

From the Congressional Record, November 8, 1997.

By Mr. COATS:

S. 1482. A bill to amend section 223 of the Communications Act of 1934 to establish a prohibition on commercial distribution on the World Wide Web of material that is harmful to minors, and for other purposes; to the Committee on Commerce, Science, and Transportation.

PORN LEGISLATION

Mr. COATS. Mr. President, during Senate consideration of the Telecommunications Act of 1996 I, along with Senator James Exon, introduced an amendment to the Act which came to be known as the Communications Decency Act or CDA. This amendment held forth a basic principle, that children should be sheltered from obscene and indecent pornography. There was spirited debate on the amendment. However, ultimately the Senate adopted the CDA by an overwhelming margin of 84 to 16.

On the very day that the President signed the Telecommunications Act into law, the American Civil Liberties Union and the American Library Association, along with America On-Line and other representatives of the computer industry, filed a law suit against the CDA in District Court. In short, the case ultimately came before the Supreme Court, where it was struck down.

Mr. President, however much I disagree with the ruling of the Supreme Court, it is reality and as such, I have studied the opinion of the Court and come before my colleagues today to introduce legislation that reflects the parameters laid out by the Court's opinion.

Mr. President, during Congressional consideration of the CDA, opponents of the measure took what I like to call an ostrich approach. They stuck their head in the sand and their rear end in the air.

With companies like America on Line and Microsoft in the forefront, there came an indignant claim from the computer industry that there was no problem with pornography on the Internet. They claimed that there was very little pornography, and that what exists is difficult to find. However incredulous, this is what they claimed.

Well, Mr. President, this ostrich appears to have extricated its head from the sand. For after the Supreme Court's ruling, the computer industry, along with so-called civil liberties groups, gathered for a White House summit to address the issue of pornography on the net, and what could be done about it. There are now panels and working groups, media discussions and industry alternatives all designed to address this problem of the proliferation of pornography on the Internet and the threat it poses to our children.

Mr. President, let me congratulate the computer industry, and welcome them to the real world.

And what is this real world? Mr. President, I turn now to the February 10 edition of U.S. News and World Report. The cover story is entitled, ``The Business of Porn.'' The article outlines in rather disturbing clarity the issue of pornography in America. ``Last year''

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it states, ``America spent more than \$8 billion on hard-core videos, peep shows, live sex acts, adult cable programming, sexual devices,

computer porn, and sex magazines--an amount much larger than Hollywood's domestic box office receipts and larger than all the revenues generated by rock and country music recordings. Americans now spend more money at strip clubs than at Broadway, off-broadway, regional, and nonprofit theaters; at the opera, the ballet, and jazz and classical music performances combined.'

This is truly alarming, and reflects poorly on the moral direction of the country. And, Mr. President, as the Internet continues to grow as a medium of communication and commerce in our society, its role in expanding the commerce of pornography increases exponentially.

The Article goes on to say that: ``In much the same way that hard-core films on videocassette were largely responsible for the rapid introduction of the VCR, porn on and CD-ROM and on the Internet has hastened acceptance of these new technologies. Interactive adult CD ROMS, such as Virtual Valarie and the Penthouse Photo Shoot, create interest in multimedia equipment among male computer buyers.''' It goes on: ``Porn companies have established elaborate Web sites to lure customers . . . Playboy's web site, which offers free glimpses of its Playmates, now averages about 5 million hits a day.'''

The Article quotes Larry Flint, who says he ``imagines a future in which the TV and the personal computer have merged. Americans will lie in bed, cruising the Internet with their remote controls and ordering hard-core films at the punch of a button. The Internet promises to combine the video store's diversity of choices with the secrecy of purchases through the mail.'''

Mr. President, there has been a virtual explosion of commerce in pornography on the Internet. Adult book stores, live peep shows, adult movies, you name it and it is there. It is available, Mr. President, not just to adults, but to children.

