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Internet—Protecting Children from Unsuitable Material and Sexual Predators: Overview and Pending Legislation

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Summary

Protecting children from unsuitable material and sexual predators on the Internet is a major concern for Congress and the Administration. The 105th Congress passed the Child Online Protection Act (Title XIV, Division C, P.L. 105-277), which is currently under review in the courts (see CRS Report 98-670); and the Protection of Children from Sexual Predators Act (P.L. 105-314). Several bills have been introduced in the 106th Congress. Attention is now focused on amendments added by the House and Senate to the FY2001 Labor-HHS appropriations bill (H.R. 4577), which are quite different from each other. Conference agreement on the bill had not been reached at the time this update was prepared. This report will be updated as needed.

Overview

Concern is growing about what children are encountering on the Internet, particularly in terms of indecent or otherwise unsuitable material or contacts with strangers who intend to do them harm. The private sector has responded by developing filtering and tracking technologies to allow parents either to prevent their children from visiting certain Web sites or to provide a record of what sites their children have visited.

Congress passed the Communications Decency Act (CDA) as part of the 1996 Telecommunications Act (P.L. 104-104). Among other things, CDA would have made it illegal to send indecent material to children via the Internet. In June 1997, the Supreme Court overturned the portions of the CDA dealing with indecency and the Internet. (Existing law permits criminal prosecutions for transmitting obscenity or child pornography over the Internet.) Congress passed a replacement law, the Child Online Protection Act, in 1998 (see next section) and other legislation to protect children as they use the Internet. Debate continues in the 106th Congress.

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Legislation Passed by the 105th Congress

The Child Online Protection Act (P.L. 105-277): Prohibiting Access by Children to Material That is "Harmful to Minors". The 105th Congress passed the Child Online Protection Act (COPA) as part of the Omnibus Appropriations Act (P.L. 105-277, Title XIV of Division C). The language was based on S. 1482 (Coats) and H.R. 3783 (Oxley). The law prohibits commercial distribution of material over the Web to children under 17 that is "harmful to minors." Web site operators are required to ask for a means of age verification such as a credit card number before displaying such material. It replaces provisions of the 1996 Communications Decency Act that were overturned by the Supreme Court. By limiting the language to commercial activities and using the court-tested "harmful to minors" language instead of "indecent" as was used in the 1996 Act, the sponsors hoped they had drafted a law that would survive court challenges.

The American Civil Liberties Union (ACLU) and others filed suit against the part of COPA dealing with commercial distribution of material harmful to minors over the Internet in the U.S. District Court for the Eastern District of Pennsylvania on October 22, 1998, the day after President Clinton signed it into law. Judge Lowell A. Reed, Jr. issued a preliminary injunction against enforcement of that part of the Act on February 1, 1999. The Justice Department appealed the ruling. The U.S. Court of Appeals for the Third Circuit let stand the injunction on June 22, 2000. (See also CRS Report 98-670, *Obscenity, Child Pornography, and Indecency: Recent Developments and Pending Issues.*)

COPA established a Commission on Online Child Protection to conduct a study of technologies and methods to help reduce access by children to material on the Web that is harmful to minors. (This part of the Act was not affected by the injunction.) The Commission, composed of 16 industry members appointed by the Republican and Democratic congressional leaders plus one ex officio representative each from the Federal Trade Commission (FTC) and Departments of Commerce and Justice, issued its report on October 20, 2000 [available at http://www.copacommission.org]. The report did not make recommendations for new legislation. It surveyed various technologies and other means by which children's access to certain materials on the Internet can be restricted, concluding that no single solution exists. Recommendations focused on the need for public education, consumer empowerment efforts, vigorous enforcement of existing laws, and voluntary industry actions. Separately, P.L. 105-314 (see next section) requires the Attorney General to contract with the National Research Council (NRC) to conduct a two-year study on the capabilities of computer-based technologies and other approaches to the problem of the availability of pornographic material to children on the Internet. NRC anticipates that the study will be completed in late 2001.

