

Findings



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Preservation of the Family.

Internet Filtering

Protecting Children From Online Pornography

By Crystal Roberts, J.D. and Stephen Daniels



The Internet has revolutionized society – including how our children are educated. With its vast reach, the knowledge once contained in isolated, distant locations is now

accessible to millions of children at their local libraries, schools, or home. Unfortunately, the most violent, offensive, and graphic forms of pornography are also readily available on the internet.

Sexually Explicit Materials Online

Sexually explicit sites are Pervasive:

- There are between 72,000 and 100,000 sexually explicit sites on the Internet.¹
- Of approximately 3,900 new sites that go up every day, at least 85 of those sell commercial pornography.²

The online sex industry is big business:

- Adult entertainment sites account for the third largest sector of sales on the Internet – behind computer products and travel.³
- It is estimated that these sites will make up to \$1 billion by the end of 1999 – the largest making more than \$100 million.⁴

The Internet and Children

Children regularly use the Internet.

- An estimated 11 million children have access to the Internet, and more than half of the nation's classrooms currently have access as well.⁵
- 60 percent of U.S. households with children 8-17 have home computers, 61 percent of which include Internet access.⁶

Kids go online for:

- Homework: 27 percent of 8 to 12-year-olds and 38 percent of 13 to 17-year-olds.
- Research: 26 percent of 8 to 12-year-olds and 22 percent of 13 to 17-year-olds.
- Games and Puzzles: 32 percent of 8 to 12-year-olds and 14 percent of 13 to 17-year-olds.⁷

Parents cannot look over the shoulders of their children as they access their schools' computers, and, quite often, neither can teachers. Many public libraries, another place parents assume their children are safe, refuse to restrict access to material based upon age,⁸ so pornography that children may not purchase at a convenience store is readily available to them in public libraries. Deviancy online goes beyond pornography to include the gamut of obscenities: bestiality, rape, torture, excretory functions, child pornography and all forms of deviant fetishes.

The Internet and Parents

The internet, which offers easy access to information and entertainment, places new demands on parents who monitor what their children view.

A recent survey of 1,102 parents found that parents:⁹

- *Like the Internet:* Eighty-one percent of parents with online access in their homes believe that their children will “discover fascinating [and] useful things they never heard of before” while searching the Internet.¹⁰ Sixty-eight percent of these parents believe that children who do not have Internet access are at a disadvantage.¹¹
- *Rely upon schools and libraries to provide safe Internet access:* Fifty-eight percent of parents without home Internet access reported that because their kids can get access from other places, there is no real need for it at home.¹²
- *Fear that their children will access sexually explicit material:* Even parents who recognize the benefits of the Internet (enough to purchase access from home) are deeply concerned about the material that their children may encounter while online. Seventy-six percent of parents with online access at home are worried that their children might give out personal

information and view sexually explicit images on the Internet.¹³ It is quite instructive that this fear of the worst elements of the Internet is shared by so many parents—regardless of whether they have Internet access in their homes. Eighty-two percent of parents without home Internet access are worried that their children will view sexually explicit images.¹⁴

More and more parents are acting to prevent their children from accessing pornography:

- *One-third use filters at home:* Thirty-two percent of parents with home Internet access use Internet filtering software to guard children from dangerous sites.¹⁵
- *Require adult supervision while online:* Seventy-three percent of parents of 8 to 12-year-olds with home Internet access and 29 percent of parents of 13 to 17-year-olds with home Internet access require that their children go online only with an adult whether inside or outside the home.¹⁶ Furthermore, 88 percent of these parents with 8 to 12-year-olds and 73 percent of these parents with 13 to 17-year-olds try to “keep an eye on” what their child is doing while online.¹⁷ Eighty-seven percent of parents of 8 to 12-year-olds without home Internet access and 65 percent of parents of 13 to 17-year-olds without home Internet access prefer their child to go online only with an adult.¹⁸
- *Restrict the sites they are allowed to visit:* Eighty-four percent of parents of 8 to 12-year-olds and 71 percent of parents of 13 to 17-year-olds regulate which sites their children may visit.