And what does the computer industry, the ACLU, and the American Library Association tout as a solution to this problem? They tout self-ratings systems and blocking software. Opponents of the CDA, companies like America On-Line, the ACLU, the American Library Association, Larry Flint, have argued that there is no role for government in protecting children, that the Internet can regulate itself. The primary solution these people promote is system called PICs (Platform for Internet Content Selection), a type of self-ratings system. This would allow the pornographer to rate his own page, and browsers, the tool used to search the Internet, would then respond to these ratings. Aside from the ludicrous proposition of allowing the pornographer to self-rate, Mr. President, there is no incentive for compliance.

I now turn to an editorial by writers in PC Week Magazine, a very prominent voice in the computer industry. The editorial is titled: ``Web Site Ratings--Shame on Most of Us.''' The column discusses the lack of voluntary compliance by content providers with the PICs system: ``We and many others in the computer industry and press have decried the Communications Decency Act and other government attempts to regulate the content of the Web. Instead, we've all argued, the government should let the Web rate and regulate its own content. Page ratings and browsers that respond to those ratings, not legislation, are the answers we've offered.'''

The article goes on, ``Too bad we left the field before the game was over.''' the article says, ``We who work around the Web have done little to rate our content.''' it states that, in a search of the Web, they found ``few rated sites.''' And that rated sites were the ``exception to the rule'' In other words, PICs does not work. It does not work, because there is no incentive for pornographers to comply.

And what about blocking software? Mr. President, let me begin by pointing out the amazing level of deceit that proponents of this solution are willing to go to. The American Library Association, a principal opponent of the CDA, lined up with plaintiffs in challenging the Constitutionality of the Act. It was a central argument of the Library Association and their cohorts, that blocking software presented a non-governmental solution to the problem.

However, Mr. President, if one logs onto the American Library Association Web site one finds quite a surprise. Contained on the site is a resolution, adopted by the ALA Council on July 2, 1997, that resolves: ``That the American Library Association affirms that the use of filtering software by libraries to block access . . . violates the Library Bill of Rights.'' Mr. President, I ask unanimous consent that this Resolution be inserted into the Record.

So, here we find the true agenda of the American Library Association. They represent to the Court that everything is O.K., that all we need is blocking software. Then, they turn around and implement a policy that says no-way.

And what are the implications? I quote now from a February 12, 1997 article in the Boston Herald. ``John Hunt, a parent from Dorchester, said he was furious to learn his 11-year-old daughter was able to view pornography yesterday while working on a school essay at the BPL's Copley Square branch.'' The article goes on: ``She said all the boys were around the computer and they were laughing and called the girls over to look at the pictures of naked people,'' Hunt said. ``I want to find out from these library officials what is going on.''

The article goes on to tell the story of another parent, Susan Sullivan who said she was stunned when her 10-year-old son spent the afternoon researching a book report on the computer in the BPL's Adams Street branch, but ended up looking through explicit photographs instead.

Ms. Sullivan says: ``I'm very, very upset because I have no idea what he saw on the screen. He said he was using the Internet to do a book report on Indians and he was able to access dirty pictures, pictures of naked people.''

When the library spokesman was asked about parent's concerns, he dismissed them saying, ``We do have children's librarians but we do not have Internet police.''

So here is the genuine concern of the American Library Association for children and their genuine support for blocking software as a solution.

Again, Mr. President, I ask unanimous consent that this article be made part of the record.

However, Mr. President, this is a side issue. As I pointed out earlier, in the case of the computer industry, deceit and denial are tactics regularly employed by opponents of real child protections. The fact is, Mr. President, that the software does not work. In fact, it is particularly dangerous because it creates a false sense of security for parents, teachers, and children.

I have here a transcript from Morning Edition on National Public Radio. It is from the September 12, 1997 program. The host, Brooke Gladstone is interviewing a 12-year-old named Jack. Ms. Gladstone asks Jack what he does when he bumps up against Net Nanny, a popular blocking software program.

