

Harmonizing the Interests of Free Speech, Obscenity and Child Pornography on Cyberspace: The New Roles of Parents, Technology and Legislation for Internet Safety

Amos O. Olagunju, Department of Statistics and Computer Networking, St. Cloud State University, St. Cloud , Prepared June 6, 2008

Abstract

Incorrect access to Web site addresses and spam e-mails are continuing to make pornography rampant on the Internet at schools, homes and libraries. Collectively, parents, teachers and members of communities must become more aware of the risks and consequences of open access to the Internet, and the distinction between censorship and Internet access filtering. Parental involvement is crucial for raising children with healthy Internet access habits to social and educational materials. Although generations have coped with different times and trials, technology is ushering in new trials. Parents and communities cannot ignore the present and future technology ingrained into the lives of children. This paper contends that, parents armed with legislation and technological security devices for access to the Internet, ought to strengthen the character of online Internet safety. The discussion is focused on the roles parents, communities, technology and laws should play in protecting children from cyberspace obscene and pornographic threats. It is argued that the roles of education and technology should outweigh the legislative interventions of governments. A critique of significant litigations and laws on obscene and pornography is presented. The paper offers a variety of security tools and techniques for protecting children from Internet access to obscene and pornographic materials.

Introduction

Today, pornography is one of most contentious subject of debates despite deliberate efforts by law enforcement and governments around the world to limit the accessible pornographic materials on the Internet. Child pornography is a crime all over the U.S. In the U.S. child pornography is legally the visual portrayal of sexually overt demeanor by drawings, cartoons, sculptures, paintings, photographs, films, videos, and computer generated images. In American courts, the definition of obscenity has been difficult to ascertain. Obscenity is any conduct, manifestation, or phrase that defies the norms of sexual morality. Child pornography is obscene when it illustrates a minor engaged in sexually open behavior. Child pornography is on the rise because of the rapid access and use of the Internet by youngsters. There are real live photos of children and software that make offensive animated minors on the Internet. The recurrently convalescing image-enhancing software makes it easier to create and share pornographic materials worldwide via the Internet.

According to the U.S. National Center for Missing and Exploited Children (NCMEC 2008) about twenty percent of youngsters age 10-17 who frequently use the Internet have been sexually importuned online, and about twenty-five were reluctantly exposed to materials of naked people and sexual engagements. Children erroneously access the Internet porn through inaccurately directed searches of stealth Web sites, deceptive universal resource locators, childlike word searches such as toys, dogs, Britney Spears, Disney, Pokémon, Barbie, and Nintendo, spontaneous spam e-mails, and real-time instant messages links with sexual predators (PCC 2008). Approximately, twenty-five percent of porn sites abuse trendy brand names of children's materials to confuse the Internet search engines. Unfortunately, participation in antisocial sexual behaviors, particularly rape later in life is associated to the exposure of youngsters under age 14 to pornography. In fact, as much as fifty-three percent of child molesters have viewed pornography. Consequently, viewing porn can rapidly make adolescents to act out sexually against younger, smaller children (PCC 2008).

Freedom of speech is the right to express an opinion in public freely without suppression or moderation by the government. The right to freedom of speech is guaranteed under the international law through various human rights documents under Article 19 of the Universal Declaration of Human Rights (Williams 1981) and Article 10 of the European Convention on Human Rights (ECHR 1953) guarantees the right to free speech. The implementation of freedom of expression is lacking in many countries around the world. In reality, the right to free speech is not absolute and degree of freedom varies vastly around the world. The industrialized countries use different approaches to harmonize

freedom with order. The First Amendment to the U.S. Constitution (Costello and Thomas 2000) prohibits the Federal Legislature from enacting laws infringing on freedom of speech. The First Amendment to the U.S. Constitution hypothetically grants unconditional freedom since it lays the yoke upon the state to exhibit when (if) a restraint of freedom is obligatory. Unfortunately, the principle that restraints are the exceptions and free expression the rule are not fulfilled in most liberal democratic systems. There are conflicts in the interpretations of cyberspace democracy, cyberspace hegemony and freedom of speech on cyberspace (Frechette 2005). Should obscene and porn materials continued to be targeted at children on the Internet because of democracy and freedom of speech on cyberspace? This paper provides insights into the educational roles of parents and the impact of technology on protecting children on the Internet.

