COSPLAY:
ENFORCING DECENCY CODES v. THE 1ST AMENDMENT

PLEASE NO PHOTOS OR RECORDINGS AT ANY TIME DURING THE PRESENTATION

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TOPICS WE'LL COVER

See your paper for details on the law.

WARNING: THIS TOPIC IS FOR MATURE AUDIENCES

(PG-13 WOULD BE A CLOSE APPROXIMATION OF THE RATING.)

VIEWER DISCRETION IS ADVISED.

I. What is COSPLAY and what is the governmental interest at stake?

II. In public or private?

III. Is enough covered up?

IV. Is too much covered up?

V. Enter the First Amendment:

- **A. Freedom of expression?**
- **B. Right to Petition Government?**
- **C. Freedom of Association?**

VI. Handy and not-so-"handy" solutions

Local governmental interests

- State Constitution
  - Peace, safety, happiness
- City Charter
  - Public welfare, morals, health safety --
- City Codes
  - Indecency, obscenity, nudity, lewdness, sexual acts, safety

What is COSPLAY and what is the governmental interest at stake

"Cosplay America is an environment wherein people of all ages can dress in what they enjoy while allowing freedom of expression."













In public or private?

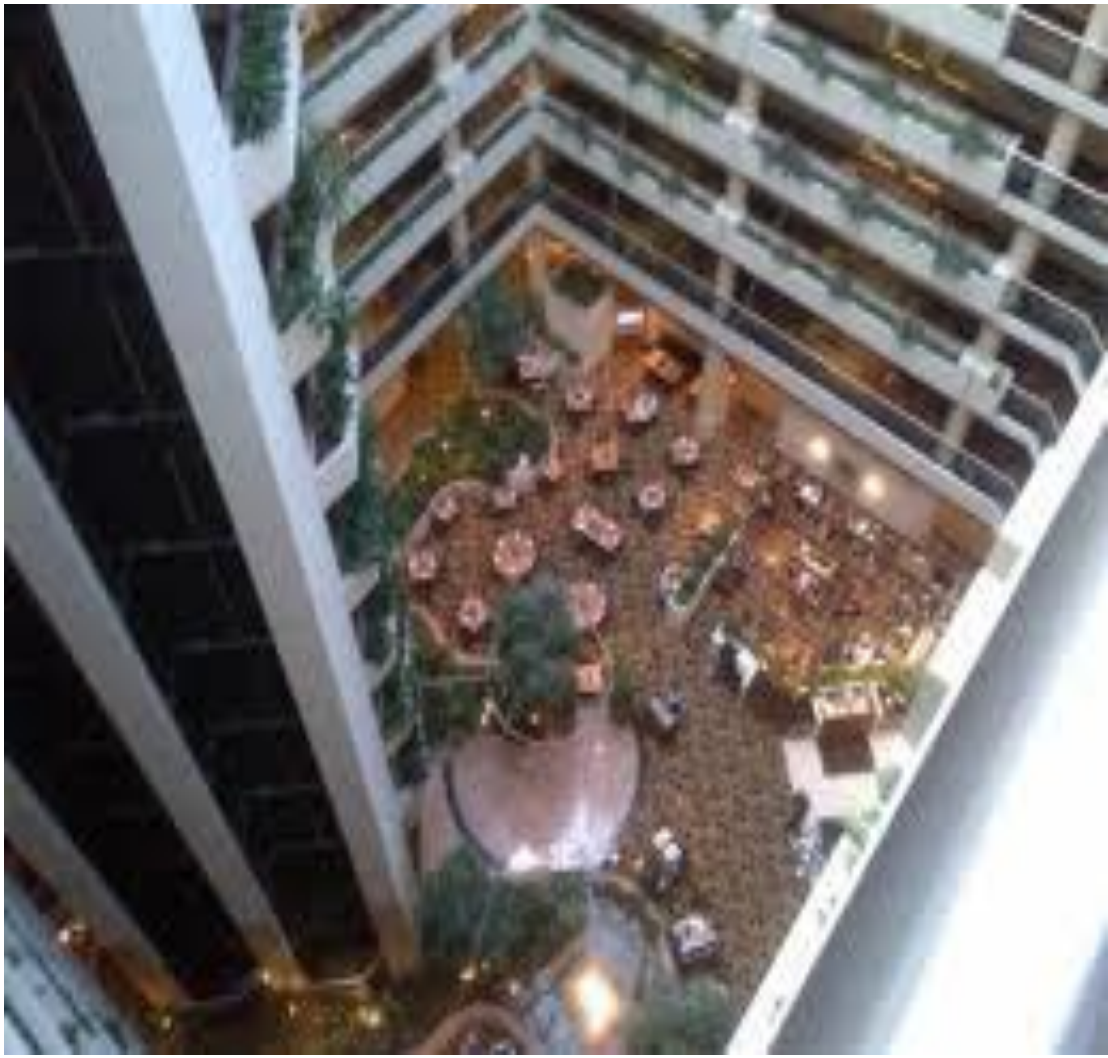
- Matthews Municipal Ordinances, at Sec. 49:12. Public Indecency, prohibits a variety of acts “under circumstances in which his or her conduct is likely to be viewed by and affront others, not members of his or her household.”

