

COMMENTS

In response to an FCC NOTICE OF INQUIRY, adopted Oct. 22, 2009

MB Docket No. 09-194; FCC 09-94

“Empowering Parents and Protecting Children

In an Evolving Media Landscape”

Submitted Feb. 23, 2010 by:

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I. INTRODUCTION

Few would disagree with the assertion that parents are the “first line of defense” when it comes to protecting children from harmful content on TV, the Internet and other media; and parents would be well-advised to use whatever technological means that are available, whether to filter (block) such content or to enable parents to monitor how a particular media device is utilized by their children.

But despite what some federal court judges may think (or want the public to think), parental use of “advance blocking technologies” is not the whole answer to protecting children from harmful content online and elsewhere.

It would of course be wonderful if each child was in the care of at least one capable *and* responsible parent, but that isn’t the reality; and even capable *and* responsible parents cannot protect children from harmful media content once they are old enough to walk out the door alone. Furthermore, no technology is perfect, and as children get older many find a way to circumvent the technology.

On January 14, 2009, the Internet Safety Technical Task Force released its *Final Report* to the Multi-State Working Group on Social Networking of State Attorneys General of the United States.¹ That *Final Report* stated in part:

The Task Force remains optimistic about the development of technologies to enhance protections for minors online...but cautions against overreliance on technology in isolation or on a single technological approach. Technology

¹ J. Palfry et al., *Enhancing Child Safety & Online Technologies: Final Report of the Internet Safety Technical Taskforce*, Berkman Center for Internet & Society at Harvard Univ., 12/08.

can play a helpful role, but there is no one technological solution or specific combination of technological solutions to the problem of online safety for minors. Instead, a combination of technologies, in concert with parental oversight, education, social services, law enforcement and sound policies by social network sites and service providers may assist... [p.6]

Filtering and monitoring technologies are a useful tool to assist parents and other responsible adults in determining their children's access to appropriate Internet content, particularly for younger children. They are, however, subject to circumvention by minors – especially older minors – who are often more computer literate than their parents and who access the Internet increasingly from multiple devices and venues. Minors can circumvent these technologies most simply by using the Internet at friends' houses or in other places that do not use such technologies. Also, many handheld devices...can be accessed in the child's bedroom, backyard, or elsewhere, allowing for greater opportunity to bypass parental controls. Increasingly, minors are also learning how to use proxies to circumvent filters or reformat their computers to remove parental controls. Home filters also cannot protect at risk minors who live in unsafe households or do not have parents who are actively involved in their lives...[p.34]

In a hearing before the Senate Committee on Commerce, Science & Transportation ("Internet Pornography: Protecting Children on the Internet," 1/19/06), U.S. Senator Blanche Lincoln summed up the reality for most parents:

As the mother of two young boys, this issue hits home to me...[W]ithout a doubt, I know in my heart . . . that parents are truly the first line of defense. Parents must monitor their children's activities online and elsewhere. They must educate them about potential dangers, whether it's sexual predators or inappropriate materials on adult Web sites. But I have to emphasize: They can't do it alone. Parents in today's world cannot do that alone.

This is not to say that this Notice of Inquiry is without purpose or value. Parents and children will both benefit to the extent that this proceeding results in more effective and user friendly technology and an improved rating system(s).

Ideally, the technology would enable parents to block channels, individual programs, rated programs/advertisements and to choose from among rating systems so as to not be dependent on systems offered by content providers. Ideally, there would also be one rating system for all media that would provide parents with both simple options and the ability to be more selective.

II. FOR A VARIETY OF REASONS, MANY PARENTS CANNOT OR WILL NOT USE AVAILABLE TECHNOLOGY

Many parents do not use available technology because they do not read or speak English fluently. According to an article in the *N.Y. Times*, in 2005 there “were 32.6 million foreign-born residents 18 years or older” living in the United States and many were “waiting months or even years to get into government-financed English classes, which are often overcrowded and lack textbooks.”²

Many parents also lack literacy skills. According to a report by the National Institute for Literacy:³

A significant number of adults in the U.S. demonstrate inadequate basic skills. Approximately 20% to 30% of adults in the U.S. lack the literacy skills needed to meet the reading and computation skills associated with daily life and work [Lasater & Elliott, 2005]. Despite societal trends that demand increased literacy skills, census data indicate that more than 40 million American adults have not attained a high school diploma or its equivalent (Lasater & Elliott, 2005). According to the results of the National Assessment of Adult Literacy..., a national survey of adult literacy, 11 million Americans are non-literate in English; 30 million possess Below Basic skills, indicating challenges in reading beyond the most simple and concrete tasks; and 63 million can perform everyday basic literacy activities but have difficulty reading technical information...[Kutner et al., 2007, p.2].

Many parents are also chronically ill or disabled. According to an article in the *Wall St. Journal*,⁴ a 2005 study “found as many as 1.3 to 1.4 million children...ages

² F. Santos, “Demand for English Lessons Outstrips Supply,” 2/27/07; see also, A. Friedman, “Do Schools Need Translators?” *N.Y. Daily News*, 3/20/05 (“Fully 25% of New York City parents do not speak English...but the Education Department has failed to provide translation services...[for] these parents.”); N. Bernstein, “Proficiency in English decreases over a decade,” *N.Y. Times*, 1/19/05 (“The number of New York adults who have a problem speaking English increased by more than 30% between 1990 and 2000, to more than 1.5 million throughout the city...”); M. Starr, “How did these DNA tests start in Queens...,” *N.Y. Post*, 8/29/09 (“a whopping 150 different languages” are spoken in the Borough of Queens, New York).

³ J.M. Taymans et al., “Learning to Achieve: A review of research literature on serving adults with learning disabilities,” p.3, 6/09; see also, K. Iofee, “Reading roadblock,” *N.Y. Daily News*, 2/8/10 (“[She] reads at a third-grade level, one of 1.5 million New Yorkers considered functionally illiterate, meaning they have trouble reading a job description...”).

⁴ C. Ansberry, “Young caregivers: Parents turn to children for help,” 1/5/07; see also, P. Belluck, “In turnabout, children take caregiver role,” *N.Y. Times*, 2/23/09.

8 through 18 provide care for a chronically ill or disabled family member...Many live in single parent homes, with only the infirm parent.”

A technology gap also separates most parents [and grandparents who fill in for parents⁵] from their children. According to a survey by the Barna Group:⁶

Technology is fast becoming the latest driving force behind what is often called the “generation gap”... Although all Americans – both young and old – benefit from technology, the generational divide brought on by digital tools is significant... The Barna study categorized “mainstream” technology as those weekly activities relied upon by 50% or more of computer users. For example, the use of email and Internet search are mainstream because they are used by more than half of all computer users each week, regardless of generation. Among Elders and Boomers, of the 14 activities assessed in the research, the only mainstream digital activities are email and search. Among Busters, four behaviors qualify as mainstream: email, search, text messaging and hosting a personal website or homepage (such as MySpace or Facebook). The Mosaic generation doubles this by reaching mainstream status on eight different technologies.

Parental controls can also be difficult to use. In 2007, User Centric⁷ tested four “ratings-based” parental control devices with 20 parents and 20 children ages 9-12. During test sessions, participants were asked to set up parental controls using a TV with a V-Chip, a digital video recorder, a game console, and a mobile phone marketed specifically for children under 10. The study found:

Failure rates were high: 31% (DVR), 36% (mobile phone), 42% (V-Chip) and 47% (game console). Across all four devices, parents and children had similar failure rates when setting up parental controls. Participants who reported prior experience fared no better than those who had experience.

In its *Report to Congress*⁸ in 2003, the National Telecommunications and Information Administration stated:

⁵ See, S. Roberts, “Most children still live in two-parent homes, Census Bureau reports,” *N.Y. Times*, 2/21/08 (“a little more than 2 percent were living with grandparents only”).

⁶ “New Research Explores How Technology Drives Generation Gap,” 2/23/09; See also, B. Stone, “The children of cyberspace: Old fogies by their 20s,” *N.Y. Times*, 1/09/10.

⁷ Release, “Study finds usability problems with parental controls,” 9/25/07, study available at <http://www.slideshare.net/usercentric/parental-controls-out-of-control>).

⁸ *Report to Congress: Study of Technology Protection Measures in Section 1703*,” Department of Commerce, NTIA, p.27, 8/03.

[S]ome educators often lack training necessary to use fully the available technology tools. For example, although CIPA includes...provisions giving adults the authority to override technology for...legitimate research, some educators do not know how to disable the technology.

Many parents are also naïve,⁹ while others feel use of technology to filter or monitor a child's use of the Internet is problematic for one reason¹⁰ or another.¹¹ Furthermore, as children get older many will find a way to circumvent the technology¹² and no technology is perfect.¹³

And while it may come as a surprise to some federal court judges, many parents are not part of the solution; *they are part of the problem*. In her report on last year's Family Online Safety Institute annual conference, Internet safety advocate Marian Merritt wrote:

It's easy to suggest that parents use a family safety service such as OnlineFamily.Norton.com to keep children shielded from the ugliness of the Internet. But that scenario requires loving, concerned parents with some level of cyber knowledge as well as resources for learning about such tools

⁹ See, e.g., D. Batty, "Half of Young Kids View Web Porn, *Society Guardian*, 7/21/04 (The proportion of 9 to 19-year-olds who reported seeing pornography online (57%) "is nearly four times greater than their parents believe. Only 16% of parents think their children have seen it.").

¹⁰ See, e.g., C. Knorr, "Seven things you should know about Web filters," CommonSenseMedia.org, 10/8/09 ("They're a form of censorship."); A. Tugend, "Tools to Keep the Web Safe For Children," *N.Y. Times*, 4/14/07 ("Filtering I understand. The monitoring – let us call it what it is, spying – seems far more repellent.").

¹¹ K. Mitchell, et al., "The Exposure of Youth to Unwanted Sexual Material on the Internet," *Youth & Society*, 34, p. 354, 3/03 ["Another problem identified by the survey is the relatively low level of filtering and blocking software adoption...In particular, parents may feel that imposing such software would negatively affect their relationship with their teenage children."].

¹² See, e.g., K. Moyle, "Varying approaches to Internet safety: The role of filters in schools," Consortium of School Networking (COSN), p.4, 7/14/09 ("trials of filtering software in Australia have brought with it media stories in which students are interviewed about the ease with which they have cracked the filtering systems and accessed forbidden sites."); A. Tugend, "Tools to keep the Web safe for children," *N.Y. Times*, 4/14/07 ("Neil Rubenking, lead analyst for operating systems and security for *PC Magazine*, reviews filtering and monitoring software...And a tech-savvy child who is determined to get around the block will always find a way to do it, he said."); *Technology News*, 1/24/06 ("To be sure, circumventing filters is not rocket science. Teens can find work-arounds through a simple Google search, which can turn up detailed instructions and pointers for sidestepping filters.")

¹³ See, e.g., "Filters: How well does filtering software work," FilterFacts.org ("Most tests...have found that pornography filters typically block between 90 and 97% of pornography"). Three to ten percent of Internet pornography is still a significant amount of pornography.

and services. And it requires a sense of morality and insight into appropriate forms of content for young people and a willingness to make rules and ask they be enforced. What about homes that lack such engaged adults? When researcher [Danah] Boyd visits kids' homes in America, she often finds parents watching R and X rated content right in the living room with their children in the room with them. No surprise that these same children will seek out adult material for their own entertainment...¹⁴

In his op ed article, “This is your (father’s) brain on drugs,”¹⁵ Mike Males wrote:

A spate of news reports have breathlessly announced that science can explain why adults have such trouble dealing with teenagers: adolescents possess “immature,” “undeveloped” brains that drive them to risky, obnoxious, parent-vexing behaviors... But the handful of experts and officials making these claims are themselves guilty of reckless overstatement...Why, then, do many pundits and policy makers rush to denigrate adolescents as brainless? One troubling possibility: youths are being maligned to draw attention from the reality that it's actually middle-aged adults – the parents – whose behavior has worsened.

Our most reliable measures show Americans ages 35 to 54 are suffering ballooning crises...More than four million arrests in 2005, including one million for violent crimes, 500,000 for drugs and 650,000 for drinking-related offenses, according to the F.B.I. All told, this represented a 200 percent leap per capita in major index felonies since 1975...21 million binge drinkers (those downing 5 or more drinks on one occasion in the previous month), double the number among teenagers and college students combined, according to the government's National Household Survey on Drug Use and Health. 370,000 people treated in hospital emergency rooms for abusing... drugs in 2005, with overdose rates for heroin, cocaine, pharmaceuticals and drugs mixed with alcohol far higher than among teenagers. .. What experts label “adolescent risk taking” is really baby boomer risk taking.