Noteworthy U. S. Children Protection Laws

The Children's Online Privacy Protection Act of 1998 (COPPA) enacted in April 2000 shelters the personal information of adolescents under age 13 in chat rooms, on bulletin boards, in instant messaging, and from web operators.

The Online Privacy Protection Act of 2003 protects the personal information of persons above 13 years not covered by COPPA.

The Communications Decency Act (CDA) of 1996 is the first legislative effort that protects children from the Internet pornography. The U.S. Supreme Court delivered a blow on the CDA's indecency provisions in the *Reno v. ACLU* case (*Reno v. ACLU* 1997).

The Children's Internet Protection Act of 2000 (CIPA) obligates public schools and libraries to use portion of federal funds they receive to filter the Internet access. Claiming it violated the First Amendment of the U. S. Constitution, the American Civil Liberties

Union, the Center for Democracy and Technology, and the American Library Association challenged the CIPA in court. In 2003, the U.S. Supreme Court overturned a Philadelphia judicial ruling that declared CIPA as unconstitutional.

The Cybermolester Enforcement Act of 2003 introduced the minimum mandatory sentences for the Internet children molesters.

In 2002, the U.S. Supreme Court upheld the Child Pornography Prevention Act of 1996 (CPPA) by a 6-3 ruling. Justices Kennedy, Stevens, Souter, Bader, Breyer, and Thomas concurred that the bill was over expansive in prohibiting computer-generated images of children engaging in sex activities.

The Protection Act of 2003 known as AMBER Bill America's Missing: Broadcast Emergency Response was passed by the House and Senate and signed by President Bush. The bill prohibits virtual children porn, and allows federal law enforcements to use nationwide emergency system to alert the public about missing children, and wiretapping and electronic surveillance in the investigation of children pornography. The U.S. Dept. of Justice Child Exploitation and Obscenity Section has established a special forensics unit that investigates illegal Internet obscenity for collecting evidence in support of prosecuting child exploitation and adult obscenity cases.

Striking Pornography Court Cases

The U.S. federal government and states have permission to confine obscenity or pornography. Obscenity usually has no protection under the First Amendment of U.S. Constitution and pornography is subject to modest regulation. However, the precise definitions of obscenity and pornography have been altered over time.

The U.S. Supreme Court endorsed the same obscenity yardstick used in a renowned British case, *Regina v. Hicklin*, LR 3 QB 360 (1868), in its *Rosen v. United States*, 161 U.S. 29, 40 (1896) decision in 1896. According to the Hicklin benchmark a material obscene if it is likely "*to deprave or corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall.*" Unfortunately, the U.S. declared the Hicklin test unsuitable in 1957 in its ruling in *Roth v. United States* 354 U. S. 476 (1957). The Roth test for obscenity was:

Whether to the average person, applying contemporary community standards, the dominant theme of the material, taken as a whole, appeals to the prurient interest. (Roth v. US 1957)

In 1973, the Court extended the Roth test in its *Miller v. California*, 413 U.S. 15 (1973) case decision. A material is obscene under the Miller Test if using modern-day community measures it could be alluring to the prurient curiosity by a typical person and it portrays sexual behavior in a boldly distasteful way without any serious artistic, literary, political or scientific value. Thus, a material considered obscene in a community may not be in another neighborhood because there are no national standards for gauging the values of materials. Child pornography is not subject to the Miller test, as the Supreme Court decided in 1982. The Court felt that the government's interest in protecting children from abuse was paramount.

In 1964 Justice Potter Stewart, in the case of *Jacobellis v. Ohio*, 378 U.S. 184 (1964), even though he could not precisely define pornography, notably stated that, "*I know it when I see it.*" However, personal possession of obscene materials at home may not be prohibited

by law. Writing for the Court in *Stanley v. Georgia*, 394 U.S. 557 (1969), Justice Thurgood Marshall wrote:

If the First Amendment means anything, it means that a State has no business telling a man sitting in his own house what books he may read or what films he may watch.

