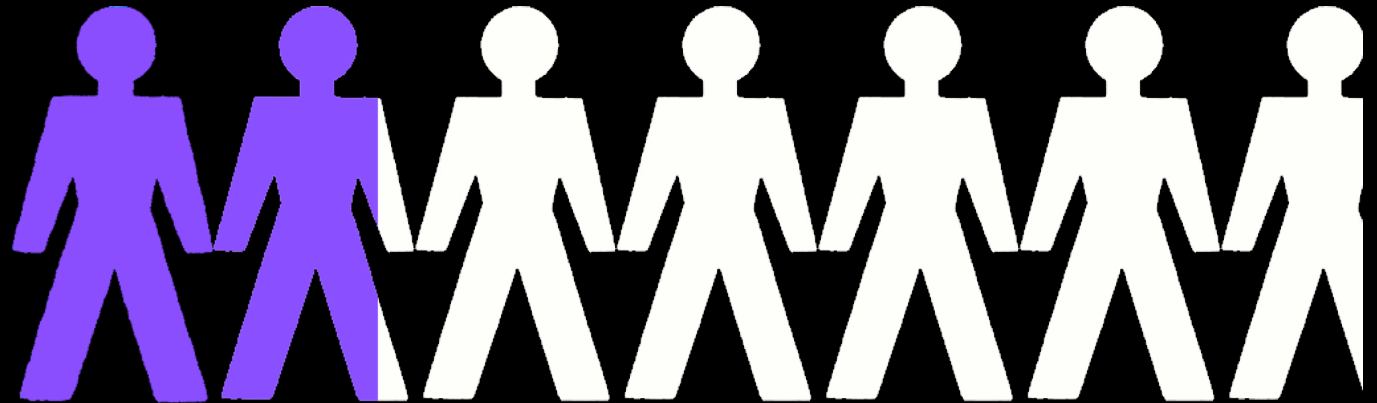


World Human Population

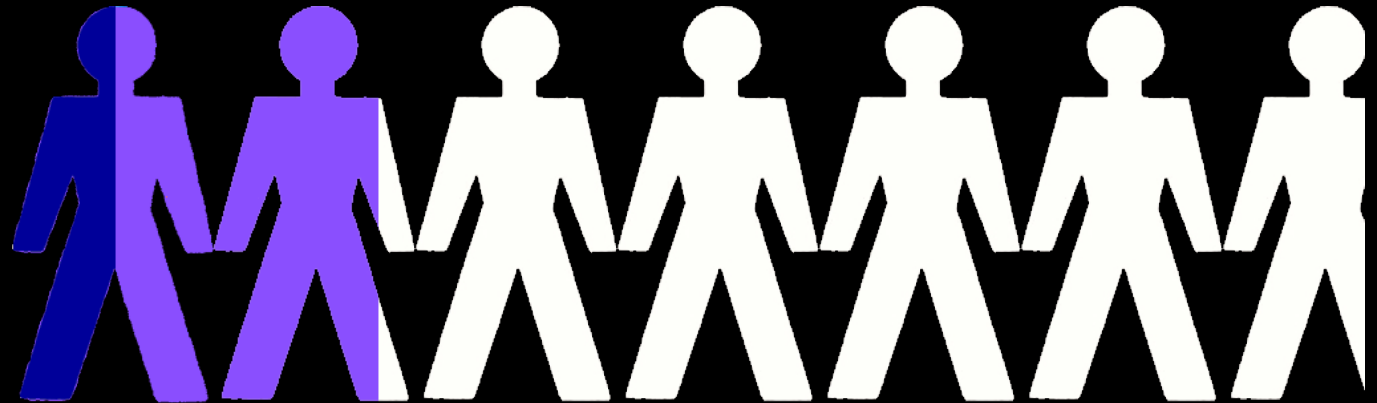
Internet Users
2000
@350,000,000



Internet Users
2010
@1,802,330,457



Facebook Users
2010
@500,000,000





=

Facebook is
6 Years Old

The Web Became Ordinary

Ordinary = Useful = Indispensable

Given 3:

The Internet is part of life.

The Internet can be useful for most
daily activities.

< /3 >

< 4 >

These Changes Are Happening Fast

1901: First radio transmission across Atlantic
1903: Wright Brothers fly the first airplane.
1908: First Model T rolls off assembly line.
1910: Edison creates a talking motion picture.
1916: Radios that receive multiple signals invented.
1926: Liquid Fueled Rockets
1927: A television as we know it is created.
1930: Jet Engine
1932: Polaroid Photography
1935: Tape Recorder using magnetic recording
1937: Photocopier
1939: Sikorsky creates the first modern helicopter
1941: Software controlled computers.
1945: Atomic Bomb
1947: AT&T create the idea for mobile phones
1955: Fiber-optics
1958: Lasers
1959: Microchip
1962: First Videogame
1967: Calculators
1968: RAM
1972: Wordprocessing
1978: Spreadsheets
1979: Cellphones
1981: Personal Computers (IBM)
1990: World Wide Web (www)

**1901: First radio transmission across
Atlantic**

1903: Wright Brothers fly the first
airplane.

1908: First Model T rolls off assembly
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1910: Edison creates a talking motion picture.

1927: A television as we know it is
created.

1932: Polaroid Photography

1937: Photocopier

1941: Software controlled computers.

1945: Atomic Bomb

1955: Fiber-optics

1958: Lasers

1959: Microchip

1967: Calculators

1968: RAM (random access memory)

1972: Wordprocessing

1978: Spreadsheets

1979: Cellphones

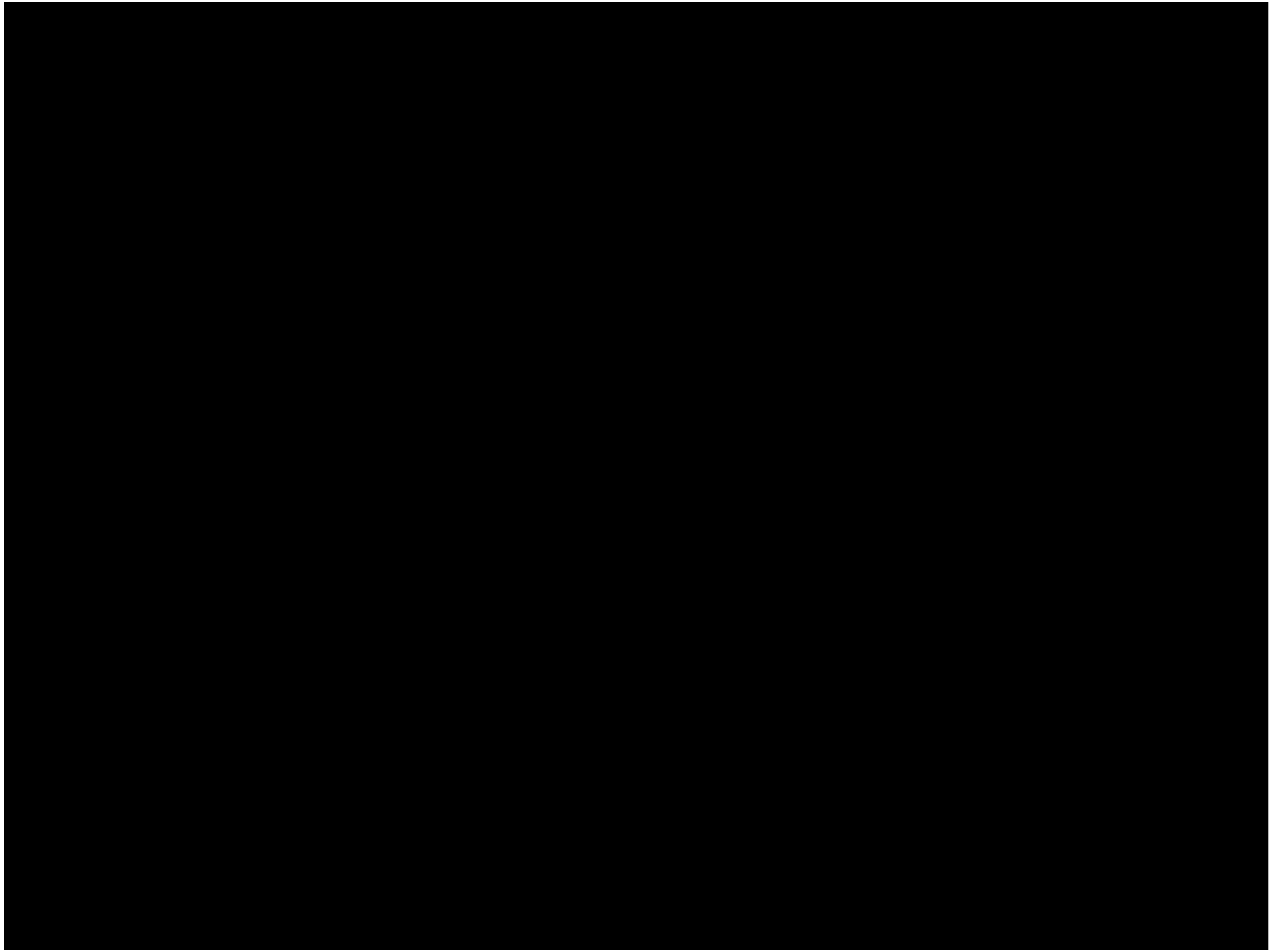
1981: Personal Computers (IBM)