And it isn’t just dads who are a problem; it’s moms too. In his op ed article, “Why is mom in rehabilitation?”¹⁶ Charles Blow wrote:

¹⁴ “Recap of This Year's Family Online Safety Institute Annual Conference: Did We Just Turn a Corner?” OnlineFamily.Norton, 11/9/09. According to data compiled by OnlineFamily.Norton, “porn” was among the top (#4, to be exact) overall search terms used in 2009 by kids age 7 and under. Data available at http://onlinefamilyinfo.norton.com/articles/kidsearches_2009.php.

¹⁵ *N.Y. Times*, 9/17/07.

The actress [name omitted] was arrested recently on charges of buying crack cocaine from a man on the street...She is a 44-year-old mother of three... [She] illustrates a disturbing trend among those being admitted to substance abuse treatment services: a growing percentage of older women are being treated for harder drugs. Data from the Substance Abuse and Mental Health Services Administration revealed that the total number of admissions to treatment services from 1996 to 2005 (the last year for which detailed data are available) stayed about the same among people under 40, but jumped 52 percent among those 40 and older. Of the 40 and older group, the rise in admissions among men was 44 percent. Among women, it was 82 percent.

Last year the motion picture industry released “The Blind Side,” a film based on a true story about an African American youth whose father was murdered and whose mother is a drug addict. While Michael Oher’s “family situation” was by no means typical in the Black community, it is representative of countless other family situations where one or both parents are *part of the problem*.

Lest anyone think that “bad parenting” is an “inner city” problem, the following news reports from the *Philadelphia Inquirer* ought to dispel that notion:

A night of depravity and incredible stupidity was admittedly had by all. Teenage boys were pulling up porn on the computer. Two suburban mothers, ostensibly chaperoning the party, were pulling out red wine, and soon were drunk. That was just for starters. As a party for 15 to 20 boys and girls morphed into a boys-only sleepover...[Defendant] danced provocatively for the teens, made out with three in a bedroom, and talked explicitly about sex, police allege. Ultimately, authorities say, she stripped and headed for the shower, soon to be joined there by two of the under-16 teens.¹⁷

[T]he suburban mother whose slutty, drunken behavior put her on center stage at a sleepover for teenage boys last spring, was cleared yesterday of charges that she sexually assaulted two of those youths. [Defendant]...was acquitted by a...jury of statutory sexual assault, illegal contact with a minor and indecent assault. After 4 hours of deliberation, the six-man, six-woman panel convicted her only of two misdemeanor counts of corruption of minors. “I’m happy about it,” [Defendant] said outside the courtroom. The jury was “correct in saying that I made bad judgments... I apologize for that.” [Defendant] and her lawyer...had conceded that she behaved outrageously at the...overnight party at the home of a friend and neighbor.

¹⁶ *N.Y Times*, 6/14/08.

¹⁷ L. King, “Sexual assault trial of Bucks mother begins,” 12/3/08.

They did not dispute that she danced erotically in front of the ninth-grade boys. Or that she kissed and exposed herself to some of them. Or even that she showered naked with two boys and let them masturbate on her.¹⁸

Once upon a time, the Supreme Court had the good sense to understand that many parents need help to protect their children and that at times government must intervene because parents aren't always available to protect their children.

In *Ginsberg v. New York*, 390 U.S. 629, 639-640 (1968), the Court upheld a New York law that made it a crime to sell or loan to a minor sexually oriented material deemed "harmful to minors." In so holding, the Court stated:

First of all, constitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of society...The legislature could properly conclude that parents...are entitled to the support of laws designed to aid discharge of that responsibility...

The State also has an independent interest in the wellbeing of its youth...
"While the supervision of children's reading habits may best be left to their parents, the knowledge that parental control or guidance cannot always be provided and society's transcendent interest in protecting the welfare of children justify reasonable regulation of the sale of material to them."

Today, the Supreme Court is no longer concerned about *whether* parents will do what the Court thinks they should do (i.e., use filters). According to the Court, what matters is whether parents have the "ability"¹⁹ to do so.

III. CHILDREN CAN ACCESS THE INTERNET FROM DEVICES THAT ARE NOT UNDER PARENTS' CONTROL

But if the limitations of filters and the failure of many parents to use filters weren't problems enough, there is yet another problem with the Court's thinking that by "enacting programs to promote the use of filtering software, Congress could give parents [the] ability to monitor"²⁰ what their children see on the Internet.

The other problem is that as children get older they have opportunities outside the

¹⁸ L. King, "Party mom cleared of sexual assault charge," 12/5/08.

¹⁹ *Ashcroft v. ACLU*, 542 U.S. 656, at 670 (2004) ["COPA presumes that parents lack the *ability*, not the will, to monitor what their children see. By enacting programs to promote use of filtering software, Congress could give parents that *ability*..." (italics added)].

²⁰ *Id.*

home to access the Internet from devices that are not under parents' control. In April 2006, a mother sent the following email to Morality in Media complaining about a hardcore pornographic website accessed by her young children:

I have just filed a report on your [www.obscenitycrimes.org] website about a pornographic website that has many parents in my community very upset... Information about this porn website has been shared on the playground, at ball games and in the classroom with children as young as 6 years old. My two sons are included . . . I could not believe the blatant content, which did not require a credit card to access. I am furious. My sons saw this sight at a friend's house whose parents did not have parental controls set up.²¹

A trained investigator followed up on her complaint and provided a detailed description of what he observed on the website. His report includes a description of what any child can also view, free of charge and without proof of age:

In the upper left corner of the page was a color cartoon of a blonde white female with naked breasts. Below this cartoon were approximately twenty-eight pornography site categories that included the printed words, "Amateur," "Anal Sex," "Anime & Cartoon," "Asian," "BSBD & Fetish," "BBW," "Big Cocks," "Bisexual," "Boobs," "Celebs," "Ebony," "Foot Fetish," "Gay," "Group Sex," "Hardcore," "Interracial Sex," "Latina," "Lesbian," "Lingerie & Bikini," "Mature MILFs," "Porn Movies," "Pornstars," "Reality Porn Sites," "Single Models," "Teens," "Transsexuals," and "Web Cams." Near the bottom of the page were nine sexually oriented color photographs... A second photograph depicted a naked...female (shown from the waist up) while engaged in oral/penile sex on a white male's erect penis. She was also depicted gripping the penis with her left hand...²²

A 2005 study of youth ages 10 to 17 conducted by researchers at the Crimes against Children Research Center found that youth spent time on the Internet in the past year at a friend's home,²³ at school,²⁴ on a cell phone²⁵ and at other places.²⁶

²¹ Email on file with Morality in Media.

²² Investigative report on file with Morality in Media.

²³ J. Wolak et al., "Online Victimization of Youth: Five Years Later," National Center for Missing & Exploited Children, 12 (2006) (69% of Internet users ages 10 to 17 said they accessed the Internet at a friend's home).

²⁴ *Id.* (90% of Internet users ages 10 to 17 said they accessed the Internet from school).

²⁵ *Id.* (17% of Internet users ages 10 to 17 said they accessed the Internet from a cellular phone).

²⁶ *Id.* (43% of Internet users ages 10 to 17 said they had accessed the Internet from a library or other place).

The Crimes against Children Research Center study also found that while the percentage of parents who said they utilized filtering, blocking or monitoring software on the computer their child used rose from 33% in 2000 to 55% in 2005,²⁷ the percentage of Internet users ages 10 to 17 who were exposed to unwanted pornography in the previous year also increased from 25% in 2000 to 34% in 2005;²⁸ and 13% of these youthful Internet users said they had “gone to an X-rated site on purpose in the past year,” compared to 8% in 2000.²⁹ According to the study authors, one “key” reason for the increase was the rise in number of youth who had Internet access in three or more places.³⁰

According to a 2009 Cox Communications study,³¹ 27% of 13- to 18- year olds “do something” to get around parental controls by using a personal cell phone (4%), a friend’s cell phone (5%), friend’s computer/laptop (14%) and other ways (10%).³²

According to 2008-2009 Kaiser Family Foundation study,³³ among all 8- to 18- year olds, in a typical day 20% go online from a computer at school and 14% go online from another location outside the home, such as a library, community center or friend’s house.³⁴ The study also found that “mobile media ownership” among all 8- to 18-year-olds increased as follows from 2004 to 2009:³⁵

- For iPod/MP3 player: from 18% to 76%
- For Cell Phone: from 39% to 66%
- For Lap Top: from 12% to 29%

According to a Nielsen Report (“How teens use media,” p.8, 6/09), “as of Q1 2009, 37% of U.S. mobile subscribers 13-17 accessed the Internet on their phone.”

²⁷ *Id.* at 46.

²⁸ *Id.* at 8.

²⁹ *Id.* at 51.

³⁰ *Id.* at 9-10 (noting that there was a 45% increase in access to the Internet from 3 or more sites).

³¹ “Teen online & wireless safety survey: Cyberbullying, sexting, and parental controls,” 5/09.

³² See also, M. Lopez, “One in four teens breaches parental controls,” Forrester Research, p. 3, 2006 (Of teens ages 13 to 18 who know that their parents or guardians “put parental controls or restrictions on the computers you use most often,” 28% said they “find ways to get around or override these controls.”).

³³ “Generation M2: Media in the lives of 8- to 18-year olds,” Kaiser Family Foundation, 1/10.

³⁴ *Id.* at 20-21.

³⁵ *Id.* at 3.

According to another Nielsen Report (“A2/M2 Three Screen Report,” Vol. 6, 3rd Quarter 2009), mobile subscribers ages 13-17 spent 7 hours and 13 minutes per month “watching video on a mobile phone.”

IV. BASED ON PAST EXPERIENCE, MORE PROMOTIONAL AND EDUCATIONAL EFFORTS ARE NOT THE ANSWER

Part 1

When Supreme Court Justice Kennedy wrote in 2004 that “[b]y enacting programs to promote the use of filtering software, Congress could give parents [the] ability” to “monitor what their children see,”³⁶ one must wonder what he had in mind.

By 2004, the explosion of Internet pornography and efforts to protect children from it had already generated a great deal of publicity, including publicity surrounding the enactment of the Communications Decency Act of 1996 (CDA)³⁷ and subsequent court decisions overturning the CDA.³⁸

Among other things, government had promoted filtering software;³⁹ national and local print media⁴⁰ had promoted filtering software; books had promoted filtering software;⁴¹ telecommunications companies, software companies, and Internet

³⁶ *Ashcroft v. ACLU*, 542 U.S. 656, 670 (2004).

³⁷ See, e.g., K. Swisher, “Ban on On-Line Smut Opposed; High-Tech Coalition Pushes Software Allowing Parents to Decide,” *Washington Post*, 7/18/95.

³⁸ See, e.g. AP, “Leaders to help parents pave Internet highway; ‘Toolbox’ blocking cyberporn planned,” *Roanoke Times*, 7/17/97; A. Ahles, “Cyber porn issue isn’t going away; Industry seeks own content solutions,” *Houston Chronicle*, 6/27/97; H. Wolinsky, “Parents have options to block online porn,” *Chicago Sun-Times*, 6/16/96; M. Woodall, “Judges: Parents have ways to block smut,” *Philadelphia Inquirer*, 6/13/96.

³⁹ See, e.g., D. Thornburgh & H.S. Lin eds., *Youth, Pornography and the Internet* (Chapter 12, “Technology-based tools for users”), National Academies Press, 2002; *Final Report of the COPA Commission* (“Technologies and Methods: Filtering/Blocking,” p.23), 10/20/00; “Online Safety for Children: A Primer for Parents and Teachers” (live national satellite broadcast), Office of Juvenile Justice and Delinquency Prevention, U.S. Dept. of Justice, 11/9/99.