Although obscene materials may be viewed only in private, it is not unconstitutional for the government to prevent the mailing or sale of indecent items. The Child Pornography Prevention Act (CPPA) of 1996 "*prohibited child pornography that does not depict an actual child.*" The *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002), case argued and invalidated the CPPA because it was exceedingly broad and unconstitutional under the First Amendment of the U. S. Constitution. In the verdict, Justice Anthony M. Kennedy wrote:

First Amendment freedoms are most in danger when the government seeks to control thought or to justify its laws for that impermissible end. The right to think is the beginning of freedom, and speech must be protected from the government because speech is the beginning of thought.

Over the years the U. S. courts have upheld certain regulations banning pornography as a way to protect the children. For instance, the zoning regulation limits where pornographic materials can be viewed.

Alarming Internet and Children Porn Statistics

The U.S. porn revenue was \$13 billion in 2006; worldwide it was \$97.06 billion (ITF 2006). \$3,075.64 was spent on porn, 28,258 Internet users were looking at porn, 372 Internet users were using search engines to look for adult terms every second and a new pornographic video was produced every 39 minutes in U. S. in 2006.

The Top Ten Adult Search Requests were "sex", "adult dating", "adult DVD", "porn", "sex toys", "teen sex", "free sex", "adult sex", "group sex" and "free porn" in 2006. Twelve percent of all websites were pornographic websites. There were 4.2 million pornographic websites, 420 million pornographic web pages, and 68 million daily pornographic search engine requests (or 25% of total search engine requests). Seventy-nine percent of youth unwanted exposure to pornography occurred in the home (OVY, 2006). The largest group of viewers of Internet porn were children between ages 12 and 17 (FSM, 2005).

Child pornography is one of the fastest growing businesses online. In 2004, the Internet Watch Foundation located 3,433 child abuse domains; in 2006 the child abuse domain increased significantly to 10,656 (IWF 2006). Of all known child abuse domains, 54 percent were housed in the United States (IWF 2006).

The fastest growing demand in commercial websites for child abuse is for images depicting the worst type of abuse, including penetrative sexual activity involving children and adults and sadism or penetration by an animal (IWF 2006). Gnutella had 116,000 daily "child pornography" requests in 2006 (IFR 2006).

In a study of arrested child pornography possessors, forty percent had both sexually victimized children and were in possession of child pornography. Of those arrested between 2000 and 2001, eighty-three percent had images involving children between the ages 6 and 12; thirty-nine percent had images of children between ages 3 and 5; and nineteen had images of infants and toddlers under age 3 (NCMEC 2005).

According to a National Children's Homes report, the number of Internet child pornography images increased 1500% from 1988 to 2003. Approximately 20% of all Internet pornography involved children, and more than 20,000 images of child pornography

were posted on the Internet every week (NCMEC 2003). Child pornography has become a \$3 billion annual industry (Top Ten Reviews 2005).

Background and Related Studies

Parents are ill equipped and unable to teach children about safety in cyberspace (Fleming 2006, Eastin 2006). The United States government has been concerned about the letdown of the Web filtering technology to protect children obscene and porn materials (Chapin 1999). The failed efforts to enact the Child Online Protection Act compelled the US Department of Justice to issue subpoenas to various Web search engine providers (Miller 1999, McCarthy 2005). The purpose was to obtain Web addresses and records of searches to serve as evidence that the filtering technology could protect children from inappropriate materials on the Internet. All but the Google Internet search providers turned search records over to US government (Foley 2007). Is this an issue of the constitutional rights of the Internet search engine providers to protect information? What about the legal protection of children from viewing inappropriate materials on the Internet?

What measures should be taken to protect the youngsters from obscene and porn materials on the Internet? Kimberly Mitchell and Michele Ybarra conducted a research on the online behaviors of youths who engage in self-harm and found that technology has become an integral part of the daily lives of youngsters. Although the research performed by Mitchell and Ybarra is specific to group deliberate self-harm, the results revealed Internet usage concerns of interests to educators and parents. Of particular interest is the assertion by Mitchell and Ybarra (Mitchell and Ybarra 2007) that:

Although empirical research is practically non-existent, recent reports, based on investigations of online chat rooms, message boards, and newsgroups suggest that the Internet can have both beneficial and detrimental influences on youth who are engaging in deliberate self-harm.