1990: World Wide Web (www)



“An analysis of the history of technology shows that technological change is exponential, contrary to the common-sense 'intuitive linear' view. So we won't experience 100 years of progress in the 21st century—it will be more like 20,000 years of progress (at today's rate).”

Ray Kurzweil, *The Law of Accelerating Returns* (2001).



Given 4:

The Pace of Innovation Will Only
Accelerate Further.

< /4 >

< 5 >

Education Is Trying

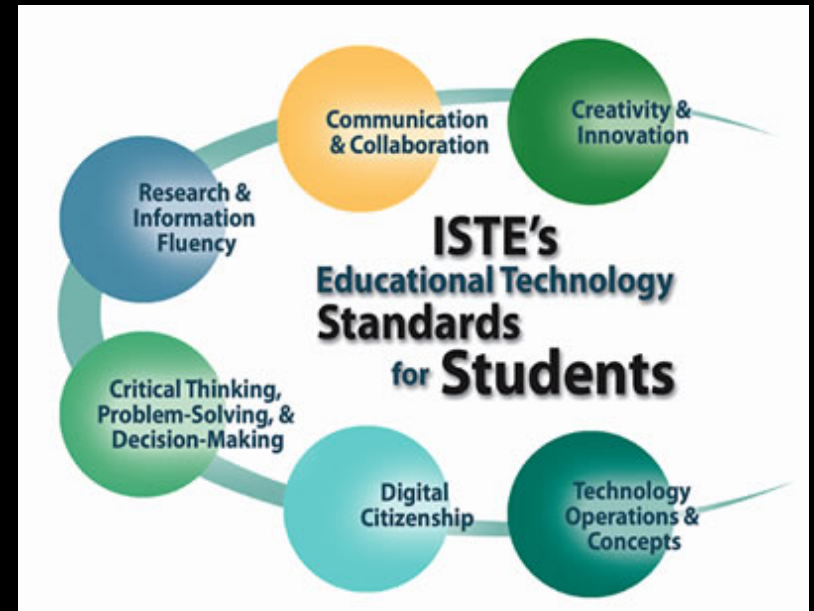


<http://www.flickr.com/photos/tfrancis/12887>

Sharing, and sharing online specifically.

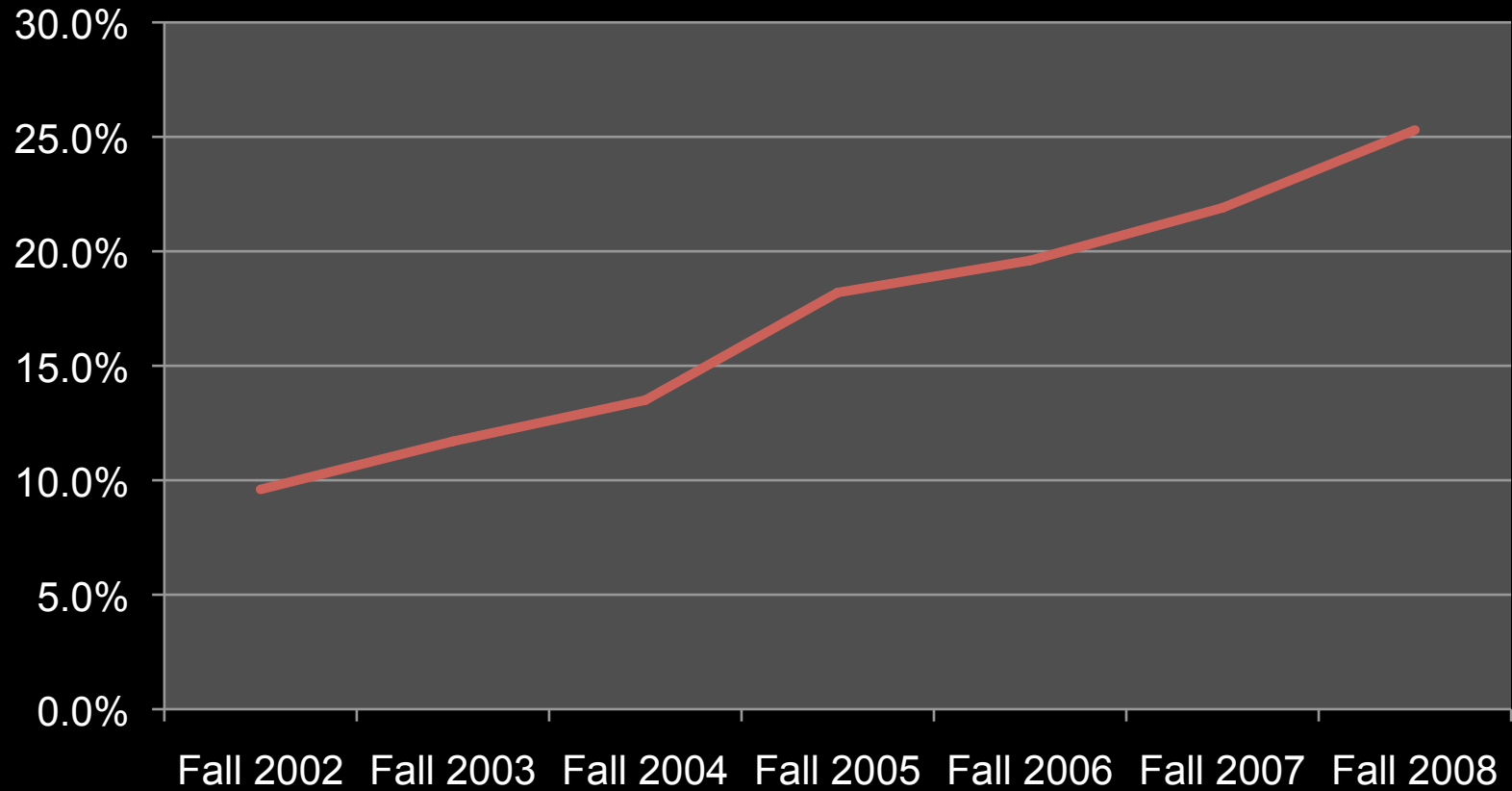
Kentucky Technology Deployment

- 214,840 Instructional Devices
- 1/5 of which are “mobile”
- 70% of schools have Tech. Skills as part of defined curriculum.
- 92% of schools have a fiber connection
- 75% of classrooms have a projector, flatscreen, or smartboard





Online Enrollment as a Percentage of Total Post-Secondary Enrollment



Source: Allen, I. E. & Seaman, J. (2010). Learning on demand: Online education in the United States, 2009, Babson Survey Research Group

Given 5:

Schools are not standing still in the face
of these rapid changes.

Educators are caring people, working
hard to improve learning for kids.

< /5 >

< summary >

Givens:

Globalization is real, and economics will drive jobs overseas to the cheapest, stable labor pools.

Information will never be the same, and organizations must adapt.

The Internet is part of life, and is generally useful.

The pace of innovation will only accelerate further.

Schools, staffed with good people, are not standing still in the face of these rapid changes.

< /Givens >

Thoughts?

A Vision of Students Today

Agenda

Intros/Bias

Students

Search

Expression

Discipline

Bullying

Employees

Expression

Privacy

Governance

Copyright

Contracts

Infrastructure

Top 10 Tech.
Trends

1.