Parents of minors are wise to fear the effect of pornography upon their children, as more public libraries and schools provide children with unsupervised and unrestricted Internet access. Eighty-six percent of

convicted rapists have admitted to regular use of pornography; 57 percent admitted imitating pornographic scenes in the commission of their crimes; and 86 percent of those who had molested girls and 77 percent of those who had molested boys admitted to regular exposure to hard-core pornography.¹⁹ One of the largest consumer groups of pornography is 12 to 17-year-old boys.²⁰

What are parents to do when a teacher cannot supervise their children at school or when librarians either cannot or will not monitor a child's Internet use? Placement of filtering or blocking technology on school and library computers will ensure that parental rights to direct a child's upbringing are respected when parents are not able to be present while their child is at school or the library. Furthermore, it reinforces the teachings and values of an overwhelming majority of parents as well as the public policies of the federal government and all 50 states: The viewing of pornography is harmful to a child's development.

Current Laws

Contrary to what free speech absolutists will have you believe, adults do not have a constitutional right to access obscenity. Furthermore, the mere possession of child pornography is illegal. Acting to restrict patron access to illegal pornography in public libraries and public schools is entirely consistent with the First Amendment.

The placement of filters on public school computers is an exercise of public school officials' duty to determine the educational suitability of all material in their schools. Similarly, public libraries have no obligation to provide unrestricted access to sexually explicit material via their taxpayer-funded computers.

The U.S. Supreme Court has consistently held that obscenity and child pornography are not protected by the First Amendment.

- There is no right to publicly and commercially disseminate or exhibit obscene materials, even though private possession in one's own home is protected. (This holds true especially when the mode of dissemination carries with it the danger of offending the sensibilities of unwilling recipients or exposure to juveniles.)²¹
- Even consenting adults may not exhibit obscene materials in places of public accommodation.²²
- There is no right for consenting adults to receive, transport, or distribute obscenity even if for private use or not for commercial or pecuniary gain.²³

- *Reno v. ACLU* reaffirmed the constitutionality of the enforcement of federal obscenity and child pornography statutes in cyberspace.²⁴
- Production, possession, receipt, transportation and distribution of child pornography are prohibited.²⁵

Federal law prohibits the transportation (including the mailing²⁶), sale, distribution and receipt of obscene material;²⁷ possession with intent to sell, and sale, of obscene material on federal property;²⁸ the transportation, shipping, receipt and distribution of child pornography; the sale or possession with intent to sell of child pornography; and the knowing possession of visual depictions of child pornography made in whole or in part of materials transported in interstate or foreign commerce.²⁹ Most state laws make it illegal to use computer transmission to disseminate, exhibit, or distribute obscenity within a state. According to North Carolina obscenity statutes, it is a class I felony to disseminate "any matter or material of whatever form which is representation, embodiment, performance, or publication of the obscene."³⁰ All states criminalize the distribution, dissemination, and exhibition of child pornography and most, including North Carolina, prohibit possession, as well. Libraries and educational institutions utilizing "interactive computers services" could be found to be subject to the provisions of these laws.³¹

Constitutional Mandate to Protect

The U.S. Supreme Court has consistently recognized society's "compelling interest" in protecting minors from sexually explicit material defined as "harmful to minors." The societal availability of pornography erodes public standards of morality affecting all members of the community and in particular children. In *Ginsberg v. New York*,³² the U.S. Supreme Court recognized the observations of psychiatrist Dr. Gaylin of the Columbia University Psychoanalytic Clinic, reporting on the views of psychiatrists in 77 *Yale Law Journal* at 592-593:

Psychiatrists ... made a distinction between the reading of pornography, as unlikely to be per se harmful, and the permitting of the reading of pornography, which was conceived as potentially destructive. The child is protected in his reading of pornography by the knowledge that it is pornographic, i.e. disapproved. It is outside of parental standards and not a part of his identification process. To openly permit implies parental approval and even suggests

seductive encouragement. If this is so of parental approval, it is equally so of societal approval – another potent influence on the developing ego.

The U.S. Supreme Court has upheld restrictions on the following media to prevent minors from exposure to material harmful to minors.