⁴⁰ See, e.g., E.C. Baig, “Keeping Internet predators at bay,” *USA Today*, 1/29/03; A. Bess, “Cranky consumer: Porn-blocking software for kids,” *Wall St. Journal*, 7/23/02; A. Lewis, “There ought to be a law,” *FamilyPC*, 3/2000; L.A. Lorek, “Check out software, books before sending children online,” *Sun Sentinel* (FL), 7/19/98; S. Woodard, “Do You Know What Your Kids Are Doing on the Internet?,” *Times-Picayune* (LA), 2/3/97; P. Elmer-DeWitt, et al., “On a screen near you: Cyberporn,” *Time*, 7/3/95; S Levy, “No place for kids?,” *Newsweek*, 7/3/95.

⁴¹ See, e.g., S. Chambers & A. Meyers, *Web Guide to Online Safety for Kids* (2003); F. York & J. LaRue, *Protecting Your Child in an X-Rated World* (2002); D. Rice Hughes, *Kids Online: Protecting Your Children in Cyberspace* (1998).

service providers (ISPs) had promoted filtering software;⁴² schools had promoted filtering software;⁴³ and non-profit organizations had promoted filtering software.⁴⁴

Since 2004, when five Justices of the Supreme Court deferred to lower court determinations that parental use of filters would provide adequate protection for children from exposure to online pornography, both government⁴⁵ and private entities⁴⁶ have continued to promote parental use of filters. These days, even the Association of Sites Against Child Pornography,⁴⁷ a group founded and supported by commercial distributors of hardcore adult pornography, promotes use of filters.

What then were the results of all this publicity about parental use of filters, when it comes to parents actually using them?

According to a 2009 survey conducted for C.S. Mott Children’s Hospital (“C.S. Mott Children’s Hospital Poll on Children’s Health”), 49% of parents “block websites they don’t want kids to use.”⁴⁸

According to a 2009 survey conducted for Cox Communications (“Teen online & wireless safety survey: Cyberbullying, sexting, and parental controls”), only 14% of teens ages 13 to 18 said their parents “use online controls to block websites” (p. 46). Among teens who use a cell phone to go online, “1 in 5 of those teens say their parents do not know this,” and the “the vast majority whose parents do know

⁴² See, e.g., AP, “Internet Companies Supporting Filtering,” *Newsday*, 10/24/01; “Net Nanny and Microsoft Co-Sponsor Internet Seminar for Educators,” *Business Wire*, 5/13/98; J. Auerbach, “Voluntary Internet ratings system launched...,” *Boston Globe*, 5/10/96; A. Harmon, “Firms unveil rating standard for the Internet,” *L.A. Times*, 5/10/96.

⁴³ See, e.g., i-Safe, Inc., <http://www.isafe.org>.

⁴⁴ See, e.g., the following websites: www.staysafeonline.org (Home Users); www.obscenitycrimes.org (Help for Parents); www.nationalcoalition.org (Internet Pornography); www.protectkids.com (Safety Tools); www.filteringfacts.org (Filters).

⁴⁵ See, e.g., Senate Resolution 205, declaring June 2007 “National Internet Safety Month,” which was agreed to by Unanimous Consent. Among other things, the Resolution called on “Internet safety organizations, law enforcement, educators, community leaders, parents, and volunteers to increase their efforts to raise the level of awareness for the need for online safety” in the U.S.

⁴⁶ See e.g., *Today Show*, “For kids, danger lurks a click away,” MSNBC.com, 2/1/05, available at <http://today.msnbc.msn.com/id/6893488/>; materials published at www.ikeepsafe.org;

www.netsmartz.org; www.fosi.org, and www.getnetwise.org among many, many others.

⁴⁷ www.asacp.com (“Protecting Children Online”).

⁴⁸ Similar results were found in Europe. According to a survey conducted in 2008 for the European Commission (“Towards a safer use of the Internet for children in the EU – parents’ perspective,” 12/08), “Half of parents – with a child who used the Internet at home – answered that they had installed filtering software on the computer that their child used at home.”

they go online through a cell phone, say they are not given any limits or controls – far fewer than are given limits on their desktop or laptop” (p. 13).

According to a 2006 survey conducted for Kaiser Family Foundation (“Parents, Children & Media,” Kaiser Family Foundation, 6/07), 41% of parents said that they “use parental controls to block their children’s access to certain websites.”

According to a 2005 survey by AOL and the National Cyber Security Alliance (“AOL/NCSA Online Safety Study,” 12/05), while 33% said they had one or more children under the age of 18 living in the home, only 8% were “currently” using “any parental control software on your computer.”

What then were the results of all this publicity about parental use of filters, when it comes to shielding children from online exposure to pornography?

According to a survey conducted in 2006, “Overall, 72% of participants (93.2% of boys, 61.1% of girls) had seen online pornography before age 18...Most exposure began when youth were ages 14 to 17, and boys were significantly more likely to view online pornography more often and to view more types of images...Girls were significantly more likely than boys (42.3% of girls; 6.8% of boys...) to report never looking for pornography on purpose...”⁴⁹

According to a study published in 2006, the percentage of Internet users ages 10 to 17 exposed to unwanted pornography in the previous year increased from 25% in 2000 to 34% in 2005;⁵⁰ and 13% of these young Internet users said they had “gone to an X-rated site on purpose in the past year,” compared to 8% in 2000.⁵¹

According to a survey conducted in 2004, 45% of teens had friends who regularly view and download pornography from the Internet.⁵²

According to Nielsen/Net Ratings for Feb. 2002, nearly 16% of visitors to “adult” websites were younger than age 18.⁵³

⁴⁹ C. Sabina, et al., “The Nature and Dynamics of Internet Pornography Exposure for Youth,” *CyberPsychology & Behavior*, 11, 691-693, 2008.

⁵⁰ J. Wolak, et al., “Online Victimization of Youth: Five Years Later,” NCMEC, p. 8, 2006.

⁵¹ *Id.* at 51.

⁵² “National Survey of American Attitudes on Substance Abuse IX: Teen Dating Practices and Sexual Activity,” Nat’l Ctr. on Addiction & Substance Abuse at Columbia Univ., p. 6, 2004.

⁵³ D. Thornburgh & H.S. Lin eds., *Youth, Pornography and the Internet*, National Academies Press, p. 78, 2002.

According to a survey conducted in 2001, 70% of teens ages 15 to 17 had “accidentally come across” pornography while on the Internet.⁵⁴

Part 2

There is an old saying (my paraphrase), “Those who cannot or will not learn from history are doomed to repeat its mistakes.”

Despite extensive publicity surrounding the V-Chip,⁵⁵ a 2001 Kaiser survey found that just 7% of all parents had “ever programmed” their V-Chip to block shows;⁵⁶ and a 2004 Kaiser Family Foundation survey found that only 15% of all parents had “ever programmed” their V-Chip to block shows.⁵⁷ A 2005 TV Watch survey found that only 5% of parents used the V-chip.⁵⁸

According to testimony before the Senate Committee on Commerce, Science and Transportation in November 2005,⁵⁹ the TV industry had spent \$250 million “to get the word out about parental blocking technologies that are available.” In July 2006 the Advertising Council also announced that it had joined with a “broad cross section of the media and entertainment industries” to launch a \$300 million “national multi-media public service advertising campaign calling on parents to take a more active role in their children’s TV viewing habits.”⁶⁰

Nevertheless, a Zogby poll commissioned by Parents TV Council found that in September 2006 only 12 % of those polled had used the V-Chip in the previous week and that in March 2007 only 11% had used it in the previous week.

⁵⁴ Press Release, “Generation Rx.com,” Kaiser Family Foundation, 12/11/01.

⁵⁵ See, e.g., “Coalition Pushes V-Chip Use,” *Television Digest with Consumer Electronics*, 6/28/99 (“Most parents want to use V-Chip to screen TV programs, but most don’t know how... To improve the situation, Kaiser Foundation joined with Center for Media Education, along with CEMA, MPAA, NAB, NCTA , others...to launch educational campaign. It will include print materials, PSAs..., booklets telling parents how to use V-chip...”).

⁵⁶ Toplines, “Parents and the V-Chip, 2001: How parents feel about TV, the TV ratings, and the V-Chip,” p.13, 7/01.

⁵⁷ “Parents, Media and Public Policy,” at p.25, 9/23/04.

⁵⁸ Release, “Survey: Parents Combine Old-Fashioned TV Rules & Latest Blocking Technologies to Manage Kids' TV,” 11/28/05.

⁵⁹ Statement of Kyle McSlarrow, President/CEO, National Cable & Telecommunications Association, “Open Forum on Decency,” Committee on Commerce, Science and Transportation, U.S. Senate, p. 20-21, 11/29/05.

⁶⁰ “Media and entertainment industries unite in unprecedented effort to help parents monitor kid’s TV: Media partners commit \$300 million to support new PSAs,” *Ad Council*, 7/25/06, available at www.adcouncil.org.

Similarly, during the hey-day of dial-a-porn there was extensive publicity about phone smut⁶¹ and about parental opportunities to block children's access to it.⁶² Presumably, therefore, to the extent that parents could block access to dial-a-porn services, children should have been protected. But as the Second Circuit observed in *Dial Information Services v. Thornburgh*:⁶³

It seems to us that voluntary blocking would not even come close to eliminating as much access of children to dial-a-porn...as would the pre-subscription requirement...Blocking has been available for over two years in the New York area, but only four percent of the 4.6 million residential telephone lines in the area having access to the 970 prefix assigned by the telephone company for adult messages have been blocked... Even if voluntary blocking is assumed to be the least restrictive means...it is clearly not an effective means.

In *Information Providers Coalition for Defense of the First Amendment v. FCC*,⁶⁴ the Ninth Circuit had this to say:

This too must be said. A parent often does not request central office blocking until after the minor has consummated a call and the parent has discovered it on the telephone bill...[F]rom a practical standpoint, central blocking is invoked only after the minor's...well-being [has] been damaged. Thus, the barn door is shut after the horse has gone...

The Commission concluded that [voluntary] blocking alone “would be insufficient to achieve realistically the goal of the statute: the protection of children.”... Further, it said, blocking does not prevent access from unblocked phones...The Commission concluded that voluntary blocking would not be an effective means of limiting minors' access to dial-a-porn services. We are satisfied that substantial evidence supports this finding...

⁶¹ See, e.g., “Many Demanding Curb on Phone Pornography,” *N.Y. Times*, 5/19/84 (“Those people and more than 25,000 others have let the FCC know what to think about telephone sex services... The Commission asked for public comment last December, but no one at the agency predicted the deluge of mail received in response. The letters...come from all parts of country...Most are written by mothers.”)

⁶² See, e.g., “Hanging Up on Porn,” *N.Y. Daily News*, 4/4/88 (“The State Public Service Commission has given N.Y. Telephone a go-ahead to make dial-a-porn messages less block access to 970 on their home phones...”).

⁶³ 938 F.2d 1535, 1542 (2nd Cir. 1991), *cert. denied*, 502 U.S. 1072 (1992).

⁶⁴ 928 F.2d 866, 873 (9th Cir.1991).

There is also evidence that parent-targeted advertising can “back fire.” According to a study published in the *American Journal of Public Health*,⁶⁵ youth exposure to “parent-targeted” smoking prevention ads was associated with:

[A]mong students in grade 8, greater...parent-targeted advertising exposure was related to...a greater likelihood of perceiving the harms associated with smoking have been exaggerated...and stronger intentions to smoke in the future...Among students in grades 10 and 12, higher advertising exposure was also associated with...stronger approval of smoking..., lower perceived harm in smoking..., stronger intentions to smoke in the future....

Similarly, according to a study published in *Pediatrics*:⁶⁶

Ratings are primarily directed at parents to help them in selecting appropriate games for their children to play. However, players of all ages might also use such ratings to select games that appeal to their interests. The use of age-based labels and content labels meant as warnings might increase the attractiveness of restricted video games. Previous research has shown that age and content labels increase attraction to television programs and films with objectionable content. These unintended effects of labels are in line with the forbidden-fruit hypothesis, which is deduced from reactance theory...The results of our study clearly showed that age-based labels and violence content labels only make video games more attractive, like forbidden fruits. The more restrictive the age label, the more attractive the video games were judged to be... Our study makes other contributions as well. It shows that reactance not only contributes to a forbidden-fruit effect among adolescent boys, but also among younger children and girls.

V. AGE VERIFICATION IS PART OF THE SOLUTION

In *ACLU v. Gonzales*, a U.S. District Court judge found that the affirmative defenses in the Child Online Protection Act of 1998 (COPA) did not aid in narrowly tailoring COPA to Congress’ compelling interest in shielding children

⁶⁵ M. Wakefield et al., “Effects of Televised, Tobacco Company-Funded Smoking Prevention Advertising on Youth Smoking-Related Beliefs, Intentions, and Behavior,” 96 *American Journal of Public Health*, pp. 2154, 2156, 2006.