- Issue Spotting Scenario

2.

- Overview of Relevant Law

3.

- Example Case (if available)

4.

- Short Discussion

Students

A student has a cell phone in their pocket during class. It rings and the teacher confiscates it. The phone is then taken to the principal's office where it will be held for 3 days as a punishment. Once in the principal's possession, the phone rings again with a text message. Noticing that the text is from another student in the school, the principal reads, answers and checks the rest of the text messages for other students who might have texted during school hours.

Search and Seizure

Reasonable Suspicion

v.

Probable Cause

Justified at
its Inception

+

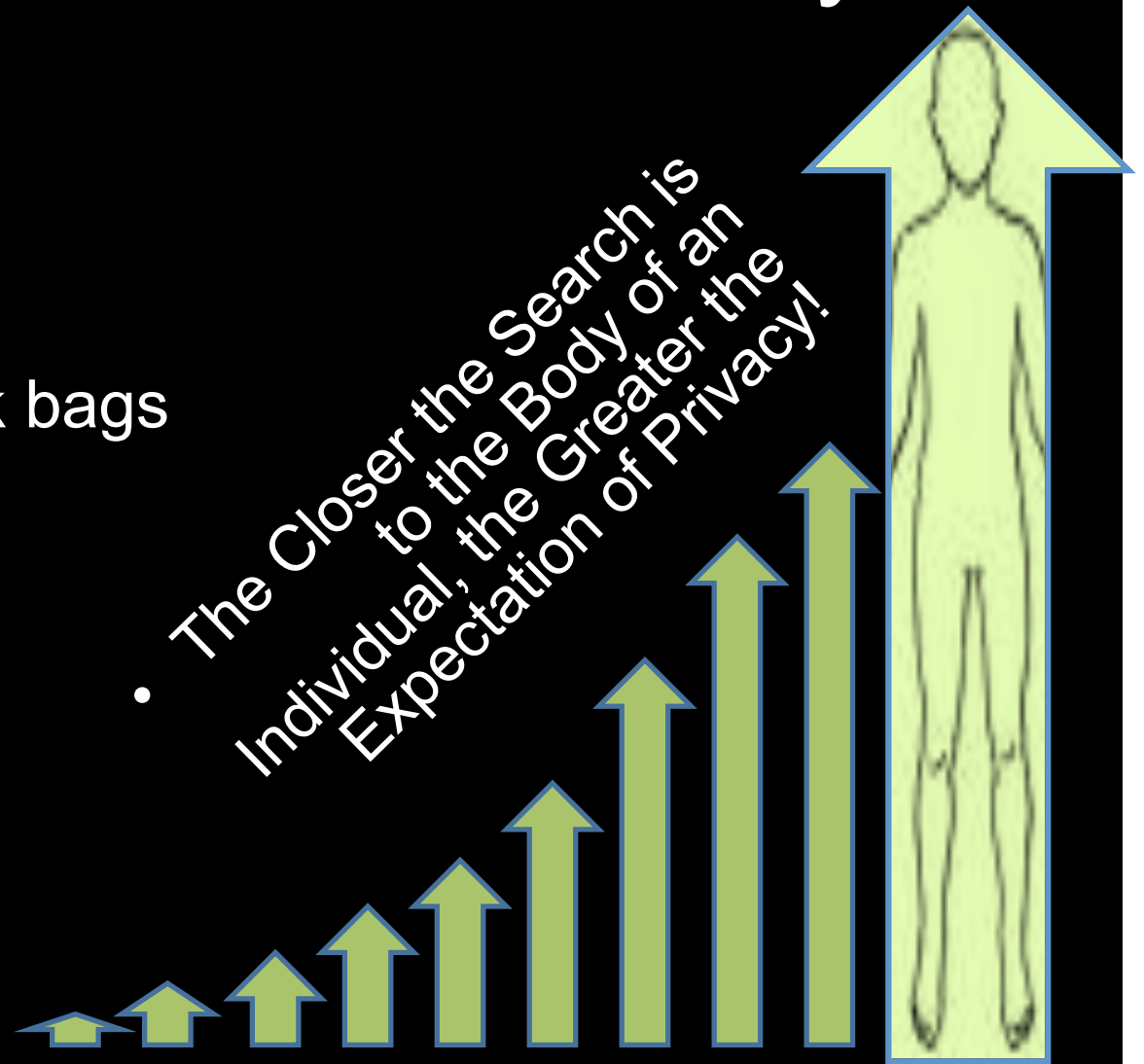
Reasonable
in Scope

=

Reasonable
Suspicion

The Expectation of Privacy

- Locker search
- Search of cars
- Search of coats/book bags
- Search of purse
- Search of pockets
- Strip search



Klump v. Nazareth Area School District,
425 F.Supp.2d 622 (E.D. Pa. 2006)



- A. Phone Fell Out of Pocket
- B. Phone was seized
- C. Suspected drug use
- D. Admin. called 9 other students
- E. Accessed text messages & voicemail
- F. Instant messaged other students posing as student

Unconstitutional under 4th Amendment

Violation of Penn. Wiretapping Law

Short Discussion

Expression

Scenario

Students in your school have been using Foursquare to “check-in” to your high-school without your knowledge. One student has checked in frequently enough that he is the “mayor” of your school. The mayor posts daily updates with his check-ins, which are automatically cross-posted to Facebook and Twitter. Lately the postings have been focused on local elections, including the local Senate, sheriff and school board elections. The student is highly critical of some candidates, including statements that the “mayor’s minions” must register to vote so that they can “overthrow the aristocrats,” of which a local school board member has been named as one. The board member complained to you.