This argument could be extended to include the benefits and potential unfavorable influences of the Internet access on all unsupervised children. Mitchell and Ybarra also emphasize that:

It is an important wake-up call however for adolescent health professionals to be mindful of including online behaviours in the risk assessments.

(Mitchell and Ybarra 2007)

Indeed, this is a wake-up call for parents, educators and communities to begin monitoring what the youths and children see and do online.

Sara Bushong, in her article *Parenting the Internet* (Bushong 2002) cited the primary reason for purchasing family computers as the need to enhance the education of the children. Unfortunately, most parents do not know how to monitor the online computer activities of children. Bushong reported that in a suburban community in Ohio, none of the research participants from various families was aware that local library catalogues and electronic databases were reachable from home computers.

Consequently, parents today require a better understanding of how the Internet could be used to access learning resources, devoid of obscene and porn materials to compliment the education of the children. Bushong advocated the need for parental involvement in combating online access to obscene and porn materials by children when she called on parents to:

Place the Internet-accessible computer in a visible, high-traffic living space in the home. (Bushong 2002)

This call serves as a reminder to children that materials viewed on the Internet are accessible to other users, and it also emphasizes parents in teaching children about safety Internet access. Bushong reiterated that parents should:

Search online with children, discussing content, web site evaluation, advertising practices, privacy policies, personal information and family rules. (Bushong 2002)

Moreover, Matthew Eastin, Bradley Greeberg and Linda Hofschire, in a Kaiser Family Foundation study cited computer and Internet use as becoming increasingly accessible to children from an alcove, the bedroom. Besides, the Internet usage is competing with traditional activities such playing outside, in the lives of children today (Eastin et al. 2006).

Eastin, Greenberg and Hofschire studied the impacts of parenting styles on Internet usage. The authoritarian, authoritative, permissive, and neglectful styles of parenting were evaluated. The authors reported that:

Parenting style has a significant effect on almost all mediation techniques investigated. Authoritative parents use evaluative and restrictive mediation techniques more than authoritarian and neglectful parents. Regardless of parenting style, parents whose teenagers have access to the Internet in their bedroom spend more time online. In fact, time online almost doubles with access in the bedroom. (Eastin et al. 2006)

Valcke et al. surveyed a group of 1700 primary school headmasters and pupils in 4th, 5th, and 6th grades at 78 schools in Flanders about their use of the Internet. The focus of the research was to gain insights into the perceptions of Internet safe use. The authors emphasized the importance of parents' involvement in the discussion of inappropriate Internet contents with the children. Unfortunately, the study revealed that out of 1626 pupils fifty-two percent said they were never or hardly ever monitored when using the Internet at home. The authors concluded that parents who teach children online safety have a significant impact on reinforcing programs designed to protect youngsters from Internet threats such as the pornography (Valcke et al. 2007). Undeniably, children are sometimes exposed to Internet porn through incorrect Web site addresses and SPAM emails.

Rich Chapin provided unique perspectives into the nature of the cyberspace threats to children and offered possible solutions. According to Chapin:

It is both ubiquitous and unavoidable that students may access the Internet from school, at home, from the library, and with friends. We should understand the difference between censorship and filtering. We monitor their playmates and don't let them talk to stranger. This is to a very great degree what good parenting is all about. Many schools are adopting "Acceptable Use Policies" –documents that describe how the Internet is to be used in school and the associated consequences for its misuse. Schools should post their policies on their Web sites, send them home to parents and teach them to students. (Chapin 1999)

Thus, parents, teachers and community members collectively must be aware of the risks and consequences associated with open areas where children explore resources on the

Internet. Children require protection from accidental accesses to Internet obscene and porn materials. Parents in a proactive step at home should have and review a document of the Internet access policy the children, and post it near the computer. Moreover, schools should assist parents to implement Internet access filtering software and policies at home. Moreover, the alliance of parents and schools would provide better defences against Internet threats for the children.