In public or private?

- Murfreesboro's Section 21-23, Public Indecency, includes the following:
- (D) *Public place* means a place to which the public or a group of persons has access and includes but is not limited to, highways, transportation facilities, schools, places of amusement, parks, places of business, playgrounds, and hallways, lobbies, and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence. An act is deemed to occur in a public place if it produces its offensive or proscribed consequence in a public place."

In public or private?

Are hotel ballrooms, when rented for a private gathering, “public places”?











WHERE YOU ARE MATTERS

Sidewalks
Parking lot
Portico
Lobby
Corridors
Elevator
Ballrooms
Hotel room

Is there a right to privacy in my hotel room?



Is there a right to privacy in my hotel room?

- Generally, yes, you have a right to expect privacy in your hotel room as long as you are using the hotel room in a normal, responsible way. However, if you are engaging in anything illegal or disturbing other guests, hotel management can enter your room without your permission.
- Note that hotel management, not the police, can enter the room without your permission and hotel management cannot give the police permission to search your room. The police must go through the usual process, which usually means getting a warrant before they are allowed to search your room.

Is there a right to privacy in my hotel room?

- A final exception to your right to privacy is for cleaning and maintenance. Hotel management does have the right to enter your room to clean or perform necessary maintenance.

- See more at: http://consumer.findlaw.com/travel-rules-and-rights/hotel-questions-and-answers.html#sthash.M0RpOIQk.dpuf

What are the hotel's responsibilities for maintaining the pool area?

Hotels know that people prefer hotels with swimming pools, but by attracting guests with a swimming pool, hotels also become responsible for their customers' safety around the pool. Although many hotels post a notice that claims you are swimming at your own risk, it is unlikely that any such warning is adequate to save it from a serious lawsuit. In addition to basic safety, **hotels must also anticipate that children and even intoxicated adults will likely use the pool and they must put appropriate safeguards in place.**

- See more at: http://consumer.findlaw.com/travel-rules-and-rights/hotel-questions-and-answers.html#sthash.M0RpOIQk.dpuf

Is enough covered up?

- State Law
  - Prohibits indecent exposure; defines public place
- City Charter
  - Addresses things detrimental to health, morals, safety, welfare

Is enough covered up?

- Matthews Municipal Ordinances contains the following provisions that might be applicable to a COSPLAY gathering:
- "Sec. 49:6. Immoral or obscene shows or exhibits. Section 1. No person … shall allow upon the premises under their control, the exhibiting of any bare or uncovered breast at or below the areola area or the exhibiting of any breast at or below the areola area of girls or women covered with a transparent or

Is enough covered up?

semi-transparent material which exposes to public view the breast at or below the areola area, or exhibiting of bare or uncovered buttocks, genitals pubic hair, or anus of either girls, women, boys or men, or the exhibiting of buttocks, genitals, public hair or anus covered with a transparent or semi-transparent material which exposes to public view the buttocks, genitals, pubic hair or anus."

Is enough covered up?

- *What does your ordinance say?*

- "Section 2. No person … shall produce or put on any performance or exhibit that includes [any of the above]."







Is too much covered up?

- How could that be?

- How about this guy?



Is too much covered up?



Is too much covered up?



Is too much covered up?



Enter the First Amendment

A. **Freedom** of **expression**?

B. **Right to Petition Government?**

C. **Freedom** of **Association**?

"I'm putting 500 or 600 bucks in my guitar a day. The girls not being here, we clean up," said Robert Burck, a former stripper from Cincinnati known globally as The Naked Cowboy.



The Naked Cowboy has been performing in Times Square since 1998 Photo: Laurentiu Garofeanu / Barcroft USA

Burck says he lets tourists approach him. He has been in Times Square dressed in nothing but his underwear, cowboy hat, boots and guitar since 1998. In over 800 deals, he has licensed his image and endorsed products ranging from Google's Android operating system to Fruit of the Loom underwear, according to his agent, Todd Rubenstein.