Historical Development of Student Expression Law

Pre-1969 = No Free Expression Rights

Tinker v. Des Moines Indep. School Dist. = 1969

Disruption Standard

Bethel Sch. Dist. v. Fraser = 1986

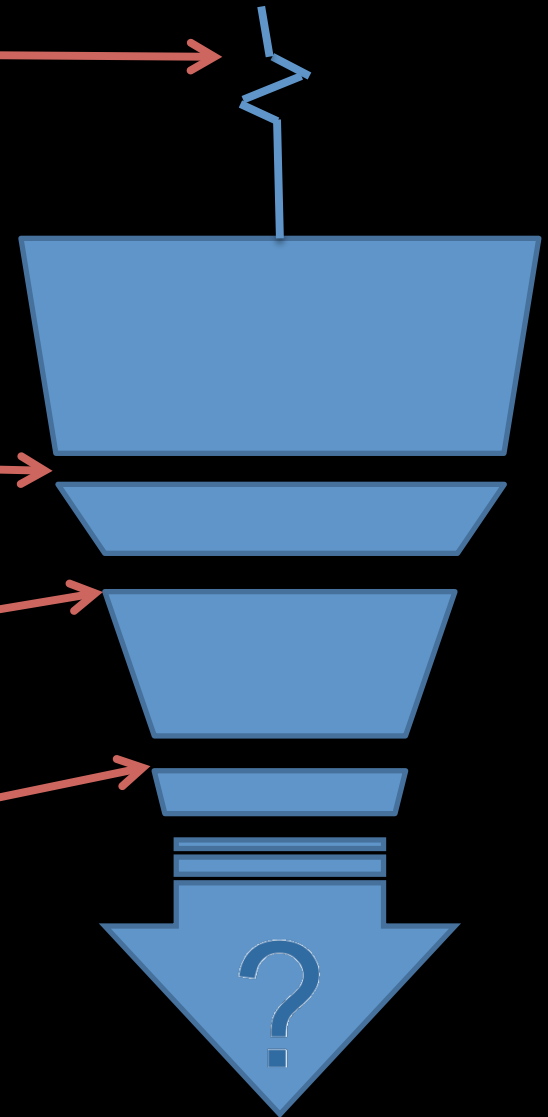
Lewd, Vulgar & Plainly Offensive

Hazelwood Sch. Dist. v. Kuhlmeier = 1988

School Sponsored Expression

Morse v. Frederick = 2007

Speech Promoting Drug Use



The Trilogy



Tinker - 1969

- Substantial Disruption
- Infringe on Rights of Others



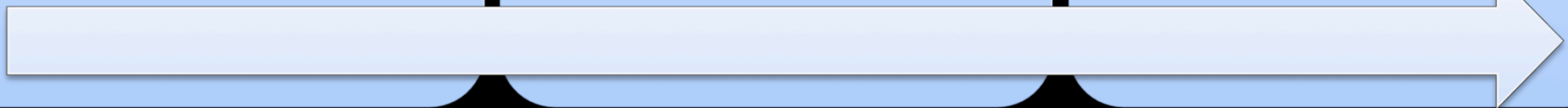
Fraser - 1986

- Lewd, Vulgar, Plainly Offensive

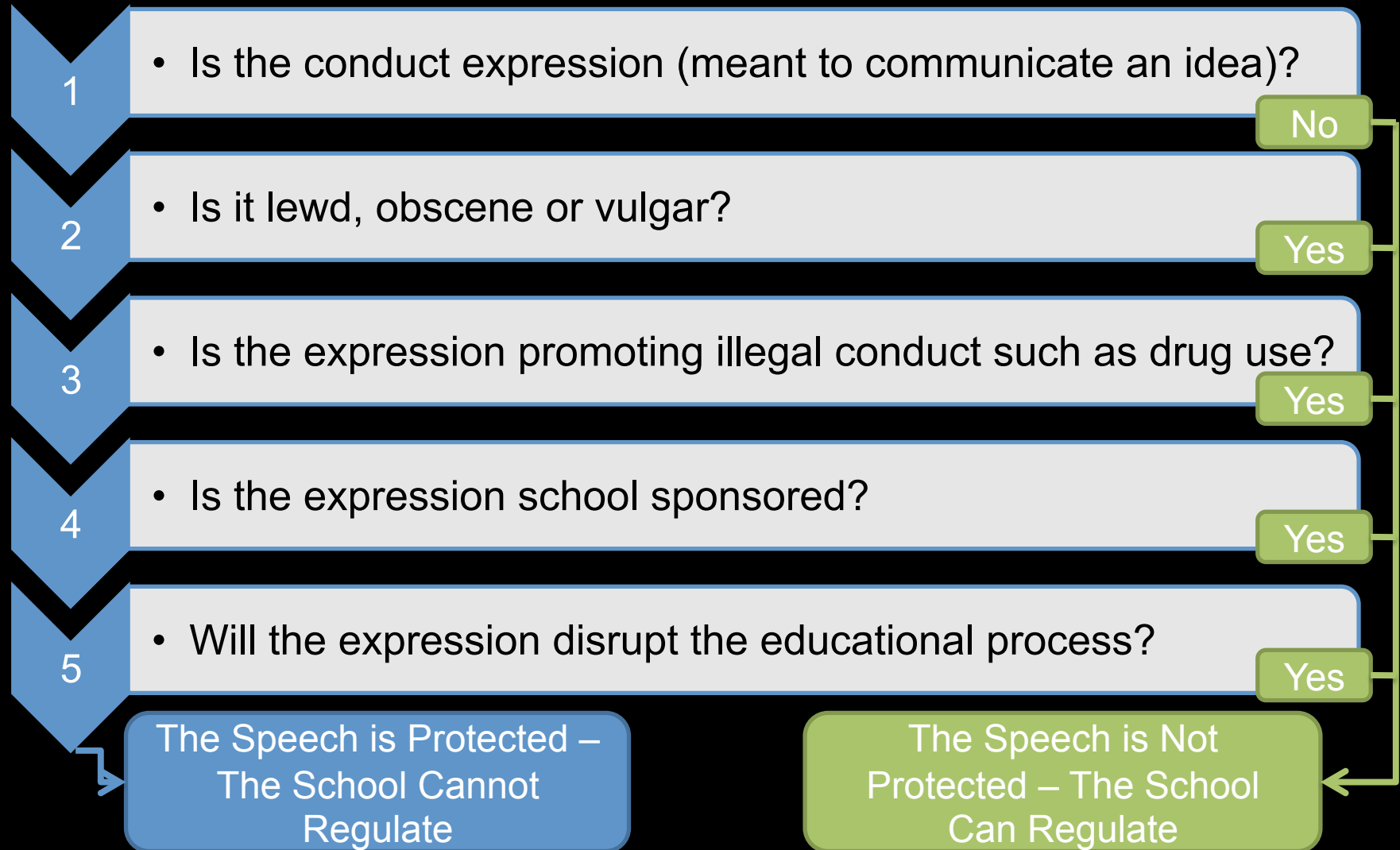


Hazelwood – 1988

- School Sponsored, Legitimate Pedagogical Reason



The Test



Electronic Expression

Nexus

Lewd,
Vulgar,
Offensive

Disruptive



Doninger v. Niehoff,
514 F.Supp.2d 199 (D.Conn. 2007)



- A. School prohibits a concert
- B. Student writes on LiveJournal blog that admin. are “douchebags”
- C. Admin. prohibit her from class election
- D. Runs t-shirt campaign, also prohibited
- E. Sues under 1st Amend.

I. Regulation of off-campus blog speech
constitutional

II. Regulation of t-shirt = litigation
ongoing

Short Discussion

Discipline

Scenario: Twitter Example

The image shows a screenshot of a Twitter profile page for the user @Nordeer. The profile name is "Nor Deering" and the handle is "@Nordeer". The profile picture is a black silhouette of a deer head. The page shows a "Follow" button and a "Timeline" tab. The timeline contains five tweets from the user, all dated "9 Jul 09". The tweets are:

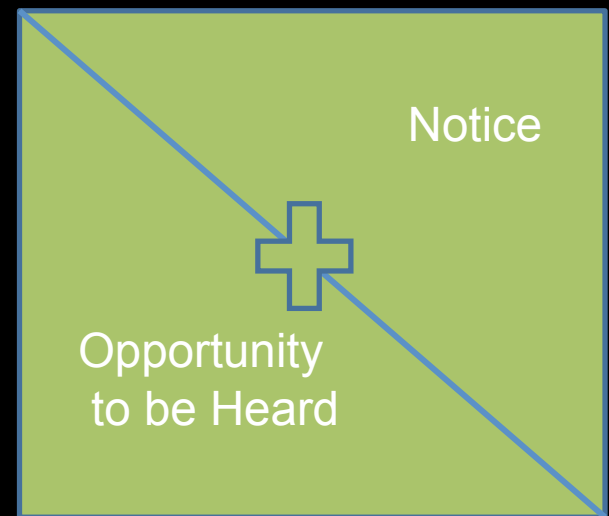
- "Only teachers left day after - they be hot!"
- "@queenters - don't think gas is necc. - just 1 match"
- "Maybe start in lib. with all books?"
- "It's june 13 - that's the day. June 13 - end of that nightmare place."
- "[partially obscured text]"

On the right side of the profile, there is an "About @Nordeer" section with statistics: 0 Tweets, 20 Following, 2 Followers, and 0 Listed. Below this is a "Following 20" section with a row of profile pictures of users being followed. At the bottom of the right sidebar, there are links for "About", "Help", "Blog", "Status", "Jobs", "Terms", "Privacy", "Businesses", "Media", "Developers", "Resources", and "© 2009".

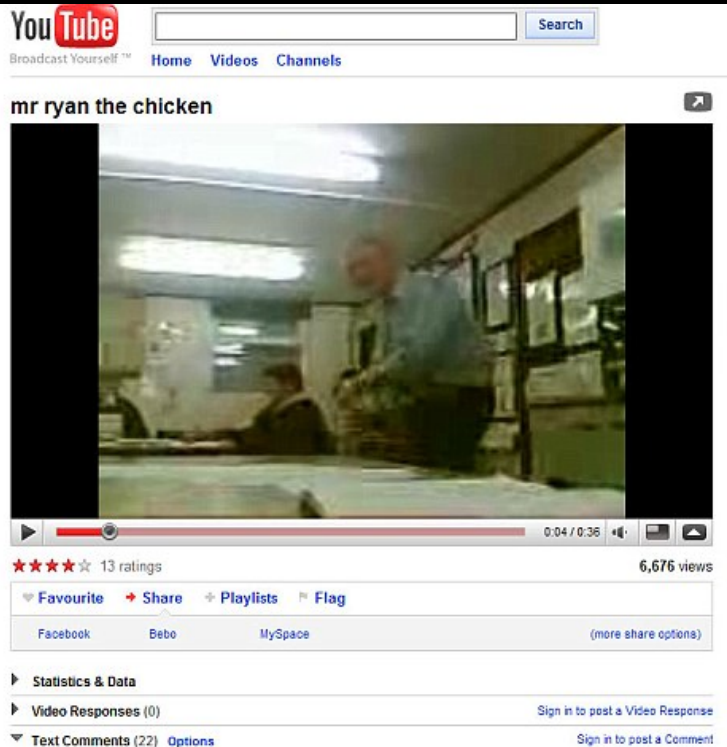
The 14th Amendment & Due Process

- “... nor shall and State deprive any person of life, liberty, or property without due process of law...”
- Life, Liberty & Property: Do Students Have These Things?
- What does “due process of law” mean?
 - At minimum, it means at least 2 things.