- **Broadcast media:** Federal law prohibits broadcasters from airing indecent sexual material when children are likely to be in the audience or when unconsenting adults may be viewers.³³
- **Print media:** States, including North Carolina, criminalize disseminating harmful "soft-core" pornographic material to minors, even though the material may not be obscene for adults³⁴ and governmental regulations may also act to facilitate parental control over children's access to sexually explicit material.³⁵
- **Telephone services:** Federal law bans obscene Dial-a-Porn from phone systems,³⁶ and indecent Dial-a-Porn is regulated by credit cards, access codes, or subscription so as to avoid access by minors.³⁷

The most recent U.S. Supreme Court case to address congressional efforts to regulate sexually explicit material in order to protect children, *Reno v. ACLU*,³⁸ left the right of states to enforce such "harmful to minors" laws undisturbed. In *Reno*, the Court reiterated its prior definitive holdings that protecting children from exposure to obscene and harmful material is a matter of "compelling" and "surpassing" state interest.³⁹ This area of the law is quite settled, as evidenced by the fact that there are very few prosecutions for providing harmful matter to minors, because most convenience stores, video stores, theaters, and even "adult" porn shops comply with state "harmful to minors" and display laws.⁴⁰

Most states, including North Carolina, have enacted "harmful to minors" legislation,⁴¹ patterned after the New York statute upheld by the U.S. Supreme Court in *Ginsberg v. New York*,⁴² which placed controls on the dissemination of "harmful matter" to minors even though that matter may not be obscene for adults. In *Ginsberg*, the Supreme Court definitively held that the scope of the constitutional freedom of expression secured to a citizen to read or see material concerned with sex can be made to depend on whether the citizen is an adult or a minor; that protecting children from exposure to obscene or harmful material satisfies a compelling state interest; and that

parents and others who have the primary responsibility for children's well-being are entitled under the U.S. Constitution to receive the support of laws designed to aid discharge of that responsibility.⁴³

No Filters Have Not Been Ruled Per Se Unconstitutional

No court has held the use of filters to be per se unconstitutional. Only one case has addressed the constitutionality of the use of filters in a public library: *Mainstream Loudoun v. Loudoun County Board of Trustees*.⁴⁴ The case, which is precedent only in Loudoun County, Va., failed to recognize four crucial facts:

1. When a state purchases speech, it has no obligation to purchase all speech. A state may act in a more restrictive manner when acting as a provider of speech (when the government purchases speech in order to provide it to the public) than it may when acting as a sovereign (regulating private speech on behalf of the general welfare of society). When regulating public schools, public libraries or public school libraries, the government is acting as provider, not sovereign.⁴⁵
2. There is no constitutional requirement that the government provide access to pornographic images through public schools or libraries. An individual has a right to access legal pornography through his or her own computer but not via a publicly funded computer, and certainly does not have a right to access illegal pornography via a government-funded computer.⁴⁶ The U.S. Supreme Court has stated, "Environments such as a prison, public schools, the military, or the government workplace 'must allow regulation more intrusive than what may lawfully apply to the general public.'"⁴⁷ (Emphasis added.)
3. The First Amendment rights of adults may be subject to limitations in order to protect children from accessing material that only adults have a right to view.⁴⁸
4. Filters are constantly evolving technology, and libraries have the ability to customize programs based upon their own settings.⁴⁹

Failing To Filter Creates Legal Problems

By distributing illegal material at taxpayer expense, public schools and libraries are creating contempt for the laws under which private individuals may be prosecuted. Under the legally recognized test to determine whether material is "obscene" or "harmful to minors," that material must be judged in light of commu-

nity standards.⁵⁰ "Community standards" are determined in the community from which the jury pool is drawn. Each juror is presumed by law to know what the views of the average or reasonable person are (in the same way that jurors in civil cases are held to know what constitutes "reasonable" conduct under the "reasonable person" standard for negligence, and so on). Failure to keep pornography out of libraries may result in sexually oriented businesses pointing to its availability in local public libraries as proof that their own material is now "accepted" in a community.⁵¹ Recently, the publisher of a pornographic magazine in Arizona used this very argument to defend against his arrest for distributing material harmful to minors in violation of a state law prohibiting the distribution of material harmful to minors via sidewalk vending machines that are accessible to minors. He argued that the Phoenix Public Library

