

## FINAL WORD ↻ BY MARNI SOUPCOFF

# Regulating All That Is Delightful

**L**ike anyone who reads the news, I come across a lot of calls for government to step in with more regulation of ... just about everything. I've seen articles demanding more regulation of funeral processions, funeral plans, drones, medical devices, organic food, crypto currency, short-term apartment rentals, surgical smoke (it's a thing), the nutritional standards of kids' meals in restaurants, duck boats, and—obviously—social media.

And that's just this morning. (I'm not making this up.)

There are so many requests for regulation that it's too tiring to get worried about every single one. You have to pick your battles.

In other words, let them have the duck boats.

It's the International Traffic in Arms Regulation (ITAR) that should be keeping you up at night, now that it is being used to ban the internet distribution of computer files that contain 3D-printed gun plans.

Predictably, because guns are involved, everybody is freaking out about this. Well, not everyone. President Trump, who is apparently trying to picture dot matrix printers spitting out fully formed assault rifles, has concluded that the technology of 3D-printed guns "doesn't make sense." But everyone else is going ballistic—so to speak.

For most people—including a federal judge who has ruled that posting blueprints for 3D-printed guns is illegal because it violates ITAR—the scariest part of all this is the potential for criminals and terrorists to create

untraceable guns that they can use against innocent people. But that's not the scariest part for me.

Don't get me wrong. I'm horrified by the idea of everyone and anyone—even the least stable of the unstable—being able to generate deadly weapons easily whenever they feel like it.

I'm not an especially brave person. I won't be calmly meeting armed terrorists head-on with my own 3D-printed firearm that I've stashed in my purse. I'm someone who gets nervous when teenagers look at me funny in the mall.

So why aren't armed psychopaths my biggest fear when it comes to banning the online distribution of gun blueprints? Because such a ban is at best an inconvenience, and more likely completely meaningless, to armed psychopaths.

As writers David French, John Lott, and Mike Masnick have noted, Americans can download and print 3D gun blueprints regardless of whether putting the blueprints online is banned by ITAR. The blueprints were readily available before the ban and—thanks to the never-forgetting internet—still are now.

Far more worrisome is the possibility that the 3D gun case will result in

courts enshrining into law a broadening of the government's ability to use "prior restraint" to restrict what information Americans can post online, as a federal judge has already done.

It's the health of the First Amendment that's at risk here. Any restraints on speech and expression are cause for concern and have always been the exception in U.S. constitutional jurisprudence rather than the rule. There's particular sensitivity about prior restraint, which doesn't just deliver a negative consequence for offending speech, but restrains the speech before it can actually be uttered.

The U.S. Supreme Court has characterized prior restraint as "the most serious and least tolerable infringement on First Amendment rights." It's like gagging people proactively rather than letting them talk and face the consequences of what they say. The gagging approach leads to less speech, less information, and a lot more retching.

When John Milton argued against authors having to be licensed before they could be published, he pointed out that such censorship would be useless unless one started censoring absolutely everything.

"If we think to regulate printing," he wrote, "thereby to rectify manners, we must regulate all recreations and pastimes, all that is delightful to Man."

It's true. And what's more delightful than the internet? Which is indeed what we'd have to regulate to achieve the ends that are being aimed at with the prohibition on posting gun blueprints.

For Milton, the idea of regulating all the fun and good stuff that makes life worthwhile was so obviously bad and absurd that his argument ended there. For us in 2018, the more likely response is, "Regulate all that is delightful to Man? OK, let's get started!"

And they have. That's why it's so important to be vigilant about protecting the First Amendment right to post 3D gun blueprints online—of all things—even as we do everything constitutionally possible to minimize the technology's danger. **R**

MARNI SOUPCOFF is the former executive director of the Canadian Constitution Foundation.