Jack replies: ``You go to hacking sites such as the Undernet, which is a site which you pay money to go a member{sic}. And then, after that, you have full access to all these hacking, cracking and phreaking

and credit card fraud and all these other tools.'

Ms. Gladstone then asks Jack if kids use these services.

Jack replies: ``A lot. I mean, you have kids at school who bring in 3.5 inch disks saying hey, buddy, come here. I'll sell you this disk for \$10 dollars. There's all the hacking stuff you'll ever need.

Ms. Gladstone then goes on to discuss with Jack how he made money down-loading pornography and selling it to his school-mates, making \$30.

Jack describes the various methods by which he defeats the blocking software his parents have installed.

Later in the interview, Ms. Gladstone interviews Jay Friedland, founder of Surf Watch, another well-hyped blocking software program. Mr. Friedland readily concedes that his software can be broken, even describing the ways to hack the program.

In describing the security his product offers parents, he says: ``It's a little bit like suntan lotion. It allows you to stay out in the sun longer, but you can still get sunburnt.' Mr. President, this does not sound very reassuring to me.

I ask unanimous consent that the full text of this article be inserted into the Record at the appropriate place.

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The bottom line here is money. There are millions upon millions of dollars being made on the Internet in the pornography business. There is even more money being made marketing software to terrified parents, software that does not work.

Let's look at the situation. You have the computer industry working to defeat laws designed to prohibit distribution of pornography to children. The solution that they promote is blocking software, manufactured by themselves. They are making tens- of-millions of dollars off of it. However, what we find out is that the software doesn't work. And all the while, you have companies like America On-Line out there, head in the sand, telling parents, schools, Congress, and the American public that there isn't a problem with pornography on the Internet. And the Internet Access Providers are pulling in the big bucks, providing access to the red light district.

``The Erotic Allure of Home Schooling,' that is the name of an article, published in the September 8 edition of Fortune Magazine. Mr. President, I have long been an advocate of home schooling. But, I must confess that its erotic allure has never been one of my motivations.

It begins: ``Here's one of the Web's dirtiest words: Mars. Try searching for sites about the red planet lately, and you could land on a porn purveyor's on-line playground. What next?' the article asks, ``Smut linked to the keywords`home schooling'? Don't look now--it's already happened.''

The article goes on: ``Perverse as these connections seem, they're right out of Economics 101, specifically the part about competition. Pornography sites are among the Web's few big moneymakers. There are thousands of them, from the R-rated to the boundlessly perverse. They compete furiously, and their main battleground for market share is search engines like Yahoo, Lycos, Excite, and Infoseek. Web surfers looking for porn typically tap into such search services and use keywords like ``sex' and ``XXX.' But so many on- line sex shops now display those words that their presence won't make a site stand out in a list resulting from a user's query. To get noticed, pornographers increasingly try to trick search engines into giving them top billing--

sometimes called `spoofing`.''

The article points out that: ``Search engine companies like Infoseek constantly develop new filters to defeat spoofing. But calls still come in from irate mothers and grade-school teachers who click on innocent-looking search results and find themselves on a page too exotic to mention.''

The article concludes: ``The Clinton Administration is encouraging efforts based on `voluntary restraint.' That's a lot to ask in the Web's open bazaar, where market share is the name of the game.''

I ask unanimous consent that the full text of this article be inserted in the record at the appropriate place.

Mr. President, it is not just a lot to ask. It is foolish and futile to ask. The bottom line is that, unless commercial distributors of pornography are met with the force of law, they will not act responsibly.

I am here today to introduce legislation that will provide just such force of law.

As I stated in my opening comments, the legislation I introduce today is designed to accommodate the concerns of the Supreme Court. This legislation is specifically targeted at the commercial distribution of materials harmful to minors on the World Wide Web.