Steve Dorman, a proponent of parental and teacher involvement offered five proactive recommendations for use by parents and teachers in promoting Internet safety.

Children using the Internet should be supervised in the same way they are when viewing television.

Parents, teachers, and schools may purchase a filtering device, which can filter many pages that parents and teachers might consider harmful or offensive.

Children should avoid bulletin boards and chat rooms, where they are introduced to strangers.

Children should be taught how to use the Internet to find the information they need and how to avoid useless and harmful sites.

Teachers should follow school acceptable-use policies and procedures developed for student and faculty use of the Internet. (Dorman 1997)

Without a doubt, there ought to be an analogy between the supervision of television viewing and the Internet usage. In fact, parents teach the children the address, phone number, and to stay away from strangers. Parents monitor what children watch on TV. Parents keep track of the friends of children. Now parents ought to assume more proactive roles in teaching and monitoring the Internet online activities of the children.

Rich Chapin recommended consistent involvement of parents and schools in proactive monitoring and reading of the log entries of web usage by children. Chapin

forewarned parents about the limitation of reactive approach to Internet access:

Monitoring alone can only be reactive, identifying problems after they happen. For proactive control, additional content filtering technology is necessary. (Chapin 1999)

Certainly, there are different tools for monitoring Web usage. There are Web browser tools for monitoring and protecting children from online Internet threats. For instance the history tool stores all accessed Web pages until the folder is cleared. Proxy servers also provide the history of cached pages. Today, there are sophisticated filtering technology and reporting tools in proxy servers. The list based filtering technology is capable of blocking known useless Web sites and domains that contain obscene and sexual contents. The filtering technology is a difficult approach to maintain because the rapid growth of the Internet requires constant updating of the list of obscene and porn Web sites. The text filter technology provides a better option for monitoring the activities on Web sites. The accessed Web contents can be monitored by filtering on specific text items. Unfortunately, the use of text filters to filter out inappropriate words could result in many false-positive Web sites such as the denial of users from accessing many legitimate medical Web sites. Content recognition is the latest filtering technology that employs the concepts of artificial intelligence such as neural network used to provide a more comprehensive content screening, and to reduce human dependency on reviewing Web contents.

It is extremely important for parents to be proactively involved in teaching children safety rules on cyberspace. Children need education about the dangers of e-mailing and providing personal information to strangers on the Internet. Companies often market products to children on the Internet. According to Steve Dorman:

Many sites on the Web exist solely for marketing a product... For example,

Dr. Pepper and NBC created a teen tip 'contest' Web page that asked teens to submit their name, age, gender, address, and e-mail address with a teen tip.

(Dorman 1997)

The negative impact of this campaign is the lack of a cautionary statement on the Web site. Moreover, the owners of Web sites do not seek permission to collect personal information of children from the parents. Parents need to know that:

The new technology of the Internet may have changed the pace of the problem, but it has not created the problem. (Chapin 1999)

Consequently, parents and teachers must assume the responsibilities of educating the children about the dangers and threats on cyberspace.

Discussions and Recommendations

Children have access to the Internet from homes, libraries, schools, cyber cafes, hotels, churches, and other public and private sources. Youngsters who access pornography on the Internet often hurriedly shift or minimize the computer screen as an adult enters the room, hide compact or digital-video disks, erase the daily Internet history file, spend too much time on the computer at home, library, or school, and are secret or evasive about instant messages with friends.

The behaviors of children on the Internet might be positively or negatively influenced by friends, strangers, teachers, parents, family, and community members. Hence, alternative sources of security and roles are required to protect the children from obscene and porn materials on cyberspace. In particular, the educational roles of parents and the security roles of technology must be aligned with the roles legislation.

Herein are the roles of the parents, communities and technology in protecting obscenity and child pornography on cyberspace.