Due Process



Requa v. Kent School Distr. No. 415,
492 F.Supp.2d 1272 (W.D. Wash. 2007).



- A. Group of students record unknowing teacher during class
- B. Students edit and post videos to YouTube
- C. Posted on MySpace page
- D. Local TV stations finds and runs video
- E. Student suspended
- F. They sue

I. Students actions disruptive, thus no 1st
Amendment Protection

II. Public interest in exposing bad
teaching does not outweigh the interest
in maintaining a safe, secure learning
environment where teachers feel safe to
teach.

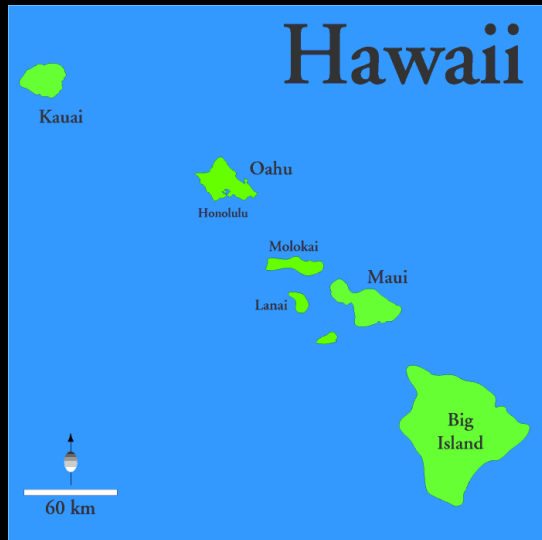
III. TRO denied.

Short Discussion

Cyberbullying



I Hate You.
You are Fat and Ugly.



Anti-Bullying Law



What do they do?

nothing

(mostly)

Bullying

In order to effectively participate in the democratic process as adults, students must learn to respect the rights of others and to interact with them in a civil manner. Therefore, students are required to speak and behave in a civil manner toward students, staff and visitors to the schools.

DEFINITION

As referred to in this policy, bullying refers to intentional, repeated hurtful acts, words or other behaviors that involve an imbalance of power. These may include, but are not limited to, name calling, teasing, threatening, social exclusion, and cyberbullying. Bullying may be physical, verbal, emotional or sexual in nature.

ACTIONS NOT TOLERATED

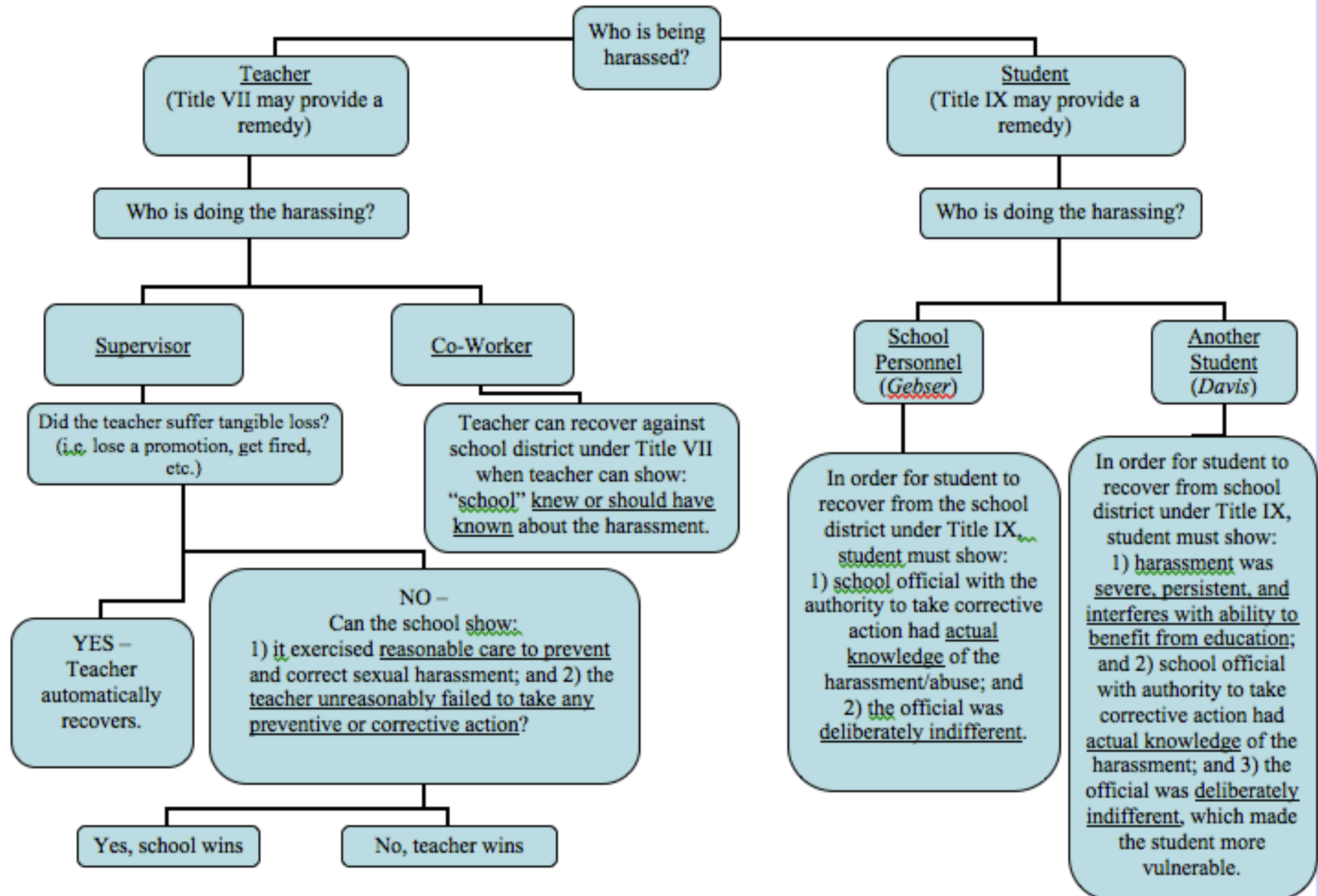
The use of lewd, profane or vulgar language is prohibited. In addition to bullying, students shall not engage in behaviors such as hazing, menacing, taunting, intimidating, verbal or physical abuse of others, or other behavior that disrupts a student's access to an education or is harmful to his/her well-being.¹ This policy extends to any/all student language or behavior including, but not limited to, the use of online or electronic methods. Such behavior is disruptive of the educational process and interferes with the ability of other students to take advantage of the educational opportunities offered.

These provisions shall not be interpreted to prohibit civil exchange of opinions or debate protected under the state or federal constitutions where the opinion expressed does not otherwise materially or substantially disrupt the education process or intrude upon the rights of others. Students who violate this policy shall be subject to appropriate disciplinary action.

Harassment/Discrimination allegations shall be governed by policy 09.42811.

but . . .

Sexual Harassment in Schools



Doe ex rel. Doe v. Coventry Bd. of Educ.,
630 F.Supp.2d 226 (D. Conn. 2009).



- A. Male student harassed female student
- B. Police notified
- C. Students still interacted in school
- D. Later male student was arrested
- E. Male students' friends sent threatening voicemails
- F. Student forced to withdraw from school
- G. Student's family sued

I. Title IX claim against school survived
summary judgment

Short Discussion

Video

BREAK

10 min.

Employees

A teacher posted photos on her Facebook page of her and some of her fellow teachers at Glen Beck's "Restoring Honor" in Washington. Several people commented on the photos, including 3 parents at the school and 1 student. The teacher stated in response to a comment that she wants to use much more of Glen Beck's writings and media in her courses at the local middle school. A parent has complained about the teacher's actions.