⁶⁶ M.N. Bijvank et al., “Age and violent-content labels make video games forbidden fruit for youth,” Vol. 123, pp. 870, 874, 2009.

from online pornography for the reason that “credit cards, debit accounts, adult access codes and adult personal identification numbers do not in fact verify age.”⁶⁷

To the extent that COPA had discouraged pornographers from displaying pornography as free teasers on the home page or via a click of the mouse,⁶⁸ however, any age verification system would have helped prevent *unwanted*⁶⁹ exposure to pornography when children surf the web.⁷⁰ Any age verification system would also help reduce younger children’s access since younger children would presumably be less likely to circumvent age verification.⁷¹

Furthermore, most young children don’t have a traditional payment card,⁷² and just because an older child does have a credit or debit card doesn’t mean he or she would use it to pay for pornography, if for no other reason than that at least some parents monitor their children’s credit card bills.⁷³

⁶⁷ 478 F. Supp. 2d 775, 811 (E.D.Pa. 2007), *aff’d*, 534 F.3d 181 (3rd Cir. 2008), *cert. den.*, 129 S.Ct. 1032 (U.S. 2009)

⁶⁸ D. Thornburgh and H.S. Lin, eds., *Youth, Pornography and the Internet*, National Academies Press, pp. 78-79, 2002 [“In a survey of adult-oriented commercial Web sites, the majority of adult-oriented sites (about 74%) were found to display adult content on the first page (accessible to anyone who visits the page), often through the display of sexually explicit banner ads to other sites...about 25% employed practices that hindered the user from leaving the site (e.g., mouse trapping), and only 3% required a credit card or other ‘adult check’ to proceed past the first page of the site (that is, most sites allow the user to take a ‘free preview’ ...).”].

⁶⁹ J. Wolak, et al., *Online Victimization of Youth: Five Years Later*, NCM EC, p. 8, 2006 (the percentage of Internet users ages 10 to 17 exposed to “unwanted” pornography in the previous year increased from 25% in 2000 to 34% in 2005); see also, Press Release, “Generation Rx.com,” Kaiser Family Foundation, 12/11/01 (70% of teens ages 15 to 17 had “accidentally” come across pornography while on the Internet).

⁷⁰ J. Wolak, et al., *Online Victimization of Youth: Five Years Later*, p. 9 (83% of incidents of unwanted exposure to sexual material happened while youth were “surfing the web”).

⁷¹ According to a 2001 survey (A. Lenhart, “Teenage Life Online,” Pew Internet & American Life Project, p. 33), “Overall, 15% of online teens say they have lied about their age to gain access to a Web site – an action that is often required in gaining access to pornographic sites. A fifth of all boys (19%) ages 12-17 have done this...And fully one quarter of boys ages 15-17 have said they were older...Teens with several years of Internet experience are more likely than newcomers to have lied about their age to gain access to a Web site.”

⁷² 478 F. Supp. 2d 775, at 801 (“The plaintiffs contend that...the percentage of 16 year-olds with access to payment cards is significantly higher than the percentage of 12 year-olds with access to such cards.”). And today, children younger than age 12 have access to online pornography.

⁷³ See, e.g., S. Sasser, “The truth about pre-paid credit and debit cards,”

www.metrofamilymagazine.com, 12/2/07 (“The cards allow parents to monitor children’s spending habits...”); M.P. Dunleavy, “Cards train teens to use plastic,” *N.Y. Times*, 8/25/07 (“Although the cards are aimed at teens, the companies emphasize parental oversight...The

Furthermore, just because a particular form of “age verification” can be circumvented does not mean that it won’t deter some children from accessing harmful to minors content. The mere fact that circumventing verification requires thought and time will deter some children. Other children will be deterred because they don’t want to do something dishonest or because they fear getting caught.

Presumably, Congress could also enact legislation requiring card companies to alert merchants when they seek authorization to make a charge to a card held by a minor⁷⁴ and legislation prohibiting the sale of pre-paid cards to minors.⁷⁵

In *ACLU v. Gonzales*, the District Court judge also concluded that COPA is “under-inclusive” because a “significant amount of sexually explicit material on the Internet...originates from the outside of the United States” and because COPA had “no extra-territorial application.”⁷⁶

COPA, however, would have applied to U.S.-based websites; and the U.S. is still a prolific producer and distributor of Internet pornography, which means that much if not most of the pornography that children are exposed is distributed from U.S.-based websites.⁷⁷ Moreover, children in the U.S. are more likely to learn about Web sites operated by U.S.-based pornographers, in part because they learn about prominent U.S. pornography producers and performers in the news/entertainment media.⁷⁸ American children are also more likely to come across advertisements

MasterCard Allow Web site, for example, calls the card a ‘financial training program’ and outlines ‘35 parental controls,’ including the ability to monitor spending online...”).

⁷⁴ See, e.g., R. Lieber, “Lessons in credit, sans card,” *N.Y. Times*, 2/13/10 (“rules governing credit card use by anyone under 21 years old”); see also, AP, “Cars of young N.J. drivers will be marked,” *Newsday*, 4/16/09 (New Jersey enacted a law requiring drivers 21 and younger to display identifying decals on their vehicles).

⁷⁵ See, e.g., A. Gregory, “Cards that let kids 14 buy...porn,” *People* (UK), 8/27/07.

⁷⁶ 478 F. Supp. 2d 775, at 810.

⁷⁷ See, J. Ropelato, “Top ten Internet pornography statistics: Top pornography production by country,” www.toptenreviews.com (“The United States is the top producer of pornographic web pages by far with 244,661,900 pages or 89 percent”); D. Peck, “Teens use of online porn can lead to addiction,” *Oregonian*, 12/17/08 (“To grow up in the United States is to grow up in the superpower of Internet porn, a \$3billion-a-year driver delivering 245 million Web pages to our desktops and making Germany, second with 10 million pages, a virtual piker.”).

⁷⁸ See, e.g., “Girls Next Door,” *E!* (weekly TV program about *Playboy*’s Hugh Hefner and his “girls”); M. Lee, “Business of Pleasure,” *CNBC*, 2009 (TV special which showcased U.S.-based pornography producers and performers and aired repeatedly); B. Montopoli, “Porn moguls ask for bailout,” *CBSNews.com*, 1/8/09 (“Hustler publisher Larry Flynt and *Girls Gone Wild*’s Joe Francis, in a move that has been effective in generating publicity..., have vowed to ‘request that Congress allocate \$5 billion for a bailout of the adult entertainment industry.’”); J. D’Angelo,

for U.S. based websites on cable or satellite TV, on palm cards, and in publications distributed in street vending machines.

Some U.S.-based pornographers also “re-rout” their content through other countries,⁷⁹ while others have affiliation agreements with foreign Web sites.⁸⁰ Presumably, Congress could enact legislation prohibiting these pornographers from maintaining foreign-based Web sites that do not require age verification and from knowingly entering into or maintaining affiliation agreements with foreign-based Web sites that do not require age verification.

Presumably, Congress could also enact legislation prohibiting U.S. banks and credit card companies from knowingly doing business with foreign-based websites that do not require age verification,⁸¹ just as they are prohibited from doing business with foreign-based websites that offer gambling.⁸² Congress could also enact legislation that has “extra-territorial application.”⁸³ Congress could also push for an international treaty to address the worldwide problem of children accessing pornography on the Internet.⁸⁴ As the District Court observed in *ACLU v.*

“Snoop Dogg Wins Porn Awards For 'Doggystyle' Flick: Movie earns Best Music, Top Selling Tape honors from Adult Video News,” www.mtv.com, 1/17/02.

⁷⁹ In 2005, U.S. citizens were indicted in Phoenix on obscenity and other charges for running an “international” porn spam operation. According to the indictment, the porn spam emails (some of which contained hardcore pornography) were sent “from Internet Protocol addresses registered in the Netherlands and domain names registered in Mauritius” to make it more difficult to identify the senders. “Three Defendants Indicted, Fourth Pleads Guilty In Takedown Of Major International Spam Operation,” *U.S. Department of Justice Release*, Aug. 25, 2005.

⁸⁰ For instance, the affiliation agreement for one of our nation’s largest distributors of adult pornography [www.adameve.com (“Affiliate Program”)] states that “any depiction of actual sexual conduct should be viewed only following a user passing through age verification.”

⁸¹ See, e.g. Online Age Verification & Child Safety Act, H.R. 4059, 111th Cong., 1st Sess. (2009).

⁸² See, e.g., “Internet Gambling: An overview of the issues,” United States GAO, 12/02.

⁸³ See, e.g., FTC, “Frequently asked questions about the Children’s Online Privacy Protection Rule,” 10/7/08 (“**19. The Internet is a global medium. Do websites set up and run abroad have to comply with the Rule?** Foreign-based websites must comply with COPPA and the Rule if they are directed to children in the United States, or if they knowingly collect personal information from children in the U.S. The definition of “operator” under both COPPA and the Rule includes foreign-based websites that are involved in commerce in the United States or its territories. As a related matter, U.S.-based websites that collect information from foreign children also are subject to COPPA and the Rule.”).

⁸⁴ In 2001, Morality in Media initiated efforts aimed at the adoption of an International treaty prohibiting trans-border transmission of obscenity via the Internet and satellite TV. MIM was not asking the nations to tackle the obscenity problem for the first time. An international treaty on obscene publications was signed at Paris in 1910 and amended at a UN meeting in 1949.

Gonzales, “reform may take one step at a time, addressing itself to the phase of the problem that seems most acute to the legislative mind.”⁸⁵

And finally, law is a teacher; and if pornographic websites based in the U.S. were blocked from youth access, youth would learn that at least in this country, adults think it is harmful (and wrong) for them to look at pornography.

In *ACLU v. Gonzales*, the District Court judge was also concerned about the “economic burdens”⁸⁶ that implementation of age verification would impose on websites. This is a valid concern, but the exercise of constitutional rights is often accompanied by responsibilities that entail expense. For example, in most states not-for-profit organizations must register with a state agency and pay a fee in order to solicit contributions.⁸⁷ To operate a bookstore or newsstand, a person must often comply with a state or local “harmful to minors” display law.⁸⁸ “Adult bookstores” must often also comply with an “adult use” zoning ordinance.⁸⁹ Broadcasters must comply with the federal broadcast indecency law.

In *ACLU v. Gonzales*, the District Court judge was also concerned about web users “privacy concerns” and “security concerns.”⁹⁰

These are also valid concerns, but they are concerns that all Internet users face, irrespective of the nature of the content they seek to access. Not everything on the Internet is free, and even some websites that provide free content require submission of personal information. Furthermore, websites can obtain information about us even when we don’t volunteer to provide it.

I also find it difficult to understand how a mature, objective adult could be more concerned about the embarrassment or fear that some grown-ups would experience, if required to provide proof of age to view or purchase smut, than they are about the impact on children of exposure to online hardcore pornography that depicts adultery, bestiality, bondage, excretory activities (feces, urine, vomit), incest, gangbangs, prostitution, rape, teen sex, torture, and unsafe sex galore.

⁸⁵ 478 F. Supp. 2d 775, at 816.

⁸⁶ 478 F. Supp. 2d 775, at 803-05.

⁸⁷ To solicit funds in all 50 states, they must register and pay fees in more than 30 states.

⁸⁸ See, e.g., *Upper Midwest Booksellers Assoc. v. Minneapolis*, 780 F.2d 1389 (8th Cir. 1985).

⁸⁹ See, e.g., *Renton v. Playtime Theatres*, 475 U.S. 41, 54 (U.S. 1986)

⁹⁰ 478 F. Supp. 2d 775, at 805-07.

I would add here that in reading various reports about how best to protect children from exposure to online pornography, I am somewhat amazed when age-verification technology is devalued if not dismissed out of hand.

It is one thing to recognize that age-verification, like filtering, technology, has limitations and cannot be looked to as a total solution to the problem. It is another to unfairly discredit age-verification technology because the individuals doing so are ideologically opposed to any *legal regulation* of online pornographers.