It states simply that ``Whoever in interstate or foreign commerce in or through the World Wide Web is engaged in the business of the commercial distribution of material that is harmful to minors shall restrict access to such material by persons under 17 years of age.''

It is an affirmative defense to prosecution that the defendant restricted access to such material by requiring use of a verified credit card, debit account, adult access code, or adult personal identification number. The bill also calls upon the FCC to prescribe alternative procedures. The FCC is expressly restricted from regulation of the Internet, or Internet Speech.

Further, the FCC and the Justice Department are directed to post on their Web sites information as is necessary to inform the public of the meaning of the term ``harmful to minors.''

As I know that it will be of some concern to my colleagues that any legislation dealing with this topic takes into account the Supreme Court's ruling in the CDA, I would like to take some time now to examine the key precedents which the Court considered in its opinion on the CDA and how they relate to this bill.

Central to the construction of this legislation is the Ginsberg case. This Court ruling upheld the constitutionality of a New York statute that prohibited the selling to minors under 17 years of age material that was considered obscene as to them even if not obscene as to adults. In Ginsberg, the Court rejected the defendant's argument that ``the scope of the constitutional freedom of expression secured to a citizen to read or see material concerned with sex cannot be made to depend on whether the citizen is an adult or a minor.''

In Ginsberg, the Court relied on both the state's interest in protecting the well-being of children, but also on the principle that ``the parent's claim to authority in their own household to direct the rearing of their own children is basic in the structure of our society.''

In the Court's opinion on the CDA, they laid out four differences between the CDA and the question contained in the Ginsberg case. As you will see, the legislation I introduce today carefully addresses each of these concerns.

First, the Court points out that in the New York statute examined in Ginsberg, ``the prohibition against sales to minors does not bar

parents who so desire from purchasing the magazines for their children.'" The Court interpreted the CDA to prohibit such activity. Though I must confess to my colleagues that I find it a disturbing proposition that a parent should so desire to purchase pornographic material for their children's consumption, it seems that this is a right that this Court feels compelled to protect.

The legislation I introduce today places no restriction on a parent's right to purchase such material, and to provide it to their children, or anyone else. In fact, it places no restriction on any potential consumer of pornography. Rather, it simply requires the commercial purveyor of pornography to cast their message in such a way as not to be readily available to children.

The Court's second issue relating to the Ginsberg case is that the New York statute applied only to commercial transactions. As I have previously stated, my legislation deals only with commercial transactions.

Third, the Court points out that in Ginsberg, the New York statute combined its definition of harmful to minors with the requirement that it be "utterly without redeeming social importance for minors.'" The Court goes on to express that the CDA omits any requirement that the material covered in the statute lack serious literary, artistic, political, or scientific value.

This concern is addressed directly in my legislation, with a specific plank of the definition of harmful to minors requiring that the material in question "lacks serious literary, artistic, political, or scientific value.'" Mr. President, I do not believe that it is possible to address a concern more directly.

Finally, the Court states that the New York statute considered in Ginsberg defined a minor as a person under the age of 17, whereas the CDA applied to children under the age of 18, citing concern that by extending protection to those under 18, the CDA reached "those nearest the majority."

Mr. President, here again I am confused by the rationale of the Court. For it is common practice in federal statute to recognize minors as those under the age of 18 years. However, the legislation I introduce today contains the same under 17 requirement established under Ginsberg.

The second case of importance as relates to the Supreme Court ruling on the CDA is the Pacifica case. Though the specifics of this case are well-known to most by now, a summary might be helpful. In the Pacifica case, the Supreme Court upheld a declaratory order of the FCC relating to the broadcast of a recording of a monologue entitled "Filthy Words."

The Commission found that the use of certain words referring to excretory or sexual activities or organs "in an afternoon broadcast when children are in the audience was patently offensive" and thus inappropriate for broadcast.

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In considering the precedent established in Pacifica, and their relationship to the CDA, the Court outlined 3 concerns.