Pickering

Pickering Balancing Test

Private Grievance

Public Concern

Balance Factors

1. Impair teaching effectiveness
2. Jeopardize relationships with superiors
3. Interfere with the management of the school

Connick, Mt. Healthy & Givhan

Mt. Healthy

Expression cases do not override independent reasons for dismissal

Givhan

Forum does not determine whether expression is related to public or private concern

Connick

Form and context of expression must be considered in making public v. private determination

Garcetti

Connick & Givhan

- To be protected, expression must relate to a matter of public concern. Private grievances are not protected.

Pickering Balancing Test

- To be protected, courts will balance these factors:
 - Whether expression impairs teaching effectiveness
 - Whether it jeopardizes relationships with supervisors/coworkers
 - Whether it interferes with the management of the school

Garcetti (2006)

- All speech made pursuant to official job duties is not protected.

Existing Framework
Existing Framework

New Addition
New Addition



Academic Freedom?

Example Case

Short Discussion

Employee Privacy

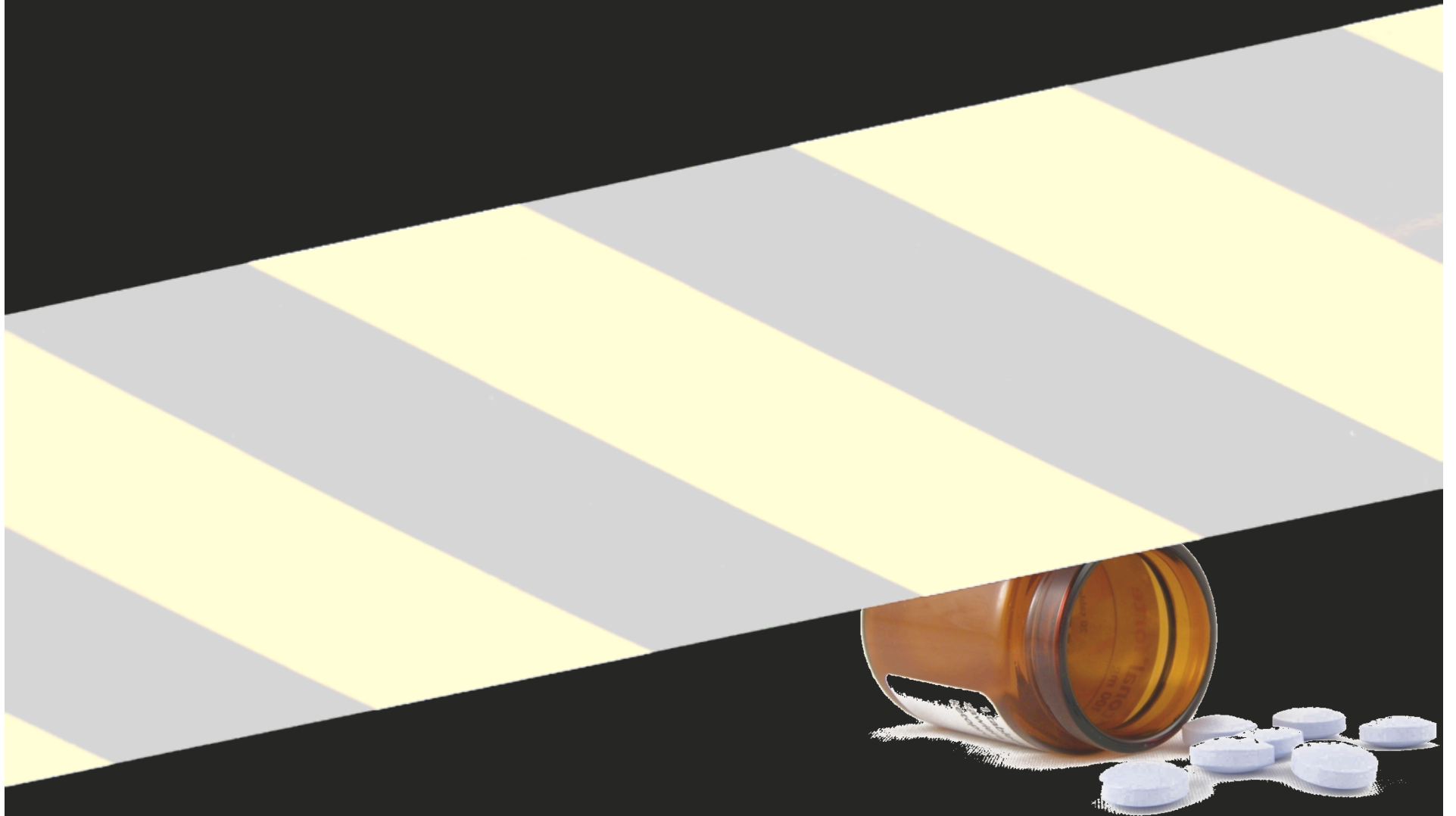
Scenario

New photos have surfaced of an Accounting IOI professor at the local community college dancing at the nearby ladies club several years back while working on his doctorate. The club had maintained the photos and in their recent website upgrade posted them on their homepage. A couple students in the class noticed the photos and forwarded them to all their Facebook friends. The class has become unmanageable. The mostly Freshmen in the class have been reprimanded, but the teacher has cancelled several classes, parents have called the Dean and the local paper is threatening to run the story. The club has deleted the photo from their site, but the students maintain several copies. You are the General Counsel faced with this situation.

Teacher Lifestyle Choices



Teacher Searches





- A. Local art teacher paints on his own time
- B. Uses body parts, particularly butt, as paintbrush
- C. Does not do this at school and takes pains to conceal his identity
- D. A recording of him painting surfaces and is posted to YouTube. He is wearing a disguise, but is nearly naked.
- E. Students & Parents see video and complain

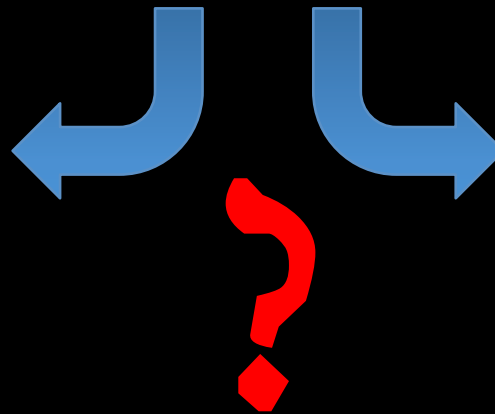
I. District Settled with Mr. Murmer for
\$65,000

II. Thanks to publicity, Mr. Murmer now
makes a living off of his artwork

Thoughts on Employee Internet Issues

Employee v. Citizen

IT DOESN'T COMPUTE



The dream behind the Web is of a common information space in which we communicate by sharing information. Its universality is essential: the fact that a hypertext link can point to anything, be it personal, local or global, be it draft or highly polished. There was a second part of the dream, too, dependent on the Web being so generally used that it became a realistic mirror (or in fact the primary embodiment) of the ways in which we work and play and socialize. That was that once the state of our interactions was on line, we could then use computers to help us analyse it, make sense of what we are doing, where we individually fit in, and how we can better work together.

Twitter is not in my job description



Legal Flexibility



What of Privacy?

Just don't ban it



Facebook logo

Short Discussion

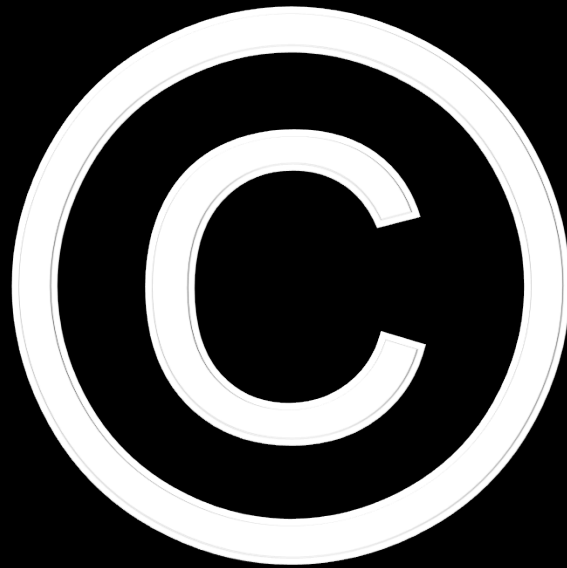
Governance

Copyright

Scenario

Each day, thousands of kids at the University of Kentucky are violating copyright law, multiple times per day.