Enter the First Amendment

"Congress shall make no law respecting an establishment of religion,

or prohibiting the free exercise thereof;

or abridging the **freedom of speech**, or of the press;

or the right of the people peaceably to assemble,

and to petition the government for a redress of grievances."

Enter the First Amendment

- Speech includes not only the spoken and written word, but also "**expressive**" or "**symbolic**" conduct such as theatrical performances, dancing or flag burning that is intended to convey a message. **Peaceable assembly** includes the right of **association**, usually in the context of **membership** in a group that **advances beliefs or ideas**.

"Cosplay America is an environment wherein people of all ages can dress in what they enjoy while allowing freedom of expression."

Handy and not-so-handy solutions

1) **PROPERTY OWNER CAN TAKE ACTION**

Mall is private property.

Hudgens v. NLRB, 424 U.S. 507, 1976.

NJ, CA found their state constitutions have more freedom; free speech can prevail over private property interests of mall owners. Not Iowa.

A good resource on these topics is the

First Amendment Center.org's FAQs.

Handy and not-so-handy solutions

2) CITE THEIR OWN RULES TO THEM:

"Failure to adhere to any of our (COSPLAY) policies can result in immediate expulsion from the convention without refund, and may result in confiscation of non-permitted property *without return or refund*."

Cosplay America

DRESS CODE

- Our rules are simple: **Outfits that cover as least as much as a swimsuit and shoes/sandals must be worn at all times.** **Make up and body paint may be used, but do not count towards coverage. Body paint should be set or sealed so that it will not rub off onto the surroundings.**
- Leashes, ropes, chains, etc. connecting two or more people are not allowed for safety reasons.

Cosplay America

- Skate-shoes, roller skates, and rollerblades are not allowed. Skateboarding is not allowed, though skateboards may be used as props if they meet the convention guidelines.
- **Please remember that <u>you are in a public area</u> - where people will see you and may take pictures of you with or without your knowledge - when deciding on what you are comfortable wearing.**
- Failure to adhere to any of our policies can result in immediate expulsion from the convention without refund.

Cosplay America

WEAPONS & PROPS POLICY

- **No Live Steel**. This includes swords, knives, shurikens, bayonets, and other metal objects that have an edge.
- **No Projectile Weapons**. This includes anything that shoots a projectile or could be enabled to shoot a projectile, such as air guns, airsoft weapons, crossbows, and replicas of actual guns. Water guns that are filled with water or any other liquid are not allowed.
- **No Paddles**. Regardless of the shape, size, material, or message that may be written on them, paddles of any kind are not allowed.
- **No Explosives or Chemicals**. This includes smoke powder and fireworks of any kind.

Cosplay America

- **No Bludgeoning Objects**. This includes sledgehammers and heavy props constructed mostly of metal or stone.
- **No Signs**. This includes all message-based signs, picket signs, polling signs, and dry erase boards. Solicitation for goods or services (free or paid) is not permitted, via sign or any other method.
- Any edged or other non-permitted **weapons** and props purchased in the Market Place must be sealed in a box, removed from the convention area immediately, and taken to your hotel room or car for storage. Weapons are not allowed to be taken from their packaging while in the convention area.

Cosplay America

LIABILITY POLICY

- Cosplay America and its affiliates are not responsible for any loss, damage, theft, or injury. Attendees are responsible for their individual actions and any repercussions that may result from them. Civil or medical emergencies will be handled directly by the proper authorities.

- So where does that leave the local authorities?

Checklist for Code Drafting

- □ Check your state constitution (more 1st Amendment protections?)
- □ Check it against your existing Code
  - □ Explicit language, body parts
  - □ Time, place, manner
  - □ Neutral content
  - □ Not aimed at particular group (protected class)

Checklist for Code Enforcement

- □ Consider running past community groups, chamber, etc.
- □ Record complaints, establish evidence
- □ Stay on top of local events
  - □ Annual events: letter ahead of time, notify of past problems, intent to enforce, then
- □ Enforce! Don't selectively enforce.

Timothy Spall sleepwalked naked around hotel

The Harry Potter star has previously suffered from somnambulism and he recalls one of his most embarrassing moments was waking up in a guest house in Cornwall and realizing he had been wandering the public areas with no clothes on.

He tells The Guardian newspaper, "I have had a tendency to sleepwalk in the past. I once woke up in the nude in a corridor of a hotel in Cornwall in the small hours of the morning. Oh, the cringing shame."



http://www.express.co.uk/celebrity-news/465396/Timothy-Spall-sleepwalked-naked-around-hotel

Brainstorming Time

- Legal solutions for these types of problems?
- Ideas?
- Non-legal solutions that take a common-sense approach

Thank you for your attention!

Possible topic at WONK breakfast?