First, the Court stated that, unlike in Pacifica where the content in question was regulated as to the time it was broadcast, the CDA made no such distinction. Further, the Court makes a rather curious distinction in stating that the regulation in question in the Pacifica case had been promulgated by an agency with "decades" of experience in

regulating the medium.

On the first point, the regulation of Internet content in the context of time is irrelevant, as a child may access or be inadvertently exposed to pornography any time he or she logs onto the Internet. That could be in the evening, when doing a research paper, or during class-working on an assignment, or at the public library. The simple fact that a child runs the risk of exposure any time presents a more substantial potential for harm than the time regulation approach approved in *Pacifica*, and calls for a higher level of control, not lower as the Court concluded.

On the question of regulation by an agency with decades of experience, given the fact that the Internet is a very new medium of communication, it is a rather ludicrous distinction to make. No agency, short of the Defense Department, could demonstrate the historical relationship to the Internet that the FCC can with broadcast radio. Surely the Supreme Court would not advocate Defense Department regulation of the Internet.

Further, given the concern among supporters of the Internet regarding government regulation of the medium, it would seem preferable to have a clearly defined statute, enforced by the Justice Department, as opposed to a regulatory regime, which would be enforced by an unaccountable federal agency and subject to bureaucratic creep. During debate and negotiations on passage of the CDA, opponents raised strong concerns that the FCC not be given any regulatory authority over the Internet. It was this opposition to a regulatory solution that resulted in a very restricted agency roll.

Though the FCC is expressly prohibited from regulating content under the legislation I introduce today, a specific provision is made for the FCC to prescribe a method of restricting access that would function as an affirmative defense to prosecution.

As such, this legislation provides the benefit and flexibility of an evolving agency regulation, whereby as technology evolved and new and more effective means of access restriction emerge, the Commission could modify the regulation, without the creation of a regulatory regime with expansive FCC authority over the Internet and speech.

The Court goes on to point out that in *Pacifica*, the Commission's declaratory order was not punitive, whereas there were penalties under the CDA. Here, it is important to distinguish the difference in scope between this legislation and the CDA.

A principal concern of the Court with the CDA, was that the CDA dealt with both commercial and non-commercial communications. As such, the cost and technology burdens necessary to restrict access that would be imposed by the CDA on non-commercial speakers, according to the opinion of the Court, would be prohibitive. The result would be, in the Opinion of the Court, that speech would be chilled.

The legislation I introduce today is strictly limited to the commercial distribution of pornography on the World Wide Web. The commercial distributors of pornography on the Web already use the very mechanisms (credit cards and PIN numbers) that are required under this bill. The difference between the status quo and this bill is that pornography distributors would be required to cease to give away the freebies that any child with a mouse could gain access to.

As such, Court concerns regarding the potential chilling effect to non-commercial speech that they perceived under the CDA is moot. The scope of this legislation does not extend to the non-commercial speaker. Secondly, this legislation imposes no new technological or economic burden on the commercial operator. It simply imposes a control

on the manner of distribution and provides penalties for violations. Mr. President, there is a long tradition of fines and penalties for violations of laws governing the commercial distribution of pornography. This legislation is simply a continuation of these principles. In fact, the very treatment of fines in penalties under this legislation, mirrors those under dial-a-porn, which have been upheld by the Supreme Court.

Finally, under an examination of *Pacifica*, the Court points out the differences between the level of First Amendment protection extended to broadcast and the Internet. Mr. President, I must say that however much I differ with the opinion of the Court on this question in general, I would simply point out that the harmful to minors standard has traditionally been used, and has been constitutionally upheld, as a standard for regulating print media. Print media is extended the highest level of First Amendment protection. As such, this legislation clearly accounts for the Supreme Court's concerns in this area.

