

Protecting
Children
Online:
The
Congressional
Response
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POLICY WATCH

Legislation to protect children's safety on the Internet had high visibility on the 1998 congressional agenda. While the legislative record on children's issues this year may be remembered as indifferent at best, legislators persisted in pushing measures to guard children from connecting to sexually oriented Web sites or falling prey to sexual predators on line.

Two years ago, Congress pursued some of the same issues. Enacted in 1996, the Communications Decency Act (CDA) established a national indecency standard for enforcement on Internet material that the Supreme Court then struck down as unconstitutionally vague and overly broad. Several of the current measures addressing the issue of children's safety online aim at imposing regulations on Internet material without running up against constitutional objections.

Blocking Pornography

In the last week of October 1998, Congress passed the Child Online Protection Act, a bill designed to restrict minors' access to adult sexual material on the Internet. The new legislation, sponsored by Rep. Michael G. Oxley (R-OH) and Sen. Dan Coats (R-IN), would replace the CDA's broad "indecency" standard with what legislators claim is a more widely recognized standard, "harmful to minors". The Child Online Protection Act would make it a crime for commercial Web site operators to post "material that is harmful to minors" without blocking access to the site through a credit card requirement or other adult verification. Violators risk penalties of up to \$50,000 in fines and six months in prison.

According to Rep. Oxley, more than 60,000 Web sites featuring sexually explicit and obscene material are available to children. Speaking in support of the bill on the House floor, Oxley explained, "While the Internet can be a positive tool for the education and entertainment of our children, it can also be a window to the dark world of pornography. Minors can readily access obscene material intentionally or unintentionally and be lured into dangerous situations. Children cannot safely learn in a virtual red light district. A child may innocently search for key words like 'dollhouse,' 'toys' or 'pet,' and be led into numerous sexually explicit sites."

The Child Online Protection Act defines harmful material as anything of a sexual nature that is obscene or that "the average person, applying contemporary community standards" finds, "with respect to minors", appeals to "the prurient interest", and taken as a whole, lacks serious literary, artistic, political, or scientific value "for minors."

Supporters of the Child Online Protection Act suggest that the now widespread availability of the Internet presents opportunities for minors to access materials through the World Wide Web "in a manner that can frustrate parental supervision or control." The

bill's sponsors claim that the online industry's efforts to help parents and educators restrict potentially harmful material have not provided a "national solution to the problem of minors accessing harmful material on the World Wide Web." Rep. Oxley argued for the sanctions despite the availability of blocking software, which he said was useful but "cumbersome and frequently ineffective."

Although the House of Representatives passed the online protection measure by voice vote, even some of its supporters, such as Rep. Edward J. Markey (D-MA), expressed doubts about the bill's practical application: "The standard in the bill before us today is 'harmful to minors,' much narrower than the Communications Decency Act. Yet like the CDA, the bill would propose a national standard rather than a community-based standard of what harmful to minors means. The legislation before us raises a number of difficult policy questions, such as whether a policy of community-by-community-based standards of harmful to minors is at all possible in a global medium, and whether the Internet requires national treatment for what is harmful to minors across the country." (For more details about The Child Online Protection Act, see Toth and McClure's article on page 19.)

Protecting Personal Information

In addition to provisions designed to restrict children's access to adult Web sites, the Child Online Protection Act includes a second set of protections authored by Markey prohibiting the public posting of children's identifying information in chat rooms and other online forums, such as a home page of a website, a pen pal service, or a message board. The bill requires that online operators prominently announce on their sites what information they are collecting, with parental consent, from children and how they will use it. Operators would also be barred from inducing children through games and contests to provide personal information. The new law would allow children to seek and receive information without parental consent provided the information is only used for the purpose of answering a child's inquiry. (See Mulligan's article in this issue for details on privacy concerns online.)