*has materials available for minors which are infinitely more graphic than Defendant's newspaper. ... A Comparison between Defendant's newspaper and materials the State itself has available for minors for free proves that the State's standards tolerate material which is infinitely more 'patently offensive' in terms of the written word, pictures and/or images evoked than anything in Defendant's newspaper.*⁵²

The viewing of pornography in public places also creates an "offensive, uncomfortable, and humiliating environment for women co-workers" and can "constitute or be evidence of sexual harassment in violation of state and federal civil rights laws and create or contribute to a hostile enforcement in violation of Title VII's general prohibition against sexual discrimination in employment practices." Businesses and offices, public and private, are constrained by various federal and state laws, with respect to conduct in the workplace, and the duty to take affirmative steps to eradicate workplace discrimination. The eradication of workplace discrimination is more than simply a legitimate governmental interest, it is a compelling governmental interest. State and federal governments have a compelling interest in eliminating discrimination against women by removing barriers to their economic, political, and social advancement within our culture.⁵³ In addition to its connection to crimes against women, pornography demeans and objectifies women by reducing their worth to nothing more than a tool for male sexual gratification.

In addition, schools may be held financially liable for a failure to take affirmative steps to prevent student-on-student sexual harassment. With its recent decision in *Davis v. Monroe*,⁵⁴ the U.S. Supreme Court held that a hostile environment claim can be entertained by a court of law when a plaintiff seeks damages for a school district's failure to address a hostile environment constituting sexual harassment in violation of Title IX. Failure to place filters on computers with Internet access, especially if it follows student and parental complaints, could be evidence of a failure rising to the level of legal liability.⁵⁵

Filtering Technology is Effective

Filtering and blocking technology is an effective tool for schools to prevent the use of their computers to access pornography. A recent study of Utah public schools found that out of 54 million Web access attempts, filters mistakenly denied access 64 times – an accuracy rate of 99.9994 percent.⁵⁶

Children use their school's internet access when not accessing the internet from home. Seventy-six percent of 8 to 12-year-olds and 83 percent of 13 to 17-year-olds access the Internet at their schools.⁵⁷ Seventy-two percent of 8 to 12 year-olds and 75 percent of 13 to 17-year-olds who do not have Internet access at home access the Internet at school.⁵⁸

Public schools are an environment within which access to pornography should be prohibited. There is no educational purpose for which public school students must access material harmful to minors or obscenity. Therefore, it is entirely appropriate that such material be blocked out on Internet-accessible computers in public schools.

In *Board of Education v. Pico*,⁵⁹ the U.S. Supreme Court recognized the power and discretion of school boards to select those materials that it finds to be "educationally suitable" or "pervasively vulgar." In *Hazelwood School District v. Kuhlmeier*,⁶⁰ the Supreme Court stated that "schools do not possess all the attributes of streets, parks, and other traditional public forums that time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions."⁶¹ It also affirmed the right of schools to control the content of curriculum. Use of the Internet has become a mainstay in some school curricula and it is well within a school district's right to limit and restrict what material enters the school as a part of its curriculum if it is not "educationally suitable" or if it is "pervasively vulgar."

North Carolina

In North Carolina, policies for student Internet use are set by district boards of education and may include adopting "acceptable use policies" or using filtering software.⁶² Acceptable use policies require students to agree to comply with set standards of conduct while using the Internet. However, evidence shows that such policies have not proven effective. According to a nationwide study, many abuses have been documented despite having policies in place.⁶³ Almost all districts have adopted an acceptable use policy and well over half use filtering software.⁶⁴

Nearly all of the 76 library systems in North Carolina, including county, municipal and regional systems, offer Internet access to citizens in their area.⁶⁵ Policies for Internet use in public libraries are set by each of these systems.

Editor's Note

A longer version of this paper was published by the Family Research Council in September, 1999. It has been edited and modified to reflect the specifics of the situation in North Carolina. To obtain a copy of the report call 1-800-225-4008 or visit www.frc.org on the internet.