Sexual Predators on the Internet (P.L. 105-314 and P.L. 105-277). The 105th Congress also was concerned about sexual predators using the Internet to approach children. Because conversations can take place anonymously on the Internet, a child may not know that (s)he is talking with an adult. The adult may persuade the child to agree to a meeting, with tragic results. Congress passed H.R. 3494 (P.L. 105-314), the Protection of Children from Sexual Predators Act, to address those and other non computer-related issues related to protecting children from sexual predators. The law: prohibits using the mail or any facility or means of interstate or foreign commerce (a) to initiate the transmission of the name, address, telephone number, social security number, or electronic mail address of an individual under 16 with the intent to entice, encourage, offer, or solicit

any person to engage in any sexual activity for which any person can be charged with a criminal offense, or (b) to persuade, induce, entice, or coerce any individual under 18 to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense; makes it a crime to transfer obscene matter by mail or any facility or means of interstate or foreign commerce to anyone under 16; calls for the U.S. Sentencing Commission to recommend appropriate changes to Federal Sentencing Guidelines if a defendant used a computer with the intent to persuade, induce, entice, coerce, or facilitate the transport of a child to engage in any prohibited sexual activity; requires electronic communication or remote computing services that have knowledge of violations of child pornography laws to report it to law enforcement officials; prohibits federal prisoners from having unsupervised access to the Internet and recommends that states do the same with their prisoners; and requires a study of technologies to control the electronic transmission of pornography (discussed earlier).

Filtering Technology: Debate in the 105th and 106th Congresses

Software to block access to Web sites or e-mail addresses has existed for many years. Commercial products include Cyber Patrol, Cyber Sitter, Net Nanny, Net Shepherd, and SurfWatch. Links to information about many of these and other products and other tools for protecting children on the Web are available at [http://www.GetNetWise.org]. Other products (such as Net Snitch) do not prohibit access to sites, but maintain a record that a parent can review to know what sites a child has visited. Some filtering products screen sites based on keywords, while others use ratings systems based on ratings either by the software vendor or the Web site itself.

Existing filtering software products have received mixed reviews because they cannot effectively screen out all objectionable sites on the ever-changing Web, or because they inadvertently screen out useful material. The Electronic Privacy Information Center (EPIC) released a report on filtering software in November 1997 entitled *Faulty Filters: How Content Filters Block Access to Kid-Friendly Information on the Internet* [http://www2.epic.org/reports/filter-report.html]. EPIC tested a filtering program called Net Shepard, searching the Web for sites it expected to be useful to and suitable for children. For example, EPIC searched for Web sites about the "American Red Cross" (entered into the search engine in quotes to ensure that only items with that exact set of words in that order would be returned) with and without Net Shepard activated. EPIC reported that Net Shepard prevented access to 99.8% of the sites. From this and other examples, EPIC concluded that in the effort to protect children from a small amount of unsuitable material, they were being denied access to a large amount of suitable information.

Congress and the Administration have been debating whether to require schools and libraries to use filtering technology when children are using computers with Internet access, or to require Internet Service Providers (ISPs) to offer such technology to subscribers in general. Action in the 105th and 106th Congress legislation in this regard is discussed below.

On May 5, 1999, Vice President Gore held a press conference with representatives of the Internet industry to announce that by July 1999 a "Parents' Protection Page" would appear automatically on most Web sites to help parents identify tools already available for them to guide their children in using the Internet, including filtering software. The Vice

President stated: "The best protection is an involved parent, taking time to pass on the right values to children. But government and industry do have a responsibility to make it easier and simpler for parents to do so." (White House press release 1999-05-05, *Remarks by the Vice President on the Internet*). The GetNetWise Web site mentioned above, sponsored by the Internet industry and public interest groups, debuted in August 1999 providing "one click" tools for parents to guide their children when using the Internet and to report trouble. Many ISPs already were providing parents with tools and information. They had created another Web site [http://www.americalinksup.org] following a December 1997 "Kids Online Summit" to offer filtering software to parents and implement an outreach campaign to increase its use.