Coincidentally, this past weekend I participated in a symposium hosted by the Communications Law & Policy Society at Syracuse University College of Law. During a panel discussion on the subject of “Understanding Your Electronic Footprint: Identification Management in New Media,” one of the panelists indicated that work is well underway on a global identity system.⁹¹

VI. VIGOROUS ENFORCEMENT OF FEDERAL INTERNET OBSCENITY LAWS IS ALSO PART OF THE SOLUTION

In *Miller v. California*, 413 U.S. 15, 23 (1973), the Supreme Court stated: “This much has been categorically settled by the Court, that obscene material is unprotected by the First Amendment.” In response to the argument that its decision would result in “repression,” the *Miller* Court stated (at p. 34):

[T]o equate the free and robust exchange of ideas and political debate with commercial exploitation of obscene material demeans the grand conception of the First Amendment and its high purposes in the historic struggle for freedom. It is a “misuse of the great guarantees of free speech and free press.”

In 1996, Congress amended two sections of the federal obscenity laws [18 USC 1462 & 1465] to clarify that distribution of obscene matter is prohibited on the Internet.⁹² The Congressionally created COPA Commission also included the following Recommendation in its 2000 *Final Report*:⁹³

⁹¹ See also, “Global ID and age verification: Commercial solutions,” www.integrity.aristotle.com (“Integrity is the most widely accepted identity and age verification service deployed for instantly verifying government-issued ID’s for citizens of 152 nations.”).

⁹² These laws were upheld in the following Circuits: *U.S. v. Little*, 2010 U.S. App. LEXIS 2320 (11th Cir. 2010); *United States v. Kilbride*, 584 F.3d 1240 (9th Cir. 2009); *U.S. v. Gravenhorst*, 190 Fed. Appx. 1; 2006 U.S. App. LEXIS 32373 (1st Cir. 2006); *U.S. v. Extreme Associates*, 431 F.3d 150 (3rd Cir. 2005), cert. den., 547 U.S. 1143 (U.S. 2006); see also, *Nitke v. Gonzalez*, 413 F. Supp.2d 262 (S.D.N.Y. 2005), *aff’d*, 547 U.S. 1015 (2006).

⁹³ Available at <http://www.copacommission.org/report/recommendations.shtml>.

Witnesses appearing before the COPA Commission testified that distribution over the Internet of obscene material...and harmful to minors material continues to grow in a troubling manner. Law enforcement resources at the state and federal level have been focused nearly exclusively on child pornography and child stalking...

Specifically, the Commission recommends that Government at all levels fund aggressive programs to investigate and prosecute violations of obscenity laws...This investigation and prosecution program should supplement the Government's existing effort to investigate and prosecute child sexual exploitation, sexual abuse, and child pornography...Such a program should be of sufficient magnitude to deter effectively illegal activity on the Internet.

Despite this recommendation, the Justice Department and FBI continue to focus almost exclusively on child pornography and child stalking. Under the Bush administration there were successful prosecutions against online commercial distributors of hardcore adult pornography, proving that obscenity laws can be enforced. But prosecutions were too few and far between to deter online distribution of hardcore adult pornography. Since the 2008 presidential election, the U.S. Justice Department has not initiated any new adult obscenity cases.

If Congress is concerned about harm to children from online exposure to hardcore adult pornography, it must do all in its power to ensure that federal prosecutors and the FBI work together to vigorously enforce federal Internet obscenity laws.

VII. HARM TO CHILDREN FROM ONLINE EXPOSURE TO HARDCORE ADULT PORNOGRAPHY

The Commission's *Notice of Inquiry* seeks comment on harms associated with children's exposure to "media content that may be inappropriate, such as... obscenity, indecency...or other content that is unsuitable for minors, as well as concern about exposure to content that could influence children to engage in behaviors that pose risks to their health."⁹⁴

In January 2010, *Morality in Media* published a 10-page paper reporting evidence that exposure to hardcore adult pornography on the Internet can adversely affect children's sexual behavior and attitudes about sex. The evidence includes published observations of clinical psychologists, police and prosecutors, educators,

⁹⁴ *Federal Register*, Vol. 74, No. 225, p. 61311-61312.

rape crisis professionals, social workers and others, as well as social science research. The paper is attached to these Comments as Appendix A.

In addition to the paper, *Morality in Media* recommends the recently published review by Michael Flood, “The harms of pornography exposure among children and young people,” *Child Abuse Review*, Vol. 18, 384-400, 2009.

In September 2009, *Morality in Media* also published a 40-page report (supplemented by 175 pages of appendices) entitled, “How Adult Pornography Contributes to Sexual Exploitation of Children.” The evidence compiled in this report includes excerpts from hundreds of news articles and from court cases, social science studies, books, and Congressional testimony. The report is posted at the www.obscuritycrimes.org website (“Porn Problem & Solutions” page).

VIII. CONCLUDING THOUGHTS

Since the launch of the World Wide Web, I have read countless articles, papers, and reports about the problem of children accessing adult pornography online.

Apart from the two lawsuits launched against the Communications Decency Act of 1996 and the Child Online Protection Act of 1998, I cannot recall *anyone* saying or implying that parental use of filtering technology standing alone will solve the problem. Apparently, only in our nation’s federal courts do people believe that parents are not only the first line of defense when it comes to protecting children from online exposure to pornography – but the only line of defense.

Part of the problem is that a U.S. District Court is not the best place to decide a complex public policy matter such as, “How best to protect children from online exposure to pornography.” For one thing, the rules of evidence make it virtually impossible for a judge to consider all relevant and available information about the matter. For another, too much depends on the capability and objectivity of the judge who is sitting in the case. Ideally, court rulings shouldn’t differ based on which judge is sitting, but that isn’t the reality.⁹⁵ Because of the doctrine of “stare decisis,” there is also an air of finality to court decisions. When Congress makes a

⁹⁵ Court rulings can also differ depending on which Circuit is *chosen*. Just as the Fourth Circuit became a forum of choice for conservative causes, so the Third Circuit became a forum of choice for smut providers. See, *ACLU v. Reno*, 929 F. Supp. 824 (E.D. Pa. 1996) (Internet indecency); *Playboy v. U.S.*, 30 F.Supp.2d 702 (D. De. 1998) (cable TV porn); *ACLU v. Reno*, 31 F.Supp.2d 473 (E.D. Pa. 1999) (online porn); *ALA v. U.S.*, 201 F.Supp.2d 401 (E.D. Pa. 2002) (online library porn); *CBS Corp. v. FCC*, 535 F.3rd 167 (3rd Cir. 2008) (broadcast indecency).

mistake, the only impediment to correcting it is a lack of political will. When the courts make a mistake, the integrity of the courts is also seemingly at stake.

It would help, of course, if the courts waited until there is an actual case or controversy instead of invalidating a reasonable and needed law on its face because the judge thinks the law could be applied in an unconstitutional manner.

In *Ashcroft v. ACLU*⁹⁶ (the COPA case), for example, it is highly unlikely that COPA would have been enforced against any of the plaintiffs. Why would any U.S. Attorney in his/her right mind expend limited resources prosecuting sites like *abbfe.com*, *artnet.com*, *eff.org*, *epgn.com*, *freespeech.org*, *obgyn.com*, *salon.com* and *sexualhealth.com* when countless commercial websites allow children to view hardcore adult pornography free of charge and without proof of age? Furthermore, on its face COPA applied only to communications “for commercial purposes.” In contrast, according to the District Court, the “vast majority of information on the plaintiffs' websites” was “provided to users for free of charge.”⁹⁷

Another part of the problem is that the Supreme Court now applies “strict scrutiny” to determine the constitutionality of laws intended to restrict children’s access to content that is harmful to children and that is not protected speech for children, if those laws incidentally burden adult access to speech that is presumptively protected for adults. In particular, there are at least three problems with the Court’s application of “strict scrutiny”⁹⁸ in the COPA case.

First, it is disingenuous for the Supreme Court to say that obscene for minors content is unprotected speech for minors⁹⁹ and that the government has a “compelling interest” in protecting children against such content¹⁰⁰ and later to say,

⁹⁶ 542 U.S. 656 (2004).

⁹⁷ *ACLU v. Reno*, 31 F.Supp.2d 473, 484 (E.D. Pa. 2000).

⁹⁸ 542 U.S. 656, at 670.

⁹⁹ *Ginsberg v. New York*, 390 U.S. 629, 636–37 (1968) (“It is enough for the purposes of this case that we inquire whether it was constitutionally impermissible for New York . . . to accord minors under 17 a more restricted right than that assured to adults to judge and determine for themselves what sex material they may read or see. We conclude that we cannot say that the statute invades the area of freedom of expression constitutionally secured to minors.”).

¹⁰⁰ *Sable Communications v. FCC*, 492 U.S. 115, 126 (1989) (“We have recognized that there is a compelling interest in protecting the physical and psychological well-being of minors. This interest extends to shielding minors from...literature...not obscene by adult standards.”)

as it did in the *Playboy* case,¹⁰¹ that “[i]t is rare that a regulation restricting speech because of its content will ever be permissible.”¹⁰²

The word “compel,” as defined in *Webster’s New Collegiate Dictionary*, means: “1. to drive or urge forcefully or irresistibly 2. to cause to do or occur by overwhelming pressure.”¹⁰³ If a governmental interest is truly “compelling,” then other interests must yield to some extent. But judging from the *Playboy* and COPA case decisions,¹⁰⁴ rarely will a law intended to protect children from pornography disseminated electronically withstand “rigorous scrutiny.”

I would add that the courts did not always apply “strict scrutiny” when evaluating the constitutionality of laws that restrict children’s access to harmful materials. In upholding a Georgia law that regulated the sale and display of sexually explicit materials deemed harmful to minors, the Eleventh Circuit noted that:

(1) content-based restrictions on speech survive constitutional scrutiny only under extraordinary circumstances; but (2) material judged “obscene” under the appropriate constitutional standard is not protected by the First Amendment; (3) indirect burdens placed on protected speech in an effort to regulate obscenity must be supported by important state interests and should not be unnecessarily burdensome; and (4) the state’s interest in protecting its youth justifies a limited burden on free expression.¹⁰⁵

As a result of the Court’s application of “strict scrutiny” to laws intended to protect children from harmful content that is unprotected by the First Amendment *for minors*, sexual materials that not too long ago could have been banned for adults,¹⁰⁶ can no longer be regulated to protect minors. Surely, our nation’s founding fathers never intended such an absurd and hurtful result.

¹⁰¹ *Playboy v. U.S.*, 529 U.S. 803 (2000) (overturning a law that would have required cable TV operators to *completely* scramble the signals for pay porn channels or air them after 10 pm).

¹⁰² *Id.* at 818. Dissenting in *City of Los Angeles v. Alameda Books*, 535 U.S. 425, 455 (2002), Justice Souter put it this way, “strict scrutiny leaves few survivors.”

¹⁰³ *Webster’s New Collegiate Dictionary*, 227, (1981).

¹⁰⁴ The Court’s decision in the COPA case (542 U.S. 656, at 670) clearly rests on its earlier *Playboy* decision (“The closest precedent on the general point is our decision in *Playboy Entertainment Group. Playboy...*, like this case, involved a content-based restriction designed to protect minors from viewing harmful materials.”).

¹⁰⁵ *American Booksellers v. Webb*, 919 F.2d 1493, 1500-1501 (11th Cir. 1990), *cert. den.*, 500 U.S. 942 (1991).

¹⁰⁶ Under the test enunciated in *Roth v. United States*, 354 U.S. 476, 487 (1957), material is obscene if it “deals with sex in a manner appealing to prurient interest.”

Second, there certainly *ought* to be a difference between a law *intended* to restrict adult access to content that is protected for adults,¹⁰⁷ and a law like COPA which *incidentally* “burdens” adult access to content that is protected for adults but which is intended to restrict children’s access to content that is harmful to children and that is not protected for children. For the latter type of law, the appropriate level of scrutiny should be “intermediate” scrutiny, which the Court has applied in evaluating restrictions on so-called “adult entertainment” businesses.¹⁰⁸

It is indeed an anomaly that intermediate scrutiny is applied to an ordinance that regulates where “adult businesses” that prohibit minors can locate, for the purpose of protecting neighborhoods where children go to school, while applying strict scrutiny to a law that regulates the manner in which pornography is distributed online, for the purpose of preventing children from viewing pornography.