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Endnotes

1. Donna Rice Hughes, Kids Online: Protecting Your Children in Cyberspace 54 (1998).
2. *Id.*
3. *Id.*
4. Louise L. Schiavone, *Washington's Dirty Little Secret*, Wash. Business Forward, June 1999, at 27.
5. Representative Bob Franks (R-N.J.), Statement at Press Conference Introducing The Children's Internet Protection Act (March 2, 1999).
6. Joseph Turow, *The Internet and the Family: The View From Parents; The View From the Press 6* (The Annenberg Public Policy Center of the University of Pennsylvania Report Series No. 27, 1999).
7. *Id.* at 18.
8. Robert Marshall, Computer Pornography: Defeating the ACLU and American Library Association, at 17 n.3 Family Research Council (1998): "Librarians and governing bodies should

not result to age restrictions on access to library resources in an effort to avoid actual or anticipated objections from parents or anyone else. . . ."

9. Turow, *supra* note 2, at 8.
10. *Id.* at 14.
11. *Id.*
12. *Id.* at 25.
13. *Id.* at 14.
14. *Id.* at 25.
15. *Id.* at 6.
16. *Id.* at 20.
17. *Id.*
18. *Id.* at 23.
19. Building the Family, Building the Republic: Policy Proposals for the 106th Congress 31 (Robert W. Patterson, ed. 1998).
20. Final Report of the Attorney General's Commission on Pornography (1986).
21. *Stanley v. Georgia*, 394 U.S. 557, 567 (1969) (cited in *Miller v. California*, 413 U.S. 15, 18-19 (1973)).
22. *Paris Adult Theatre I v. Slaton*, 413 U.S. 49 (1973).
23. *U.S. v. Orito*, 413 U.S. 139, 141-42 (1973).
24. *Reno v. ACLU*, 521 U.S. 844, at 877 n.44 (1997).
25. *New York v. Ferber*, 458 U.S. 747 (1982). Child pornography is defined as follows: An unprotected visual depiction of a minor child (federal age is under 18) engaged in actual or simulated sexual conduct, including a lewd or lascivious exhibition of the genitals. See *New York v. Ferber*, 458 U.S. 747 (1982), *Ohio v. Ohio*, 495 U.S. 103 (1990), *U.S. v. X-Citement Video, Inc.*, 115 S. Ct. 464 (1994). See also *U.S. v. Wiegand*, 812 F.2d 1239 (9th Cir. 1987), *cert. denied*, 484 U.S. 856 (1987), *U.S. v. Knox*, 32 F.3d 733 (3rd Cir. 1994), *cert. denied*, 115 S. Ct. 897 (1995). In 1996, 18 U.S.C. § 2252A was enacted and § 2256 was amended to include child pornography that consists of a visual depiction that is or appears to be of an actual minor engaging in sexually explicit conduct. See *Free Speech Coalition v. Reno*, No. C-97-0281 SC, judgment for defendants, Aug. 12, 1997, unpublished, 1997 WL 487758 (N.D. Cal 1997).
26. 18 U.S.C. § 1461 (1999).
27. 18 U.S.C. § 1462 (1999), 18 U.S.C. § 1465 (1999).
28. 18 U.S.C. § 1460 (1999).
29. 18 U.S.C. § 2252 (1999).
30. NCGS § 14-190.1
31. National Law Center for Children and Families, National Law Center Memorandum of Law On Legal Issues Involving Use of Filtering Software By Libraries, Schools and Businesses To Screen Acquisition of Pornographic Material From the 'Internet' Is Both Lawful and Constitutional 51 (1997) [hereinafter law center].
32. 390 U.S. 629, at 642, n.10 (1968).
33. *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978).
34. *Ginsberg v. New York*, 390 U.S. 629 (1968).
35. *See Action for Children's Television v. FCC*, 932 F.2d 1504 (D.C. Cir. 1991), *cert. denied*, 112 S. Ct. 1282 (1992); and *Sable Communications v. FCC*, 492 US 115 (1989).
36. *Sable Communications v. FCC*, 492 U.S. 115 (1989), 492 U.S. at 124-26.
37. *Sable*, 492 U.S. at 121-22, 128-31.
38. *Reno v. ACLU*, 521 U.S. 844 (1997).
39. Law Center, *supra* note 35, at 40.
40. *Id.*
41. See NCGS § 14-190.13 for the definition of materials considered "harmful to minors."
42. 390 U.S. 629 (1968).