Despite these efforts at industry-sponsored solutions, debate continues over whether schools and libraries should be required by law to use filtering technology on computers that have Internet access when children are using them. Policies adopted by local communities reflect the spectrum of attitudes on this topic. Some allow children to use computers at local libraries only with parental permission, some use filtering software, and others impose no restrictions. Quality Education Data reported in October 1999 (*Communications Daily*, October 25, 1999, p. 2-3) that 58.3% of schools use filtering software and 90.5% have "acceptable use" policies where adults and children have an agreement regarding how the children should behave when using the Internet.

Supporters of attempts to pass a law requiring schools and libraries to use filtering technology argue that children must be protected from inappropriate material, particularly when their parents are not present to supervise them. Critics assert that it is censorship, prevents access to appropriate sites, and that such decisions should be left to the local community. Some believe "acceptable use" policies are preferable. The American Library Association, the National Education Association, and the Center for Democracy and Technology are among the groups opposing filtering legislation.

105th Congress Action. The 105th Congress included a section in the Child Online Protection Act (P.L. 105-277, discussed earlier) requiring interactive computer services to advise customers that parental control protections (hardware, software, or filtering services) are commercially available.

The 105th Congress also considered, but did not pass, legislation to require most schools and libraries to use filtering technology to screen out unsuitable Web sites. Senator McCain and Representative Franks introduced bills to require schools receiving federally-provided "E-rate" subsidies through the universal service fund to use filtering software on computers that have access to the Internet to block sites that might contain material unsuitable for children. (For information on universal service and the E-rate, see CRS Issue Brief IB98040, *Telecommunications Discounts for Schools and Libraries: the "E-Rate" Program and Controversies)*. The bills would have required libraries with computers that have access to the Internet and receive E-rate funds to equip one or more computers with filtering software. The determination of what was inappropriate was left to local officials. The Senate adopted the McCain bill (S. 1619) as an amendment to the FY1999 Commerce-Justice-State appropriations bill (S. 2260) on July 21. The House Appropriations Committee adopted an Istook amendment to the FY1999 Labor-HHS appropriations bill (H.R. 4274) requiring schools and libraries to install filtering software if they received funds under any federal agency program or activity to acquire or operate any computer that is accessible to minors and has access to the Internet. Neither was included in the final version of those appropriations bills, however..

106th Congress Legislation: The FY2001 Labor-HHS Appropriations Bill (H.R. 4577). The debate on filtering has continued in the 106th Congress. Many bills are pending, but attention is currently focused on language in the House- and Senate-passed versions of the FY2001 Labor-HHS appropriations bill, H.R. 4577. The language is quite different in the House and Senate versions, and the three amendments adopted by the Senate differ among each other.

In the version of H.R. 4577 that passed the House on June 14, 2000, schools receiving funds under title III of the Elementary and Secondary Education Act (ESEA) for purchasing computers used to access the Internet or paying direct costs associated with accessing the Internet must install filters on any computer to which minors have access. The filter must block material that is obscene, child pornography, and material harmful to minors. Local educational agencies or schools specifically are not prohibited from filtering other materials. The filters may be disabled if the computer is being used by an adult for bona fide research or other lawful purposes.[1] The House language does not address libraries.

By contrast, the Senate adopted language during floor debate on June 27, 2000, placing various requirements on schools and libraries receiving E-rate funding (described earlier) and on Internet Service Providers (ISPs). First, the Senate adopted (95-3) a McCain amendment,[2] as amended by a Hatch/Leahy amendment.[3] The McCain amendment requires schools and libraries receiving E-rate funding to certify to the Federal Communications Commission (FCC) that they have selected a technology for computers that have Internet access to filter or block material that is obscene and child pornography, and are enforcing a policy ensuring its operation when the computers are being used by minors. Local school officials also are *permitted* to use the technology to filter or block access to other materials they determine to be "inappropriate for minors," while libraries are *required* to do so. Libraries also must block child pornography during any use of the computer, not only when a computer is being used by minors. Determination of what material is to be filtered or blocked would be made by local officials. The FCC has 120 days to prescribe regulations for administering the legislation. Schools and libraries then must comply within 30 days unless state or local procurement rules or regulations or competitive bidding requirements prevent it, in which case they must notify the FCC. If the school or library does not comply, it must repay the E-rate funds it received. The school or library may resume receipt of E-rates funds once it does comply. E-rate funds may be used to purchase or acquire the filtering or blocking products needed to comply with the legislation.