Copyright Law

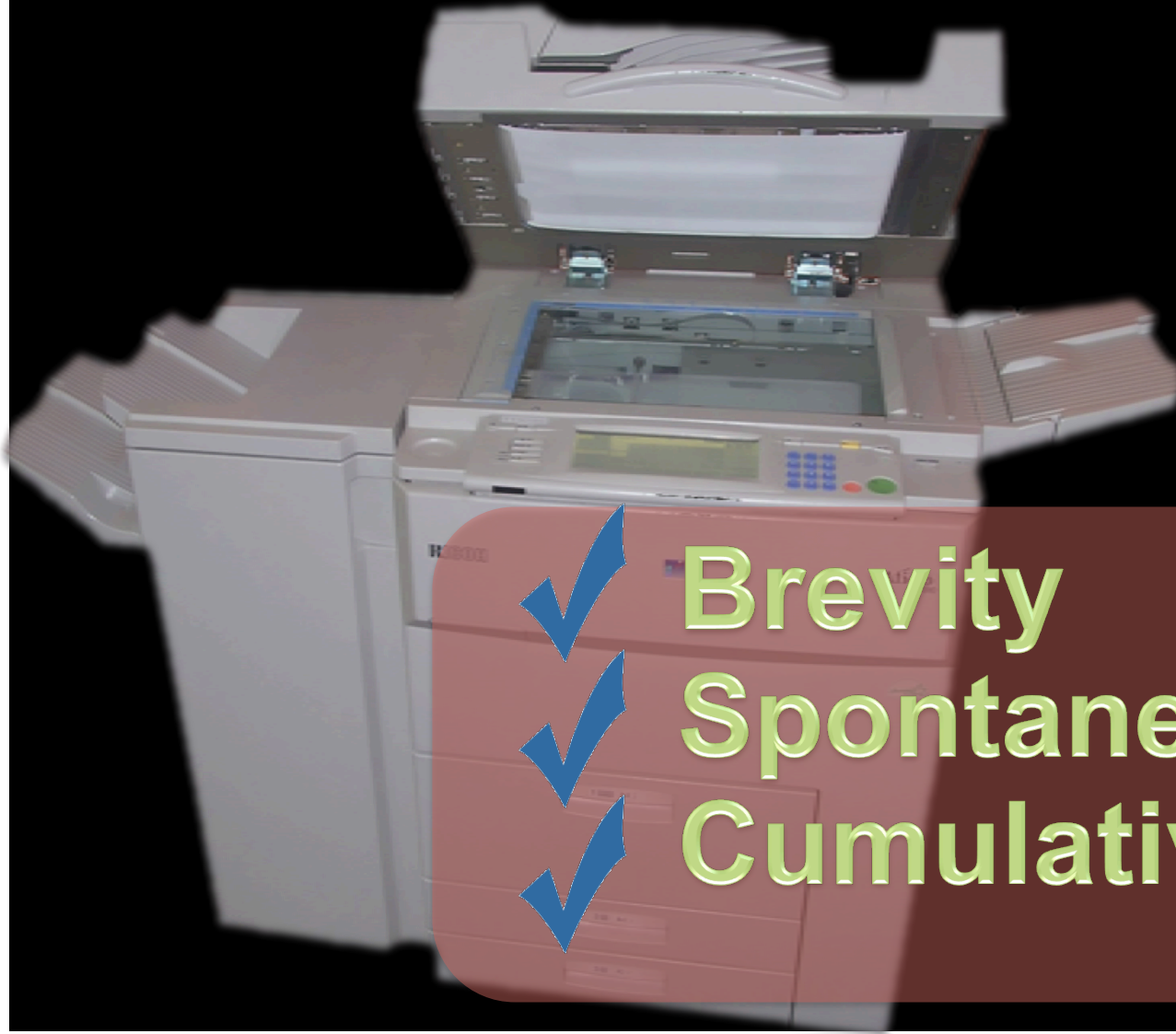


Fair Use

Considerations to Determine Fair Use

1. The purpose and character of the use
2. The nature of the copyrighted work
3. The amount of the work used
4. The market effect

Multiple Copies



Brevity

Spontaneity

Cumulative Effect

Electronic Copyright Issues





Criminals?



Short Discussion

Contracts

Your university is working with the state department of education to sign an iTunesU contract for K-12 schools and more. The cost of the service is \$0.

A Contract

- Minimum Requirements for a Contract:
 1. Offer & Acceptance
 - Offer Must Include:
 - Salary, Period of Time of Employment, Duties & Responsibilities
 2. Competent Parties
 3. Consideration
 4. Legal Subject Matter
 5. Proper Form



Clickwrap Agreements + Students

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I Agree

I Really Don't
Understand Why I
Can't Use this Cool
Tool for My
Students

Infrastructure (and/or “other”)

Scenario

State datasets have improved because of better database technology. As a result, it is now possible to track student progress over time and against particular teachers. This data can be used as part of a value added evaluation tool, and teachers can be evaluated (and fired) based on their performance in these data. The media has requested the raw data for themselves so that they can perform a similar analysis, and then rank all the teachers in the district on a public website. The FOIA request is sitting on your desk.



The Edjurist

Other Recent Issues on Blog

- Electronic Record Storage and Requests
- Recording School Board Meetings Under Sunshine Laws
- Cyber Charter Schools
- Definition of Biometric Records under FERPA
- Acceptable Use Policy Migration to Core Curriculum
- Banning Social Networking During School Hours

Top 10 Tech. Trends 2011

10.



Larger Companies Come to Play



9.



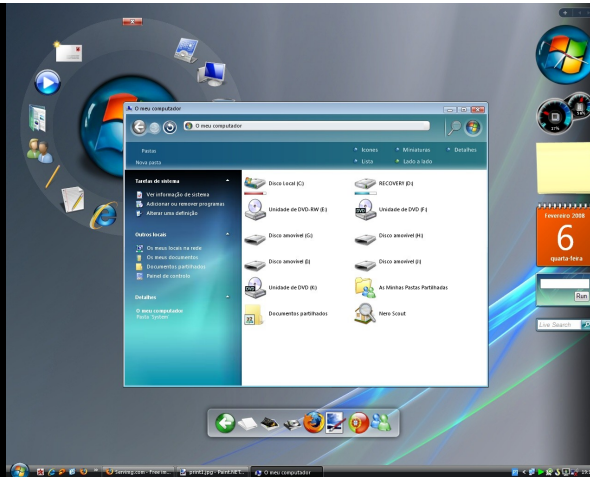
8.



Moodle (or Sakai) Explosion



7.