The Court also examines the precedents established under *Renton*. The *Renton* case dealt with a zoning ordinance that kept adult movie theaters out of residential neighborhoods. It did so based on the "secondary effects" of the theaters--such as crime and deteriorating property values. It was the Court's opinion that the CDA treated the entire universe of cyberspace rather than specific areas or zones. Further, the Court seemed preoccupied that the CDA dealt with the primary, not the secondary effects of pornography.

The legislation I introduce today deals with a narrow zone of the Internet, commercial activity on the World Wide Web. Though there is tremendous economic activity in pornography on the Web. The cyber geography of this bill is very limited.

Mr. President, on this question of primary and secondary effects, I must differ with the Court and would like to go into this question in some detail.

The underlying principle which the Senate supported by a vote of 84 to 16 in adopting the CDA, and which is embodied in the legislation I introduce today is articulated in *New York versus Ferber*: "It is evident beyond the need for elaboration that the State's interest in 'safeguarding the physical and psychological well-being of a minor' is compelling."

There is no question that exposure to pornography harms children. A child's sexual development occurs gradually through childhood. Exposure to pornography, particularly the type of hard-core pornography available on the Internet, distorts the natural sexual development of children.

Essentially, pornography shapes children's sexual perspective by providing them information on sexual activity. However, the type of information provided by pornography does not provide children with a normal sexual perspective. As pointed out in *Enough is Enough's* brief to Court on the CDA, pornography portrays unhealthy or antisocial kinds of sexual activity, such as sadomasochism, abuse, and humiliation of females, involvement of children, incest, group sex, voyeurism, sexual degradation, bestiality, torture, objectification, that serve to teach children the rudiments of sex without adult supervision and moral guidance.

Ann Burgess, Professor of Nursing at the University of Pennsylvania, states that children generally do not have a natural sexual capacity until between 10 and 12 years old. Pornography unnaturally accelerates that development. By short-circuiting the normal development process and supplying misinformation about their own sexuality, pornography

leaves children confused, changed and damaged.

As if the psychological threat of pornography does not present a sufficient compelling interest, there is a significant physical threat. As I have stated, pornography develops in children a distorted sexual perspective. It encourages irresponsible, dehumanized sexual behavior, conduct that presents a genuine physical threat to children. In the United States, about one in four sexually active teenagers acquire a sexually transmitted disease (STD) every year, resulting in 3 million STD cases. Infectious syphilis rates have more than doubled among teenagers since the mid-1980's. One million American teenage girls become pregnant each year. A report entitled ``Exposure to Pornography, Character and Sexual

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Deviance'' concluded that as more and more children become exposed not only to soft-core pornography, but also to explicit deviant sexual material, society's youth will learn an extremely dangerous message: sex without responsibility is acceptable.

However, there is a darker and more ominous threat. For research has established a direct link between exposure and consumption of pornography and sexual assault, rape and molesting of children. As stated in *Aggressive Erotica and Violence Against Women*, ``Virtually all lab studies established a causal link between violent pornography and the commission of violence. This relationship is not seriously debated in the research community.'' What is more, pedophiles will often use pornographic material to desensitize children to sexual activity, effectively breaking down their resistance in order to sexually exploit them.

A study by Victor Cline found that child molesters often use pornography to seduce their prey, to lower the inhibitions of the victim, and as an instruction manual. Further, a W.L. Marshal study found that: ``87 percent of female child molesters and 77 percent of male child molesters studied admitted to regular use of hard-core pornography.''

Given these facts, Mr. President, any distinction the Court makes regarding the effects of pornography on children seems to miss the very point of the state's compelling interest. For the sanctity and security of childhood is what these efforts are all about.

As I have stated before in addressing this subject, childhood must be defended by parents and society as a safe harbor of innocence. It is a privileged time to develop values in an environment that is not hostile to them. But this foul material on the Internet invades that place and destroys that innocence. It takes the worst excesses of the red-light district and places it directly into a child's bedroom, on the computer their parents bought them to help them with their homework.

I urge my colleagues to support this legislation, and yield the floor.