It is the responsibility of every parent to protect children from online threats by creating a list of recommended and agreed upon Web sites and Internet search engines. A parent ought to be knowledgeable of the hardware devices and software tools available for monitoring, tracking and logging inbound and outbound Internet communications. Every parent should learn the use of software and hardware tools for filtering and blocking unapproved sites, keywords and phrases that set off actions, and porn materials. Parents ought to learn to setup individual accounts with restricted Internet access on home computers. Every parent ought to learn the use of online role play in teaching the children Internet safety awareness (Wishart, Oades and Morris 2007). More specifically, it is the role of parents to:

- Set and adhere to rules for children access to the Internet inside and outside homes
- Educate the children on the use of the Internet as an opportunity and not a legal right
- Inform children never to give out personal information over the Internet without checking with you the parent
- Build confidence and trust in children by using computers for online activities jointly with youngsters
- Deny children from creating online profiles and placing personal photos in MySpace, FaceBook, etc.
- Alert schools to refrain from identifying projects by children's names and pictures on web sites

- Report all suspicious or criminal Internet porn activities to local and national law enforcement agencies
- Install computers in intense traffic areas at home and not in children's rooms
- Check the Internet access history files, CDs, DVDs often
- Subscribe to a pre-filtered Internet Service Provider
- Use security tools to shield children from the IP addresses and instant messages of sexual predators, strangers and porn materials

Communities as strong forces have the right to regulate or eradicate pornography. City bylaws require limitations on who can buy and sell pornography. The American Center for Law & Justice (ACLU, 2008) affirms that citizens and communities may:

- Apply their First Amendment rights to free speech and gathering to peacefully protest, to picket against and to boycott porn merchants and stores
- Contact city attorneys for assistance with existing unenforced porn laws
- Contact city council members about drafting laws if no porn ordinances exist
- Advocate for porn merchants to be zoned into specific areas inaccessible to children

Schools and churches should install Internet programs that monitor and record the use of Web sites by children and members. Web site visit histories should be stored at secured locations and must not be erasable. Members must designate accountability persons who receive a weekly, bi-weekly, or monthly log of all sites each member has visited. The goal is that members will never be able to hide under any cover of anonymity.

The U.S. Congress provides funds for the National Center for Missing and Exploited Children to work jointly with the FBI, U.S. Customs, the U.S. Postal Inspection Service, and state and local law enforcement in Internet Crimes Against Children Task Forces. The Morality in Media sponsors a web site (Morality Media 2008) for reporting online child

pornography or exploitation or unsolicited pornographic adult e-mails. A former FBI agent reviews and forwards porn reports to the U.S. Attorney of the appropriate state. Prosecuting the Internet porn crimes remains a major challenge in the U.S. because the perpetrator and victim often live in different states. It is the responsibility of all citizens to report all Internet porn crimes.

Today, there tools for blocking download, spyware, peer-to-peer communicating, online chatting, video, and proxy server. There are complete virus protection and anti-spam software. There are tools for reporting Web usage, authenticating Web and managing bandwidth. There are firewalls and context-sensitive pornography filters. Unfortunately, the majority of these technological tools require steep learning curves for the parents. The new challenge for the information technologists consist of developing user-friendly, self-paced learning tools for parents while simultaneously building intelligent self-administering cyberspace tools.

Conclusion

The Internet provides access to a vast array of tools for adults to manage personal finances, bank online, manage investments, pay bills, monitor news, shop online, listen to music, watch movies, send e-mails, and so on. Children and adolescents should be monitored or prohibited from engaging in many of these Internet activities. In particular, the online business application tools parents use should not become the experimental Internet tools for children. The Internet access paths and privileges of adults should be separated from the online Web access paths of children.

Children are the most valuable resources and future leaders in any society. The power of a nation relies upon the strength of its families. The citizens and the government are the

main stakeholders in protecting the children on cyberspace. Parents, teachers, communities, and governments must forge partnerships and take proactive positions to confront the continued misuse of the Internet by children. The government has never taken the position that parents are inept and incapable of providing guidance to the children on cyberspace. However, the government has taken the position that the filtering technologies are not effective at screening out every inappropriate Web site. The combination of the Internet access training efforts by parents and teachers with the Web filtering technology and legislation is the solution to eradicating the obscene and child porn materials on cyberspace.

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