

**Written Statement of the
Center for Democracy & Technology**

**to the
U.S. Senate Committee on
Commerce, Science, & Transportation**

**Hearing on
Protecting Children on the Internet**

July 24, 2007

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Protecting children in the online environment is a critical goal that should be shared by all, parents and policymakers alike. The leading studies assessing policies to promote online child safety have all concluded that promoting *education* – to teach kids how to stay safe online, and to teach parents how to protect their kids – is the most important step that the government can take. The Center for Democracy & Technology (“CDT”) urges the Committee to focus its attention on positive steps that can promote child safety education.

CDT is an independent, non-profit public interest policy organization in Washington, DC. CDT’s mission is to develop and implement public policies to protect and advance individual liberty and democratic values in new digital media. The Center achieves its goals through policy development, public education, coalition building, and litigation.

I. Two Congressional Panels of Experts Concluded that Education Is the Most Critical Approach to Protecting Children Online.

Two expert panels established by Congress to investigate how best to protect children in the online environment concluded that the most effective way to protect kids online is to combine education with the use of filtering and other technology tools that can empower parents to decide what content their children should access.

As part of the Child Online Protection Act passed in 1998 (“COPA”), Congress established the “COPA Commission” to “identify technological or other methods, if any, to help reduce access by minors to material that is harmful to minors on the Internet.”¹ The Commission, which was comprised of 18 commissioners from government, industry and advocacy groups, representing a wide variety of political affiliations, evaluated and rated protective technologies based upon various factors including their effectiveness and implications for First Amendment values. The Commission issued a final report in October 2000.²

Wholly independent of the COPA Commission, Congress also instructed the National Academy of Sciences to undertake a study of “computer-based technologies and other approaches to the problem of the availability of pornographic material to children on the Internet.”³ More than two years in the making, the National Academy released its study – entitled “Youth, Pornography, and the Internet” – in May 2002.⁴ The committee that prepared the National Academy of Science report was chaired by former U.S. Attorney General Richard Thornburgh, and was composed of a diverse group of people including individuals with expertise in constitutional law, law enforcement, libraries and library science, information retrieval and representation, developmental and social psychology, Internet and other information technologies, ethics, and education.⁵ Over the course of its two years of study and analysis, the committee received extensive expert testimony, and conducted numerous meetings, plenary sessions, workshops, and site visits.⁶

Both the COPA Commission and the Thornburgh Committee reached the same two critical conclusions: (A) in light of the global nature of the Internet, criminal laws and other direct regulations of content inappropriate for minors are ineffective, and (B) education and parental empowerment with filtering and other tools are far more effective than any criminal law.

The Thornburgh Committee concluded that education and technology tools were the critical components of a strategy to keep children safe online:

[T]he most important finding of the committee is that developing in children and youth an ethic of responsible choice and skills for appropriate behavior is foundational for all efforts to protect them—with respect to inappropriate sexually explicit material on the Internet as well as many other dangers on the Internet and in the physical world. Social and educational strategies are central to such development, but technology and public

¹ See COPA § 5(c), 47 U.S.C. § 231, note.

² The “Final Report of the COPA Commission,” released on October 20, 2000, is available online at <http://www.copacommission.org/report/>.

³ Pub. L. No. 105-314, Title IX, § 901, 112 Stat. 2991 (1998).

⁴ See Nat’l Research Council of the Nat’l Academy of Sciences, “Youth, Pornography, and the Internet” (2002) (“Thornburgh Report”). The full report is available online at http://books.nap.edu/html/youth_internet/ (HTML form) or <http://books.nap.edu/openbook/0309082749/html/index.html> (PDF form).

⁵ Thornburgh Report, at viii – x.

⁶ See Thornburgh Report, at x – xi & appendix A.

policy are important as well—and the three can act together to reinforce each other’s value. . . .

Technology-based tools, such as [end-user] filters, can provide parents and other responsible adults with additional choices as to how best to fulfill their responsibilities.⁷

And critically, the Thornburgh Report suggests that one should look beyond criminal laws for governmental and public policy actions that would help to protect children. As the report noted, “public policy can go far beyond the creation of statutory punishment for violating some approved canon of behavior.”

Congress should follow the recommendations of these two blue-ribbon panels, and focus its efforts on promoting education of children about the Internet and the use of filtering tools by parents to protect their children. Attempts to regulate Internet content directly, in contrast, will be ineffective and will raise significant constitutional and policy concerns.

II. Effective and Constitutional Legislative Proposals.

Since the Internet first became widely available in the early 1990s, Congress has at times sought to directly regulate Internet content in the name of protecting children in the online environment. Those efforts, however, have been repeatedly held by courts to violate the First Amendment, and as a result has led to little other than the very significant expense of the litigations. Congress is not, however, without power to make meaningful contributions to the protection of kids online, but it must focus its efforts on constitutional proposals that will have real and positive impacts.

