operators, on channels primarily dedicated to sexually oriented programming, either to scramble fully or otherwise fully block such channels, or to not provide such programming when a significant number of children are likely to be viewing it, which, under an FCC regulation meant to transmit the programming only from 10 p.m. to 6 a.m. The Court found that, even without "discount[ing] the possibility that a graphic image could have a negative impact on a young child," it could not conclude that Congress had used "the least restrictive means for addressing the problem."[1144] Congress in fact had enacted another provision that was less restrictive and that served the government's purpose. This other provision requires that, upon request by a cable subscriber, a cable operator, without charge, fully scramble or otherwise fully block any channel to which a subscriber does not subscribe.[1145]

Government Restraint of Content of Expression

As a general matter, government may not regulate speech "because of its message, its ideas, its subject matter, or its content."[1146] "It is rare that a regulation restricting speech because of its content will ever be permissible."[1147] Invalid content regulation includes not only restrictions on particular viewpoints, but also pro-

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[1144] 529 U.S. at 826–27. The Court did not state that there is a compelling interest in preventing the possibility of a graphic image's having a negative impact on a young child, and may have implied that there is no compelling interest in preventing the possibility of a graphic image's having a negative impact on an older child. It did state: "Even upon the assumption that the government has an interest in substituting itself for informed and empowered parents, its interest is not sufficiently compelling to justify this widespread restriction on speech." Id. at 825.

[1145] 47 U.S.C. § 560.

[1146] Police Dep't of Chicago v. Mosle, 408 U.S. 92, 95 (1972). *See also* Erznoznik v. City of Jacksonville, 422 U.S. 205, 208–12 (1975); First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978); Carey v. Brown, 447 U.S. 455 (1980); Metromedia v. City of San Diego, 453 U.S. 490 (1981) (plurality opinion); Widmar v. Vincent, 454 U.S. 263 (1981); Regan v. Time, Inc., 468 U.S. 641 (1984).

[1147] United States v. Playboy Entertainment Group, Inc., 529 U.S. 801, 818 (2000). The distinction between, on the one hand, directly regulating, and, on the other hand, incidentally affecting, the content of expression was sharply drawn by Justice Harlan in Konigsberg v. State Bar of California, 366 U.S. 36, 49–51 (1961): "Throughout its history this Court has consistently recognized at least two ways in which constitutionally protected freedom of speech is narrower than an unlimited license to talk. On the one hand, certain forms of speech, or speech in certain contexts, has been considered outside the scope of constitutional protection. . . . On the other hand, general regulatory statutes, not intended to control the content of speech but incidentally limiting its unfettered exercise, have not been regarded as the type of law the First or Fourteenth Amendments forbade Congress or the States to pass, when they have been found justified by subordinating valid governmental interests, a prerequisite to constitutionality which has necessarily involved a weighing of the governmental interest involved." The Court set forth the test for "incidental limitations on First Amendment freedoms" in United States v. O'Brien, 391 U.S. 367, 376 (1968). *See also* San Francisco Arts & Athletics, Inc. v. United States Olympic Comm., 483 U.S. 522, 537 (1987).