43. Law Center, *supra* note 35, at 40.
44. In 1998, the city of Livermore, California, was sued for its failure to prevent the downloading of "material harmful to minors" and "obscenity" by a boy in its public libraries. The suit asserted that such failure constituted a "waste of public funds," a "nuisance," and "premises liability" for refusing to "take steps to prevent children from being" harmed despite its knowledge that children can access this material, making the premises unsafe. *Complaint for Injunctive Relief*, May 28, 1998 (visited June 3, 1998), <http://filteringfacts.org/liv-comp.htm>.
45. This distinction was recognized, again, by the U.S. Supreme Court in its recent decision in *NEA v. Finley*, 118 S. Ct. 2168 (1998) when it held that there is no constitutional right to government funding of the arts: "And as we held in *Rust*, Congress may 'selectively fund a program to encourage certain activities it believes to be in the public interest, without at the same time funding an alternative program which seeks to deal with the problem another way.'" "
46. In *Capital Sq. Review Bd. v. Pinette*, 115 S. Ct. 2440 (1995), the Court stated: "It is undeniable, of course, that speech which is constitutionally protected against state suppression is not thereby accorded a guaranteed forum on all property owned by the State."
47. *See Turner v. Safley*, 482 U.S. 78, 84-85 (1987); *Connick*, 461 U.S. at 143; *Tinker*, 393 U.S. at 507; *GMC 131 F.3d at 276*. In these environments, the government is permitted to balance constitutional rights against institutional efficiency in ways it may not ordinarily do. *Waters v. Churchill*, 511 U.S. 661, 675 (describing governmental power to restrict speech in the name of efficiency; *Safley* 482 U.S. at 88 (Noting balancing between First Amendment rights and governmental interests.)" *Amatel v. Reno*, 156 F.3d 192 (1999) *cert. denied*, 67 U.S.L.W. 3781 (1999).
48. *Ginsberg v. New York*, 390 U.S. 629 (1968).
49. For a review of the accuracy and capabilities of filtering and blocking technology, please see the final section of the original version of this paper published by Family Research Council, "Filtering and Blocking Technology Is an Effective Tool for Preventing Access to Illegal Pornography," or see www.filteringfacts.org.
50. See NCGS § 14-190.1 for a definition of "obscenity." Law Center *supra* note 35, at 7.
51. Janet M. LaRue, Statement at Press Conference Introducing The Children's Internet Protection Act (March 2, 1999).
52. *Defendant's Motion for Determination that the Newspaper in Question Is Not "Harmful to Minors"*, November 21, 1997 (visited June 29, 1999), <http://filteringfacts.org/everson.htm>.
53. Law Center, *supra* note 35, at 32.
54. *Davis v. Monroe*, 119 S. Ct. 1661 (1999).
55. *Id.*
56. David Burt, *Censorware Project Helps Filtering Cause (Again)*, July 2, 1999 (visited July 16, 1999) <<http://www.filteringfacts.org/f1070299.htm>>.
57. Turow, *supra* note 2, at 21.
58. *Id.* at 18.
59. 457 U.S. 868 (1982).
60. 484 U.S. 260, 267 (1988).
61. *Id.* (quoting *Hague v. CIO*, 307 U.S. 496, 515 (1939)).
62. Conversation with Camp Price, Instructional Technology Specialist, NC Department of Public Instruction.
63. David Burt, *Dangerous Access: The Epidemic of Pornography in America's Public Libraries and the Threat to Children*, March 2, 1999, available at <http://www.filteringfacts.org>
64. 1998-1999 Annual Media and Technology Report, Section V-Internet Use. NC Department of Public Instruction, Educational Technology Division.
65. NC Public Library Statistics 1998-1999, Data Tables. State Library of North Carolina.

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