In *Young v. American Mini Theatres, Inc.*, the Supreme Court reversed the Court of Appeals on grounds that on their face should have applied to COPA: “There is no claim that distributors or exhibitors of adult films are denied access to the market or... that the viewing public is unable to satisfy its appetite for sexually explicit fare. Viewed as an entity, the market for this commodity is essentially unrestrained.”¹⁰⁹ Justice Powell agreed, stating in his concurring opinion:

In this case, there is no indication that the application of the Anti-Skid Row Ordinance to adult theaters has the effect of suppressing production of or, to any significant degree, restricting access to adult movies... The constraints of the ordinance with respect to location may indeed create economic loss for some who are engaged in this business...The inquiry for First Amendment purposes is not concerned with economic impact; rather, it looks only to the effect of this ordinance upon freedom of expression.¹¹⁰

A third problem with application of “strict scrutiny” in the COPA case is that when it comes to protecting children from Internet pornography, the government does not realistically have a choice between two or more means, each of which can “achieve the Government’s interest”¹¹¹ or “accomplish Congress’s goal.”¹¹²

¹⁰⁷ See, e.g., *Boos v. Barry*, 485 U.S. 312 (1988) (applying strict scrutiny and holding unconstitutional a statute limiting political speech in front of foreign embassies).

¹⁰⁸ See, *Los Angeles v. Alameda Books*, 535 U.S. 425, 442 (2002); *id.* at 447 (Kennedy, J., concurring).

¹⁰⁹ 427 U.S. 50, at 62 (1976).

¹¹⁰ *Id.* at 77–78.

¹¹¹ *Sable Communications v. FCC*, 492 U.S. 115, at 129 (1989) (“to achieve the Government’s interest in protecting minors”).

Some societal problems do not permit any feasible either-or choice to *achieve* or *accomplish* the governmental purpose. For example, to protect children from online sexual exploitation, parental involvement, technology, schools, nonprofits, and laws are all needed.¹¹³ Now, even Internet service providers, credit card companies, and banks are fully cooperating with this effort.¹¹⁴

In the COPA case, the majority observed that COPA standing alone would not have completely protected children from Internet pornography because COPA did not apply to sites located overseas¹¹⁵ and did not apply to all forms of Internet communication.¹¹⁶ But as Justice Breyer observed in his dissent, neither does screening technology standing alone provide complete protection:

Filtering software, as presently available, does not solve the ‘child protection’ problem. It suffers from four serious inadequacies that prompted Congress to pass the legislation instead of relying on its voluntary use. First, its filtering is faulty, allowing some pornographic material to pass through...Second, filtering costs money. Not every family has the \$40 to install it...Third, filtering software depends upon parents willing to decide where their children will surf the Web and able to enforce that decision. As to millions of American families, that is not a reasonable possibility. More than 28 million school age children have both parents or their sole parent in the work force, at least 5 million children are left alone at home without supervision each week, and many of those children will spend afternoons and evenings with friends who may well have access to computers and more lenient parents...Fourth, software blocking lacks precision, with the result that those who wish to use it to screen out pornography find that it blocks a great deal of material that is valuable...In sum, a “filtering software status

¹¹² 542 U.S. 656, at 673 (“to accomplish Congress’s goal”).

¹¹³ S. Diaz, “A Multi-Front Battle Against Web Predators,” *Washington Post*, 7/31/07 (“Those on the front lines of the fight against predators on the Web...say the battle is complex and will take a combination of education, high-tech security, old-fashioned investigative work, and cooperation among police, lawmakers, schools, parents, teens and the sites.”).

¹¹⁴ Press Release, “Financial and Internet Industries to Combat Internet Child Pornography,” Nat’l Ctr. for Missing & Exploited Children, 3/15/06, *available at* www.ncmec.org/missingkids.

¹¹⁵ 542 U.S. 656, at 667.

¹¹⁶ *Id.* at 668. The CDA did apply to all forms of communications on the Internet; but in *Reno v. ACLU*, 521 U.S. 844, 876–79 (1997), the Supreme Court found this to be problematic.

quo” means filtering that under-blocks, imposes a cost upon each family that uses it, fails to screen outside the home, and lacks precision.¹¹⁷

In its report, *Youth, Pornography, and the Internet*, the National Academies’ National Research Council also emphasizes that there is no one solution to protecting kids, advocating a mix of social, technological, and public policy strategies. The Council’s report states:

Technology solutions seem to offer quick and inexpensive fixes that allow the adult caregiver to believe that the problem has been addressed, and it is tempting to believe that the use of technology can drastically reduce or even eliminate the need for human supervision. Public policy approaches promise to eliminate sources of the problem.

. . . .

[N]either technology nor public policy alone can provide a complete—or even a nearly complete—solution. As a rule, public policy aimed at eliminating sources of sexually explicit material can affect only indigenous domestic sources and a substantial fraction of such material originates overseas. Nor is technology a substitute for education, responsible adult supervision and ethical Internet use.¹¹⁸

It ought to go without saying that if technology in general is not the whole answer to shielding children from online exposure to pornography, a particular technology – namely, filters utilized by parents – is most assuredly not the whole answer.

The Commission needs to say so and to urge Congress to take whatever steps will be necessary to provide meaningful protection, including enforcement of Internet obscenity laws and if necessary, proposing an Amendment to the Constitution to clarify that the First Amendment does not provide adults with a “constitutional right” to distribute material harmful to minors *without any legal obligation* to adopt sensible measures to restrict children’s access to that material.

Freedom of speech and press is indeed a “fundamental” right but so is the right to live and raise children in a safe, healthy and decent society.

This is not to say that the Supreme Court should turn a “blind eye” to every burden on adult access to materials that are or may be protected by the First Amendment. In cases where there is a realistic choice between two approaches to *achieve* or

¹¹⁷ 542 U.S. 656, at 684–686 (Breyer, J., dissenting).

¹¹⁸ D. Thornburgh & H.S. Lin, eds., *Youth, Pornography and the Internet*, Washington, DC, National Academy Press, Ch. 14.3, 2002.

accomplish the desired end, the courts properly require government to use means less restrictive of First Amendment rights. COPA was not such a case.

APPENDIX

Harm to Children from Online Exposure to Hardcore Adult Pornography

By Robert Peters
President of Morality in Media, January 2010

Introduction

In *Paris Adult Theater I v. Slaton*, 413 U.S. 49, 57 (1973), the U.S. Supreme Court held that there are “legitimate [governmental] interests at stake in stemming the tide of commercialized obscenity, *even assuming it is feasible to enforce effective safeguards against exposure to juveniles.*” [*Italics added*] In other words, even if we were to succeed in shielding children from exposure to hardcore adult pornography on the Internet and elsewhere, the federal and state governments would still be justified in enforcing obscenity laws.

When it comes to the Internet, however, in the United States there are at present *NO legal safeguards* to protect children from exposure to pornography, and in large measure we can thank the Supreme Court itself for this tragic state of affairs. In 1997, the Supreme Court invalidated a law intended to restrict children’s online access to content that is “indecent.” In 2009, the Court also refused to review a lower court decision which had invalidated a law intended to restrict children’s online access to sexual content that is “harmful to minors.”

Today, if a child were to walk into an “adult bookstore,” he would normally be told to leave, because it is against the law to sell pornography to children in real space. But if that same child were to “click” to most commercial websites that distribute adult pornography, he could view hardcore adult pornography free of charge and without restriction, because when it comes to cyberspace, the courts think parental use of filters is an adequate solution to the problem.

Parents are indeed the “first line of defense” when it comes to protecting children from harmful Internet content, but no matter how hard the government tries to educate and motivate parents, many will not install and use filter technology on computers under their control. The reasons include the cost and difficulty of installing filters, the problem of over-blocking, parental language barriers, illiteracy & disabilities, and parental naiveté, indifference & neglect.

Moreover, most children can access the Internet outside the home at a school, library, friend or relative’s house, at a job or via a mobile device (e.g., laptop or cell phone); and all it takes is one child in a group of friends to have unrestricted access to the Internet for all to have access. But it isn’t just the Courts who are to blame for the failure to protect children from exposure to Internet pornography. Congress, the U.S. Justice Department and FBI also share responsibility.

In 1996, Congress amended two sections of the criminal obscenity laws [18 USC 1462 & 1465] to clarify that distribution of obscene matter is prohibited on the Internet. The Congressionally created COPA Commission also included the following Recommendation in its 2000 *Final Report* (available at <http://www.copacommission.org/report/recommendations.shtml>):

Witnesses appearing before the COPA Commission testified that distribution over the Internet of obscene material...and harmful to minors material continues to grow in a troubling manner. Law enforcement resources at the state and federal level have been focused nearly exclusively on child pornography and child stalking...

Specifically, the Commission recommends that Government at all levels fund aggressive programs to investigate and prosecute violations of obscenity laws...This investigation and prosecution program should supplement the Government's existing effort to investigate and prosecute child sexual exploitation, sexual abuse, and child pornography...Such a program should be of sufficient magnitude to deter effectively illegal activity on the Internet.

Despite this recommendation, the U.S. Justice Department and FBI continue to focus almost exclusively on child pornography and child stalking. Under the Bush administration there were successful prosecutions against online commercial distributors of hardcore adult pornography, proving that obscenity laws can be enforced. But these prosecutions were too few and far between to effectively deter online distribution of hardcore adult pornography. Since the 2008 presidential election, the Justice Department and FBI have not initiated any new adult obscenity cases. Furthermore, Congress hasn't uttered a peep about the lack of enforcement.

What then are the consequences of our nation's failure to protect children from online exposure to hardcore adult pornography? Common sense should inform us that when children are exposed to graphic depictions of adultery, bestiality, bondage, excretory activities, group sex, incest, prostitution, pseudo child porn, rape, sexual murders, teen sex, torture, and unsafe sex galore, their attitudes about sex, their sexual desires and their sexual behavior can be influenced for the worst. The evidence compiled in this paper supports that assessment; and make no mistake about it, *many, many* children are being exposed to this vile material on the Internet.

Statements from experts

Staff reporter, "Five-Year Olds 'Are Imitating Net Porn,'" *Daily Mail* (London), 11/20/09 ("Children as young as 5 are imitating sex acts at school because they are being allowed to stay up late and watch pornography, a senior MP has warned... Barry Sheerman, chairman of the Children, Schools and Families Select Committee...blamed... pornography that could easily be watched by children on satellite channels and over the Internet. He said... 'You go to infant schools now and teachers say to me: "Children come here at 5 and 6 simulating sexual behavior that they should know nothing about.'" ...Earlier this year a survey warned that teenagers said they had learned about sex from pornography. Nearly nine out of ten 14 to 17-year-olds had looked at graphic images and nearly one in five viewed them more than once a week, according to research for Channel 4's *The Sex Education Show Vs Pornography*.").

P. Marshall, "Generation sexting," *Daily Mail* (London), 3/18/09 ("Like a real porn star, Becky is heavily made up and lying naked on the bed as the camera flashes. She could be just another glamorous model as she poses provocatively with practiced moves. But she isn't.

Shockingly, Becky is just 17...She's filming herself in a friend's bedroom... Becky has not been coerced into this degrading behavior. She is posing on her own, taking photographs of herself not for profit -- but for attention. Welcome to the deeply alarming new world of privileged British teenagers who have a growing obsession with pornography...As a mother of three daughters aged 15, 14 and 12, I am well aware of the pressures children face online... My guide into this disturbing universe was a pretty A-level student. I'd come to talk to her and a group of sixthformers -- boys as well as girls -- at their prestigious school about the impact that watching pornography may be having on today's youngsters. I certainly was not prepared to hear they were also producing it... Even taking into account the obvious fact that teenagers are prone to exaggeration, it became alarmingly clear to me that most of these teenagers were not exaggerating their involvement with pornography. 'Everyone makes porn -- more people than you would expect,' an articulate sixth-former told me matter-of-factly...”).

J. Sullivan, “This is your kid’s brain on Internet porn; it can disrupt normal thought processes...” *Oregonian*, 12/12/08 (“‘A lot of parents are still clueless and don't appear to understand one of the primary uses of the Internet is pornography access,’ says Eric M. Johnson, a clinical psychologist and full-time forensic evaluator...The problem is that some kids confronted with pornography are captured by the images...Johnson said. Half his caseload consists of kids in trouble for sexual behavior who mainly use the Internet to view pornography. ‘For them it becomes something very different, and they become obsessed. They think about it all the time and they do it, and so it begins to dominate their lives.’”).