Constitutional Questions Raised

While the privacy of information proposals generally enjoyed universal support from online service providers and free speech advocates, the legislative proposal to restrict online speech that is "harmful to minors" is more controversial. Civil liberties groups warn that the measure would chill free speech. It is argued that defining a national, "harmful to minors" standard for Internet speech would wrongfully replace local authority to determine what materials are appropriate for minors, putting the federal government in the position of deciding what people should be able to see online. Commercial online providers complain

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that the provisions are too broad and would unintentionally block a wide range of otherwise innocent information. As soon as the legislation passed Congress, online technology interest groups vowed to go back to court to challenge the new law as was done successfully with the Communications Decency Act

The U.S. Department of Justice, in a letter to the chair of the House Commerce Committee with jurisdiction over the legislation, expressed the Clinton administration's concerns about the Child Online Protection Act. For one, the enforcement of a new criminal prohibition would require, according to the Justice Department, an "undesirable diversion" of investigative resources. Through the "Innocent Images" online undercover operation begun by the FBI in 1995, agents are already assigned, according to the Justice Department's letter, to combat traffickers in child pornography and other commercial distributors of obscene materials and in thwarting child predators by going online to investigate predators victimizing children through the Internet and online service providers.

The Justice Department also anticipates the likelihood of constitutional challenges to the new law. Because the Child Online Protection Act proposes the establishment of a commission to study the ways in which the problem could be most effectively addressed, the Justice Department advised Congress to wait until the commission is established and has completed its study, with legislative recommendations, before determining whether a criminal statute would be necessary

Issues Persist

Other measures protecting children's safety online were proposed in Congress this year:

The Internet School Filtering Act, S 1619, authored by Sen. John McCain (R-AZ), would require schools and libraries to install filtering software if they received federal subsidies for computer links. The bill easily passed the Senate, but it also drew opposition from civil liberties groups and from educators and librarians. The American Library Association advised against a federal mandate to require local filtering or blocking software and opposed linking the requirement to eligibility for the telecommunications subsidy program. Opponents argued that the mandated safeguards proposed by McCain usurp the ability of local communities to set standards reflecting their own values.

An approach proposed by Sen. Christopher Dodd (D-CT) fared better, enjoying support from all sides. Dodd's measure would require Internet providers to make screening software available whenever Internet access is purchased.

The Protection of Children from Sexual Predators Act, S 2491, sponsored by Sen. Orrin Hatch (R-UT), would require Internet service providers to report to law enforcement officials any information regarding the transmission of child pornography. The measure also proposes criminal fines and imprisonment for individuals found to use the Internet or electronic mail to entice children to engage in sexual activity. Recognizing the difficulty of drafting federal restrictions on Internet communications that meet constitutional requirements, the Hatch bill also mandates a study by the National Academy of Sciences on the ability to develop blocking technologies which can effectively control the transmission of pornographic images.

The effort to protect children's safety online will no doubt remain a legislative issue in the coming year, especially with a lack of consensus and agreement

around the most effective approaches for shielding children from pornography and enticement to sexual activity over the Internet. The National Center for Missing and Exploited Children has developed a CyberTipline to serve as a national reporting service for leads on the sexual exploitation of children in cyberspace. Still, the industry balks at legislation which would require service providers to report suspected violations to the police, similar to child abuse reporting laws which mandate various professionals, including film proces-

sors in some states, to report suspected cases of child maltreatment to protective services. At present, the only action taken is removal of the offending Web site from the Internet provider's service.

All agree that the use of credit cards and related techniques would help to protect children from adult materials. There is also general agreement on the need for more sophisticated filters and blocking systems, which could include the creation of new domain names for "adult" material, leading to more effective filtering of other information produced during a search on the World Wide Web. However, much remains to be done if children are to be kept safe, especially from predators who stalk the chat rooms and entice children through email, where filtering systems have no impact.

As soon as the legislation passed Congress, online technology interest groups vowed to go back to court to challenge the new law as was done successfully with the Communications Decency Act.

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