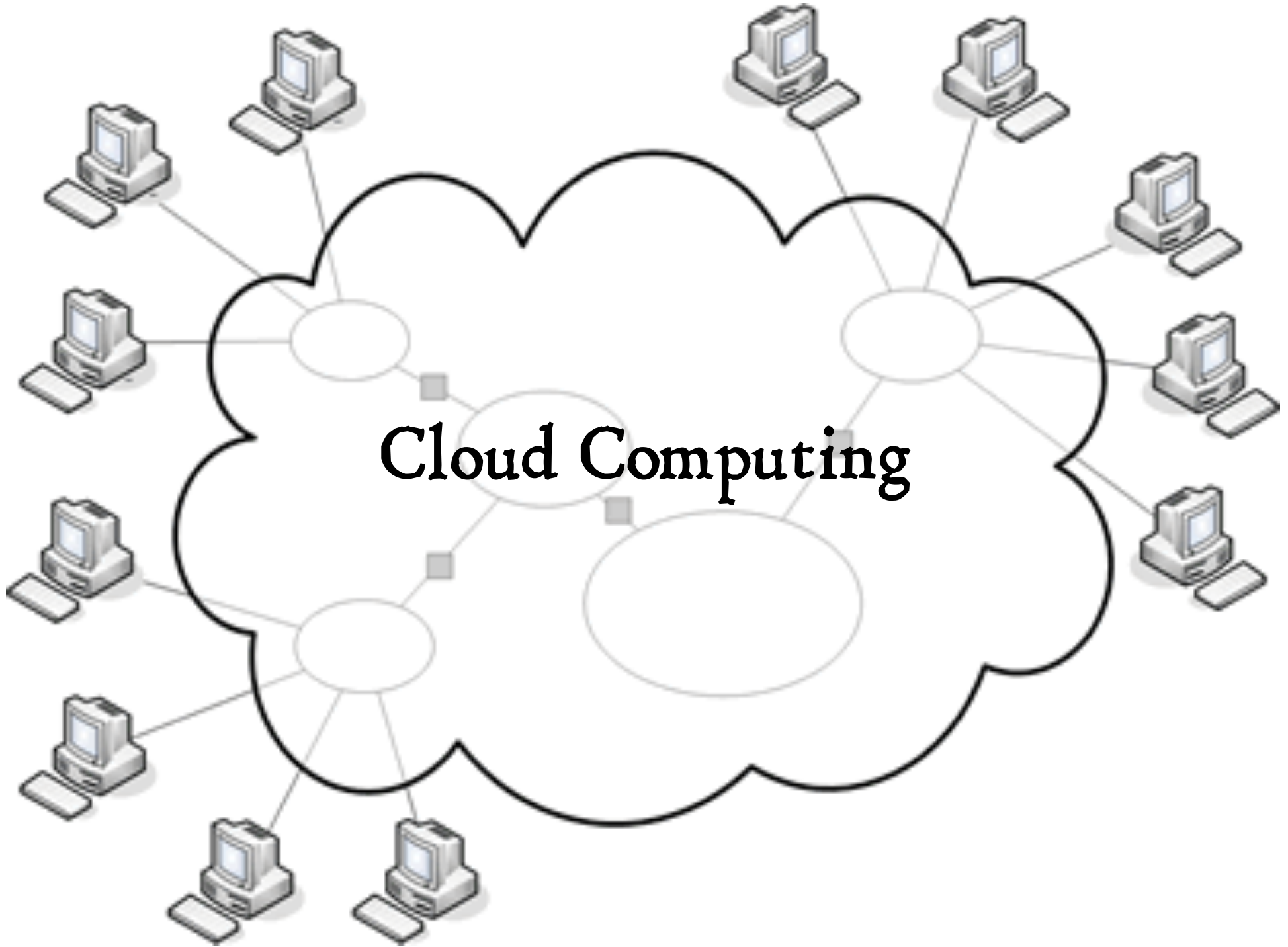


Operating Systems with Mice to Touch Screen App Stores



6.

Cloud Computing



5.

Revision3

NETFLIX

h+

TWIT.TV
with Leo Laporte & Friends

Internet 3.0 (TV Integration)

Apple tv

ROKU

Google TV™

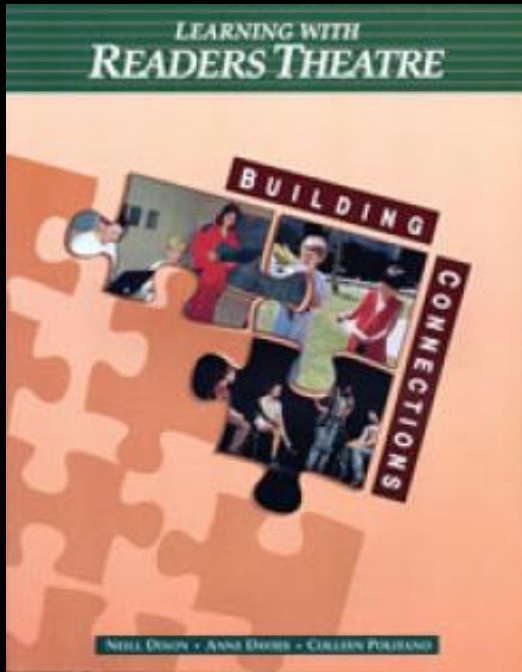
TV MEETS WEB. WEB MEETS TV.

Google IO

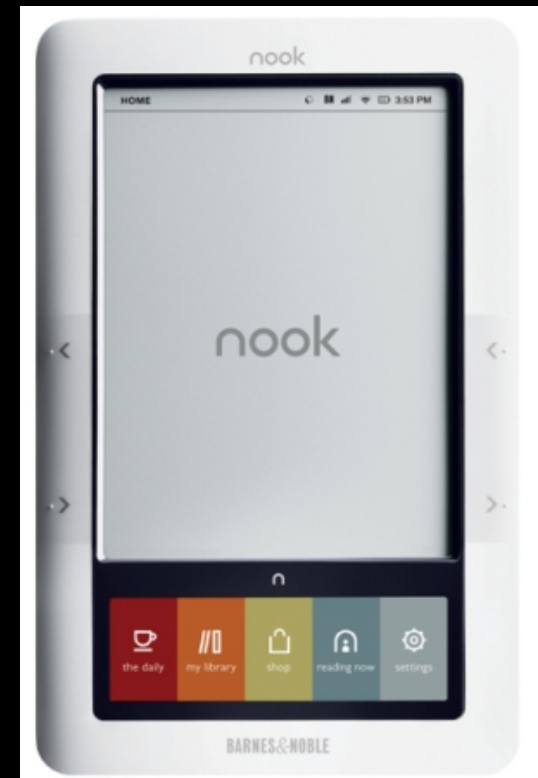
BOXEE

Powered by Ti-Look

4.



Textbooks (& Texas)



3.

Tablets & Mobility

- Apple iPad (released)
- Samsung Galaxy (released)
- Dell Streak (released)
- HP Slate (Nov. 2010)
- HTC (Christmas)
- Motorola/Verizon (Christmas)
- Asus Eee (March 2011)
- OLPC (\$75 tablet)
- India (\$35 tablet, released)

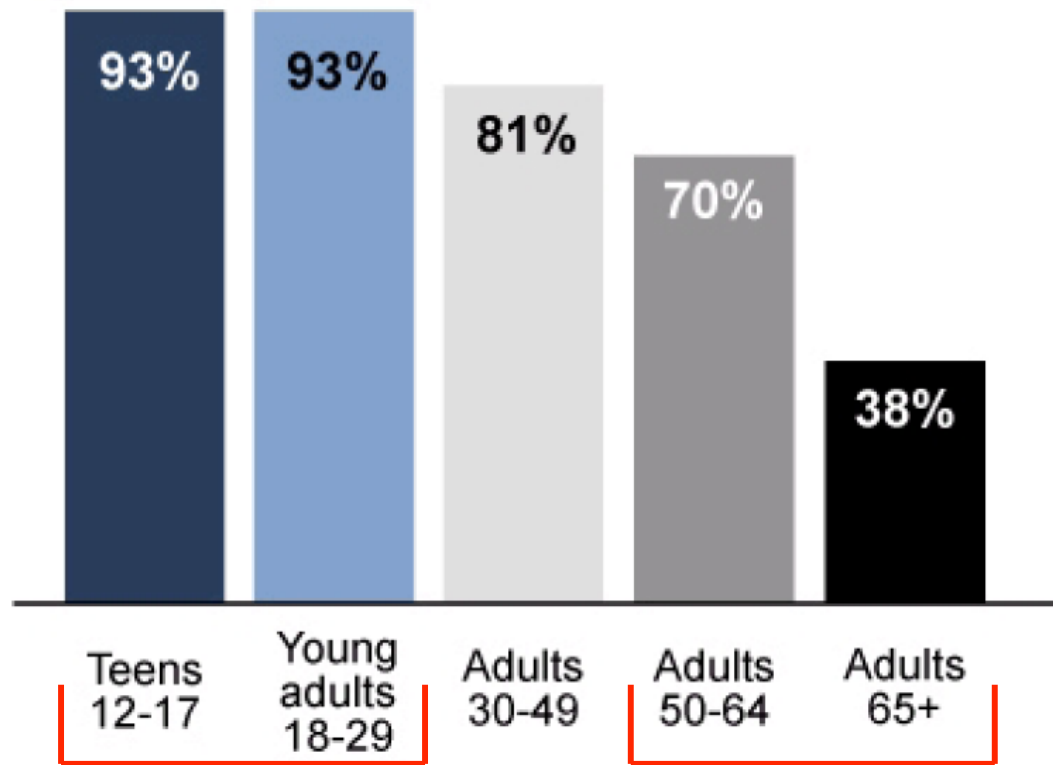


2.

I - I Computing

I.

Who's online? The internet by age groups



Those to whom
rules apply

Those who
make rules