S. Garfield, “Porn addicts, sex offenders, rapists, pedophiles...” *Observer (London)*, 11/23/08 (“‘Increasingly, perversion is not just a problem for adults. In a basement room [of London’s Portman Clinic] I met John Woods, a specialist in young people’s perversions...When he trained as a psychotherapist he began working with boys who had committed sexual offenses...His patients range in age from 9 to 21, and the majority are male...The clinic’s most recent survey of adolescent referrals showed that ‘sexually inappropriate behaviour’ dominated the caseload, with more than 50 percent of patients committing some form of sexual assault... [I]ncreasingly, Woods has found that Internet pornography is almost as serious a problem for adolescents as for adults. ‘I do think it has profoundly corrupting effect on youngsters, and leads them into all sorts of wrong thinking, sex is instantly available, all these glamorous people...’”).

G. Lower, “Mothers urge action on child-against-child sex abuse.” *Weekend Australian*, 10/18/08 (“‘Dianne thought she was doing the right thing when she picked up the phone to report what had happened at school to her little boy...Dianne’s son had been confronted improperly by a fellow 5-year-old in a school toilet. The case has triggered impassioned debate over what is to be done about so-called ‘sexualized’ intrusions on children, committed not by adults but by other youngsters. Such incidents are becoming increasingly common, according to Freda Briggs, one of the nation’s top experts on child protection...Professor Briggs attributed the sexualisation of children to ‘a more highly explicit society than 10 years ago.’ ‘There’s much more sex on TV, (Children are) accessing the Internet...,’ she said. ‘What we are seeing is the replication of pornography, sex abuse or where they (children) have seen sex. We’re paying a high price for sexual freedom; our children are being damaged.’”).

J. Bennett, “The Pornification of a Generation,” *Newsweek*, 10/7/08 (“‘Last year, the

.American Psychological Association put out a compelling report that described the sexualization of young girls... 'It's not as if we get our ideas straight from porn about what a kiss should be or what sex should be,' says Sharon Lamb, a psychologist...and a coauthor of the APA report. 'But you do see imitation of sex that was once found only in porn. It's a kind of education to kids about what sex is like before they have a real education of it.' That education involves seeing thousands of explicit sexual images by the time a person reaches his teenage years...").

E. Landau, "When sex becomes an addiction," www.cnn.com, 9/5/08 ("A lot of teenagers develop their sexuality with pornography and then discover that relational sex isn't as satisfying, Doug Weiss [therapist and executive director of the Heart to Heart Counseling Center] said. Pornography gives them a 'very strong chemical hit,' and alters ways of thinking about sex...").

H. Neill, "Male sex addict cases 'increase,'" *BBC Radio*, 1/10/08 ("Christine Lacy, Relate Sex therapy consultant, said those with sex addiction problems felt their lives were: 'spiraling out of control.' She said... 'Relate counselors working with teenagers have reported that the instant availability of pornographic images on the internet and mobile phones has worrying implications for their ability to have normal sexual relationships as they grow up.'").

"Web is blamed for 20 per cent leap in sex attacks by children," *Evening Standard* ("This is London," UK), 3/3/07 ("Internet pornography was blamed yesterday for a dramatic rise in the number of sex offences committed by children...Experts said the behavior of youngsters was being changed by ready access to sexual imagery...A shocking 143 cases involved 12-year-olds... Kevin Gibbs, co-chair of the charity's sexually harmful behaviour group, said the Internet had let everybody access pornography more easily...He added: 'Five or ten years ago it would have been time-consuming and involved...money. But these days it's easy to access pornography online and it's also often free. A child can get at these images within five minutes...").

T. Sheehan, "Young rape offenders on the rise," *Columbus Dispatch* (Ohio), 7/12/06 ("An apparent jump in the number of youngsters accused of raping other children is concerning local authorities. Three boys ages 11, 12 and 14 were in...Juvenile Court this week facing delinquency rape counts in separate cases involving children who are all younger than 10. Last year, juvenile authorities handled 33 rape cases, with 12 involving defendants between 11 and 13 years old...Assistant County Prosecutor Melinda Seeds thinks easy access to pornography through the Internet and elsewhere is a factor in the number of youthful offenders. The average age for juvenile rape offenders has been 14 or 15, she said. 'I think we are going to see it get worse. What we are seeing is pornography. Some parents have it in their homes. Everybody with a computer has it' available, Seeds said.").

M. Chalmers, "Juvenile sex offenders treated same as adults," *News-Journal* (Wilmington, DE), 4/22/06 ("Juveniles make up a third of people charged with child sexual abuse in Delaware and nationwide...About 60 percent of juvenile sex offenders have been abused and are acting out what happened to them, [Marc] Felizzi [who counsels juvenile sex offenders at the nonprofit Delaware Guidance Services for Children and Youth], said. Others may be exposed to pornographic pictures or videos, while some may have seen adults having sex, he said... 'Sex to them is an object they see on TV or in a picture.'").

R. Jenkins, "Violent Pornography blamed for turning boy aged 14 into a rapist," *Times*

(London), 3/24/06 (“Susan Baily, professor of Child and Adolescent Forensic Mental Health..., believes that it is important for parents to monitor what images their children are exposed to, especially with the increasing number of TV and computer screens in most homes. She said: ‘The work I have done on children who have killed, committed sexual offenses or other crimes suggest that exposure to pornography is a factor. It is certainly well documented in the literature. You find that they model themselves on what they’ve seen...’”).

Staff Reporter, “Teenage Rape: The hidden story,” *Irish Times*, 7/9/05 (“When a children’s support agency revealed this week that it had been asked to help deal with ‘many cases’ of gang rape among teenagers during the past year, even rape crisis professionals were taken by surprise... ‘We are very concerned that more and more boys are accessing their sex education from pornography,’ says Fiona Neary, [Rape Crisis Network of Ireland] executive director. ‘Yet there are no programs to combat these messages from pornography, and other media, which are now very powerful...’ Teenage Tolerance, a survey of 14- to 19-year-olds conducted by Women’s Aid, found that 94% of teenage boys and 68% of teenage girls have seen pornography, mostly at friends’ homes... Young men in particular see pornography a major source of information about sex,’ states the report. One teen interviewed confessed to having sexually abused a younger child as a direct consequence of viewing pornography, while another said that pornography had taught him how ‘to have better sex.’”).

P. Paul, *Pornified*, Henry Holt & Co., 2005, p. 188 (“Watching pornography, kids learn that women always want sex and that sex is divorced from relationships. They learn that men can have whomever they want and that women respond the way men want them to. They learn that anal sex is the norm and instant female orgasm is to be expected. ‘Kids today are going to run into pornography online...,’ explains [psychologist and sex therapist] Aline Zolbrod... ‘They’re getting a very bad model. Pornography doesn’t show how a real couple negotiates conflict and intimacy.’ For girls especially, Zolbrod believes pornography, particularly online, is a ‘brutal way to be introduced to sexuality,’ since much of it she deems ‘rape-like’ in its use of violence.”)

Testimony of M.A. Layden, *Hearing on the Brain Science Behind Pornography Addiction*, Subcommittee on Science, Committee on Commerce, Science and Transportation, U.S. Senate, 11/18/04 (“Pornography...is an equal opportunity toxin...It is more toxic the more you consume, the ‘harder’ the variety you consume, and the younger...the consumer.”).

S. Clairmont, “Porn gave kids know how to assault their friends,” *Hamilton Spectator* (Canada), 3/25/04 (“They were children, acting out the pornography they had seen. One boy was 12. He learned it from watching cable TV and clicking on pornographic ‘pop-ups’ on the Internet. Another boy was 13. He watched it on cable and the Net. The girl was about the same age. She saw it on TV. All imitated the pornography they had witnessed, engaging in acts that police say went far beyond any normal sexual experimentation that might occur at that age... Since last summer, Hamilton police have conducted three investigations into children who have been exposed to porn and then used their newfound knowledge to sexually assault other children...The actions of these three youths is more likely the result of misguided experimentation and imitation than deep-rooted deviance, says Dr. Steven Hucker, head of forensic psychiatry at McMaster University and an expert in sexual psychopathology. Children with ‘growing minds’ who are on the cusp of puberty and are exposed to pornography might become desensitized to it and begin to think that is normal behavior, said Hucker.”).

J. Johnston, “The boy rapists...,” *Mirror (London)*, 3/10/04 (“The youngest member of this group is just 6 – barely capable of tying his own shoe laces, yet somehow old enough to have committed the most serious of sexual offenses...All are here for a reason most will be unable to fathom: they have raped. One of the 7-year-olds raped his 3-year-old cousin. Another forced himself on a neighbor, barely more than a baby. Another sodomised a fellow pupil in school...Shaheda Omar is...a psychologist, an expert in child sex abuse. The courts turned to her when they realized the number of pre-pubescent rapists, too young to be prosecuted, was reaching terrifying proportions...‘Look, this is happening,’ she says firmly...She adds: ‘It is happening every day, in every part of South Africa. Boys are raping, and they are not waiting until they are 18 to start. They are getting younger and younger...‘What we are seeing is new,’ she says. ‘We are in the middle of an epidemic’...‘Children are seeing explicit sex on TV, and without parental control to explain and put it in context’...‘A lot of children make references to pornography and this is deeply worrying. Some are obviously simply copying what they see.’”).

C. Kim, “From fantasy to reality: The link between viewing child pornography and molesting children,” *Child Sexual Exploitation UPDATE, American Prosecutors Research Institute, Vol. 1, No.3, 2004* (“Sexual predators frequently use pornography as a tool to assist them in the grooming process. ‘Grooming’ is the term used to describe the process by which child molesters build trust with the child to transition from a nonsexual relationship to a sexual relationship in a manner that seems natural and nonthreatening...Ultimately, the seemingly healthy relationship is only a farce used to take sexual advantage of a vulnerable child. Child molesters use both adult pornography and child pornography in the grooming process, albeit for different purposes... Repeated exposure to both adult and child pornography is intended to diminish the child's inhibitions and give the impression that sex between adults and children is normal, acceptable and enjoyable...”).

N. Wallace, “Net helps children start sex attacks,” *Sydney Morning Herald*, 11/26/03 (“Internet pornography was helping to spawn a new generation of sexual predators as young as six, child protection experts warned...There had been an alarming increase in children under 10 sexually abusing other children over the past few years, most of whom had used the Internet specifically to browse porn sites, the Child At Risk Assessment Unit based at Canberra Hospital said. Cassandra Tinning, a social worker at the unit, said abusive behaviour by children included ‘oral sex and forced intercourse with other children or forced intercourse with... animals.’”).

R. Benson, “Will glut of online porn create more young sex offenders?” *Citizen Magazine*, 11/02 (“Although law enforcement and mental health professionals are reluctant to say that pornography causes sex crimes, most seem to name it as one of numerous, complex, related factors that serve as precursors to sexual offending... ‘The Internet just scares us to death,’ said David Flowers concerning the flood of online porn. Flowers is a 28 year veteran with the Utah Division of Youth Corrections...Flowers, who has focused his work on juvenile sex offenders...says he is already beginning to see the edge of a disturbing trend with more teenagers regularly talking about such perversions as necrophilia, bestiality, ritualistic mutilation. Pornography that features such obscenities is easily found on the Internet...A specialist in the treatment of adolescents who commit sex offenses, Dr. Jacqueline Page [University of Tennessee Special Problems Unit in Memphis], also sees the Internet as an important emerging issue in dealing with child-on-child sex offenses. Particularly disturbing to her is the high probability of

adolescents accidentally encountering porn while surfing the Internet. ‘It sends the message of acceptability,’ she says, which could desensitize a teen towards sexual violence...”).

M. Becker, “School sex attacks frighten kids, parents,” *N.Y. Daily News*, 10/14/02 (“A kindergartner is beaten and sodomized by a gang of boys in the bathroom of his Bronx school. Two weeks later, a 12-year-old boy is jumped by 4 other boys as he crosses the playground of a Brooklyn middle school. He escapes after they try to violate him with a wooden stick... Fondling is the most common assault. ‘You have guys walking down the hall and grabbing girls’ breasts,’ said Dr. Elissa Brown, a child and adolescent psychologist at the NYU Child Study Center. Experts agree that most sexual abusers learn the behavior at home...Kids who commit sexual attacks often can watch anything they want on TV, have easy access to pornography, or have been repeatedly exposed to their parents’ sex lives, Brown said.”).