The Hatch/Leahy amendment to the McCain amendment requires ISPs with more than 50,000 subscribers to provide filtering software or blocking systems to all residential

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[1]The provision is the same as language in H.R. 4141, the "Education OPTIONS," bill as reported by the House Education and the Workforce Committee (H. Rept. 106-608). The House Appropriations Committee adopted the language as an Istook amendment to the Labor-HHS bill during full committee markup.

[2]The McCain amendment to H.R. 4577 is similar, but not identical, to Senator McCain's S. 97 as reported from the Senate Commerce Committee (S.Rept. 106-141) in August 1999.

[3]This language originally was adopted (100-0) as an amendment to the juvenile justice bill, H.R. 1501 (Section 1504), during Senate floor debate in July 1999. There has been no further action on that bill.

customers at the time they sign up for service. The software or system must be provided for free or at a cost no higher than what the ISP paid for it. The provision's effective date is tied to determinations required to be made by the Department of Justice and the FTC as to whether ISPs are providing such software or systems voluntarily. The provision becomes effective one year after enactment if those agencies determine that less than 75% of residential subscribers are provided such software or systems by their ISPs; after two years if that number is less than 85%; or after three years if the number is less than 100%.

The Senate then adopted (75-24) a Santorum amendment (based on S. 1545) that would permit schools and libraries to choose between using filtering technology or having "acceptable use"policies, called "Internet use" policies in the amendment. The Santorum amendment requires schools and libraries applying for E-rate funding to certify either that they have selected and installed filtering systems on computers dedicated to student use or that they have adopted and implemented Internet use policies. Filtering systems must filter or block access to matter considered to be inappropriate for minors as determined by the school board or library or other authority, but not an agency or instrumentality of the U.S. government. Internet use policies must address specific matters identified in the bill and reasonable public notice of the policy must be provided and at least one public hearing or meeting conducted. The National Telecommunications and Information Administration must initiate a notice and comment proceeding to evaluate whether filtering software adequately addresses the needs of educational institutions, make recommendations on fostering the development of products to meet such needs, and evaluate the development and effectiveness of local Internet use policies currently in operation after community input. The FCC has 100 days after enactment to adopt rules implementing this provision.

Senator McCain argued that voting in favor of the Santorum amendment would "basically negate the amendment we just adopted [the McCain amendment]," but Senator Santorum insisted that those voting for his amendment would "see a much more comprehensive policy put in place" (*Congressional Record*, June 27, 2000, p. 5869). Senator Santorum cited the American Association of School Administrators, National Rural Education Association, American Library Association, National Education Association, and the Catholic Conference and several other groups as supporting his amendment. Senator McCain cited the American Family Association, Family Research Council, National Law Center for Children and Families, Morality in Media, Family Friendly Libraries, and several other groups as opposing the Santorum amendment. The Senate passed H.R. 4577 on June 30. Conferees met on July 25 and according to press reports a conference version of the bill should be ready soon.

106th Congress Legislation: Other Bills.. Apart from the amendments adopted to H.R. 4577 and their predecessor bills, other pending bills are: H.R. 368 (Franks); H.R. 543 (Franks); H.R. 896 (Franks); a Franks amendment to the House version of H.R. 1501 (the "juvenile justice" bill); and H.R. 4600 (Pickering). All require schools and libraries to use filtering technologies if they receive e-rate funding, although the specifics in the bills are different. Also, as noted above, different filtering language in H.R. 4141 (Goodling), the Education OPTIONS Act, was added to the House-passed version of the FY2001 Labor-HHS appropriations bill (H.R. 4577).