J. Henley, “Pornography forms French children’s views on sex...,” *Guardian (London)*, 5/25/02 (“Concern that French children’s attitude to sex is being warped by early exposure to pornography was exacerbated yesterday when eight adolescent boys were placed under formal judicial investigation for the rape of a 15-year-old classmate. Details of the alleged crime... emerged the day after the publication of a survey estimating that nearly half of France’s children had seen an adults-only film by the time they were 11...Most of the teenagers said they watched pornography ‘to find out about sex,’ and nearly 40% said the films – almost invariably watched at home or at friends’ houses while parents were out or asleep – had taught them something useful. Benoit Felix, who runs an AIDS hotline for teenagers...said, it had become ‘patently obvious’ that the majority of questions adolescents asked the hotline’s staff were inspired by the pornography they are watching. ‘They want to talk about sodomy, threesomes, group sex, gang rape, bondage,’ he said. ‘The language they use is that of the porn world’...Michela Marzano, a philosopher and psychologist, said it was becoming increasingly difficult not to relate French children’s increasing exposure to pornography to the recent surge in cases of teenage collective rape... ‘Porn does not recognize that the other person might have a different urge to yours.’”).

K. Kelleher, “Birds and Bees; With teens and Internet sex, curiosity can become compulsion,” *L.A. Times*, 4/15/02 (“I had a boy who was 16 and he would be looking at pornography with his 12-year-old sister and he would turn to her and say, ‘Let’s try this,’ said [Chris] Kraft [a psychologist at the John Hopkins University Center for Marital and Sexual Health, Sexual Behaviors Consultation Unit]. ‘Adolescents aren’t always ready to deal with such things. Being exposed to explicit information can speed up sexuality of adolescents who, we know, are sexually active earlier and earlier.’”).

S. Gilbert, “A Conversation with Lynn Ponton: An Expert’s Eye on Teenage Sex, Risk & Abuse,” *N.Y. Times*, 01/15/02 (“Teenagers open up to Dr. Ponton, a professor of psychiatry...‘I see boys who are addicted to sex sites on the Internet that show sadistic behavior toward women. It affects those boys’ sexual lives...”).

J. McConaughy, “Psychiatrists consider impact of Internet pornography,” *AP*, 5/9/01 (“Do Internet porn sites warp adolescents? There’s no data to tell but the question needs study, said psychiatrists on an American Psychiatric Association panel titled ‘Voyeurism in the New Millennium: A Prime-Time Obsession?’ ‘The potential of seeing hundreds of thousands of such

images during adolescence – I have no idea what that could do. But I can imagine it must be profound,’ said Dr. Norman E. Alessi, a University of Michigan psychiatry professor.”).

H. Marcovitz, “Many sex offenders begin young,” *Morning Call (Allentown, PA), 4/26/01* (“For weeks, a boy constantly nagged his female classmates. His desire was for oral sex. He was in first grade. Two girls tied up a classmate, removed her clothes and threatened to sodomize her. One girl is 6, the other 7. Those cases didn’t cross the police blotter... But social workers got involved, which means the files landed on the desk of Robert Cosner, executive director of the Bucks County Children and Youth Social Services Agency...In each of the cases Cosner cited, evidence showed the children got their behavior from various media. The boy seeking oral sex had been exposed to pornographic videotapes, he said; in the case of the two girls who tied up their classmate, social workers believe pornography also was involved...Clearly, he said, the children shouldn’t have been exposed to pornography.”).

Dr. Victor B. Cline, “Pornography’s effects on adults and children,” *Morality in Media, 2001* (“Some of my porn addict patients inform me that the Internet has three major advantages in feeding their...sexual illnesses. They call them the three ‘A’s’: It’s easily Accessible, Affordable, and Anonymous...I have had boys in their early teens getting into this wasteland with disastrous consequences. They told me they actively search for porn on the Internet, keying in on such words as sex, nudity, obscenity, pornography, etc. Then, once they have found how to access it they go back again and again, just like drug addicts.”).

M. Conlon, “Web skews sex education, U.S. psychiatrist warns,” *Reuters, 5/16/2000* (“‘I’m very concerned about children,’ Donna Woods of the Univ. of Michigan said, adding that easily accessed pornography was portraying sex as a public event, disconnected from commitment. It also offers a smorgasbord of aberrant behavior...‘There is going to be a big public health issue...’ Woods told a session at the annual meeting of the American Psychiatric Association. She said she had treated a teen-age boy who had become a zoophile through various websites that caused him to spend 16 hours a day on the Internet without eating or bathing...”).

Social science research

E.M. Alexy, et al., “Pornography use as a marker for an aggressive pattern of behavior among sexually reactive children & adolescents,” *J. Am. Psychiatr. Nurses Assoc., 14, 442-453, 2009* (“Moreover...few studies investigate pornography use among sexually reactive children and adolescents (SRCAs), sometimes referred to as juvenile sex offenders...The purpose of this study was to examine pornography use among SRCAs as a possible risk marker for the development of an aggressive pattern of behavior...Specifically, we found that SRCAs who used pornography compared to those who did not use pornography were more likely...to engage in coerced vaginal penetration and forced sexual acts such as oral or digital penetration, to express sexually aggressive remarks (obscenities) and to engage in sex with animals.”).

A. Tsitsika, et al., “Adolescent pornographic Internet site use: A multivariate regression analysis of the predictive factors of use and psychosocial implications,” *CyberPsychology & Behavior, 12, 1-6, 2009* (“The present study assessed emotional and psychosocial characteristics related to [pornographic Internet sites] PIS...In contrast, frequent PIS use, which reflects the

adoption of PIS as an information source for sexual role models and behaviors, was associated with significant maladjustment regarding [Greek] adolescent conduct and social behavior.”

Y.K. Fulbright, “FOXSexpert: How teens really feel about pornography,” *FoxNews.com*, 1/22/09 (“One study, conducted at Malmö University in Sweden and published in 2006, answers many of the questions parents have about youth porn consumption...While sizing up youth porn consumption, investigators found three main uses for it:... 2. It’s a ‘reliable’ information source. Youth learn new things from porn -- for example, tips on different positions... 3. It’s an inspiration for sexual excitement... Another 2006 study, which examined the porn perceptions of 1,776 Danish, Norwegian, and Fenno-Swedish 12- to 20-year-olds, had interesting findings as well... Half of the participants, mostly boys, thought that porn could improve their lives....”).

C. Sabina, J. Wolak & D. Finkelhor, “The Nature and Dynamics of Internet Pornography Exposure for Youth,” *CyberPsychology & Behavior*, 11, 691-693, 2008 (“Overall, 72% of participants (93.2% of boys, 61.1% of girls) had seen online pornography before age 18...Most exposure began when youth were ages 14 to 17, and boys were significantly more likely to view online pornography more often and to view more types of images...Girls were significantly more likely than boys (42.3% of girls; 6.8% of boys...) to report never looking for pornography on purpose...Some boys had repeated exposure to pictures of sexual violence.”).

S. W. Kraus & B. Russell, “Early Sexual Experiences: The Role of Internet Access and Sexually Explicit Material,” *CyberPsychology & Behavior*, 11, 162-168, 2008 (“Results discovered males with Internet access during the ages of 12 to 17 reported significantly younger ages for first oral sex compared to males without Internet access. In addition, male and female participants with Internet access, between the ages of 12 and 17, reported younger ages for first sexual intercourse compared to participants without internet access.”).

T. DeAngelis, “Web Pornography’s Effect on Children,” *Monitor on Psychology*, 38, No. 10, Nov. 2007 (“Because all published studies about the influence of Internet porn on teen attitudes are correlational, researchers can’t say for sure whether access to Internet porn *causes* certain attitudes and behaviors, emphasizes Jochen Peter, PhD, a communications researcher at the University of Amsterdam. But he and colleague Patti M. Valkenburg, PhD, are finding some intriguing links. In one study surveying 471 Dutch teens ages 13 to 18, the researchers found that the more often young people sought out online porn, the more likely they were to have a ‘recreational’ attitude toward sex -- specifically, to view sex as a purely physical function like eating or drinking...In the study...the team also found a relationship between porn use and the feeling that it wasn’t necessary to have affection for people to have sex with them...In a related study...the Dutch team found a link between the type and explicitness of sexual media the teens saw and their tendency to view women as sexual ‘play things.’ The more explicit the material viewed, the more likely young people were to see women in these ways -- and Internet movie porn was the only media type to show a statistically significant relationship, they found.”).

B. Betkowski, “Rural teen boys most likely to access pornography, study shows,” *Express News (Univ. of Alberta, Canada)*, 2/23/07 (“Though being curious about sexually explicit images may seem a natural part of early adolescence, pornography is a major presence in the lives of youth, said [study author] Sonya Thompson, a masters graduate student at the University of Alberta ... ‘We don’t know how we are changing sexual behaviors, attitudes, values and

beliefs by enabling this kind of exposure.’...Other study findings show that the majority of students [ages 13-14] surveyed, 74%, reported viewing pornography on the Internet...”).

V. Lo & R. Wei, “Exposure to Internet Pornography and Taiwanese Adolescents’ Sexual Attitudes and Behavior,” *J. Broadcast. Electron.*, June 2005 (“This study examines use of Internet pornography by Taiwanese adolescents...The results also indicate that Taiwanese adolescents used Internet pornography more frequently than traditional pornographic sources...Further, the exposure to Internet pornography relates to greater acceptance of sexual permissiveness and the greater likelihood of engaging in sexually permissive behavior.”).

J. F. Silvosky and L. Niec, “Characteristics of young children with sexual behavior problems: A pilot study,” *Child Maltreatment*, 7, 187-197, 2002 (“The present study was designed to systematically investigate the sexual behaviors, abuse history, adjustment, and social environment...of young children (ages 3 to 7 years) referred to treatment due to [sexual behavior problems]...17 (46%) children had seen naked adults on TV, 13 (35%) had seen sexual intercourse on TV, 10 (27%) had witnessed their parents in sexual intercourse, 17 (46%) had seen naked adults, 12 (32%) had bathed with an adult...”).

G.M. Wingwood et al., “Exposure to X-rated movies and adolescents’ sexual and contraceptive-related attitudes and behaviors,” *Pediatrics*, 107, 1116-1119, 2001 (“Between Dec. 1996 and Apr. 1999, 522 single, black females 14 to 18 years old participated in the study. Exposure to X-rated movies was reported by 29.7% of adolescents...In this study, adolescents exposed to X-rated movies were more likely to have attitudes non-supportive of STD/HIV prevention, to engage in STD/HIV sexual risk behaviors, and to engage in contraceptive risk practices...These adolescents were more than twice as likely to have a strong desire to conceive and were more than one and a half times as likely to test positive for Chlamydia.”).

K. Kurtis, “Sex Offenders Younger, More Violent,” *Associated Press*, 6/9/07 (“Courts have seen the number of sex offense cases involving juvenile offenders rise dramatically in recent years...and treatment professionals say the offenders are getting younger and the crimes more violent...Experts say certain trends emerge among the cases of children charged with sex crimes against other children. Many estimates range from 40% to 80% were molested themselves. And 42% have been exposed to hardcore pornography, the Office of Juvenile Justice and Delinquency Prevention, an arm of the U.S. Department of Justice, said in a 2001 report.”).

E. Benedeck & C.F. Brown, “No excuses: Televised pornography harms children,” *Harvard Rev. Psychiat.*, 7, 236-240 (1999) (“The main possible effects of TV pornography that must concern us as clinicians, educators, and parents are modeling and imitation of language heard and behaviors observed...; negative interference with children’s normal sexual development...; stimulation of premature sexual activity; development of unrealistic, misleading, and/or harmful attitudes toward sex and adult male-female relationships; and undermining family values with resultant conflict between parents and children. Much more research is clearly needed on this topic. Because of the ethical and procedural problems surrounding research on children exposed to pornography, ideal research designs may never be possible...”).

Conclusion

It has been said that exposing children to hardcore adult pornography is a form of child abuse. There is much truth in that, especially when children are repeatedly exposed to pornography. Those responsible for this abuse include Internet pornographers that allow children to view hardcore adult pornography free of charge and without proof of age. Those responsible also include prosecutors and law enforcement agents who have turned a blind eye to the proliferation of obscene materials on the Internet, and Congress for failing to hold the Justice Department and FBI accountable for their failure to vigorously enforce federal Internet obscenity laws.