The blue-ribbon panel chaired by former Attorney General Thornburgh specifically considered and advanced a wide array of alternative public policy recommendations. The Thornburgh Report concluded, for example, that:

- Concrete governmental efforts to promote Internet media literacy and educational strategies would yield superior results. Specifically, the Report suggests government funding for the development of model curricula (such as that developed in the state of Virginia), support of professional development for teachers, support for outreach programs such as grants to non-profit and community organizations, and the development of Internet educational material, including public service announcements and Internet programming akin to that offered on PBS.⁸
- Government support of parents’ voluntary efforts to employ technological solutions would be an effective approach to protecting children. While recognizing that user-directed filtering technology is not perfect, the Thornburgh Report concludes that

⁷ Thornburgh Report, at 365-366. The COPA Commission also analyzed the effectiveness of user-side filtering and blocking technologies. The results indicate that filtering and blocking technologies are more effective for protecting children (and less restrictive of First Amendment values), than criminal statutes. *See* Final Report of the COPA Commission, at 8, 21, 25, 27.

⁸ Thornburgh Report, at 384-385.

filters (which may be installed directly on a computer by end-users or available as a feature offered by an ISP) can have “significant utility in denying access to content that may be regarded as inappropriate.”⁹

CDT believes that the Thornburgh Report provides an effective roadmap to promoting child safety online. Congress should promote education of children, and awareness by parents of parental empowerment tools. CDT urges Congress to fund programs to promote media literacy for both adults and children, which are the most effective way to protect children online. And critically, support for educational programs needs to flow not only to specialized non-profit groups, but also to the schools and libraries that are themselves on the front lines of teaching children how to safely and effectively benefit from the wealth of information available on the Internet. Compared to other countries, our investment in technology and media literacy is inadequate and piecemeal in nature.

In addition to the critical focus on education for both parents and children, there are a number of important additional steps that Congress can take to enhance child safety online. For example, Congress could increase funding for direct prosecution of child pornography and child predation, and encourage foreign governments to enhance their efforts to combat child pornography and exploitation.

III. Flaws in Recent Draft Legislative Language.

A number of child safety bills have been introduced in Congress this session, and CDT has most recently analyzed the gamut of pending bills in a report released in February.¹⁰

Among the bills discussed by CDT in that analysis is S.49, introduced by Senator Ted Stevens in January 2007. Based on a draft that has circulated within the policy community, CDT understands that Senator Stevens and other Committee members have significantly revised S.49, and have addressed many of the concerns and issues that CDT and others had raised about the bill as originally introduced. CDT commends Senator Stevens, Chairman Inouye, and other members of the Committee for the important progress made on the draft.

CDT does, however, have concerns about certain parts of the revised draft legislative language:

1. Giving the FCC unprecedented and ill-defined authority to regulate the Internet: Section 101(b) of the revised draft bill would be the first time Congress has empowered the FCC to regulate providers of information services. Absence of regulation has been crucial to the Internet’s success, and any departures from that policy should be narrow and specifically defined

⁹ Thornburgh Report, at 303. The COPA Commission also identified a range of governmental actions that it believed would significantly contribute to the protection of children on the Internet. Significantly, the passage and enforcement of new criminal laws (like the COPA statute) was not included in the Commission’s recommendations. Many of the Commission’s recommendations are similar to those later made by the Thornburgh committee. See Final Report of the COPA Commission, at 39-46.

¹⁰ “Child Safety and Free Speech Issues in the 110th Congress,” Feb. 15, 2007 (available at <http://www.cdt.org/speech/20070215freespeechincongress.pdf>).

by Congress. Giving the FCC policymaking authority in this area is particularly troubling because in other proceedings (e.g., CALEA), the FCC has demonstrated a fundamental deafness to concerns about innovation on the Internet. We believe the current FCC would be far too quick to adopt whatever proposals were advanced by law enforcement. Although we certainly agree that fighting child pornography is an important goal, we strongly believe that the Committee should be very hesitant to authorize FCC regulation of the Internet.

If the Committee wishes to initiate an effort to identify new ways to fight child pornography, then it could create a “working group” along the lines of Section 102(b)(2) – a working group that contains representatives of law enforcement, industry, and the public interest community. There is broad consensus that child pornography should be eradicated, and a multi-stakeholder working group would be far more effective than the FCC at devising effective – and constitutional – ways to address the problem. And if after such a consultation legislation was needed, this Committee could consider any proposals at that time.

2. Asking the FCC to define “social networking” (and “chat rooms” and “cyberbullying”): There is absolutely no need to define these terms. School administrators don’t need the FCC or anyone else to tell them what these terms mean, and the actual operation of the revised S. 49 would not be impaired in any way by dropping section 203(b) from the bill entirely. Conversely, the FCC has no expertise making nuanced distinctions between or policy decisions affecting Internet content sites (such as social networking sites and blogs).

Moreover, calling for definitions of “social networking” opens an enormous can of worms. In addition to the general concerns about inviting the FCC into an oversight role over Internet content/applications, there is no plausible (or constitutional) way to distinguish social networking sites like MySpace from the vast majority of blog sites (including the leading political blog sites across the political spectrum). Both MySpace and blogs both allow for user profiles, and conversations among users. At the same time, any hint of government interference with blogs would draw firestorms of protest in the blogosphere. By dropping the definition requirement, the Committee can wholly avoid these problems.

3. Focusing the “warning label working group” primarily on “voluntary labeling initiatives”: The working group proposed in Section 102(b)(2) would be asked to assess “voluntary labeling initiatives,” but the group would not be told to assess the extent to which filtering of “sexually explicit” sites can be successful even *without* labels. The overwhelming majority of sexually explicit sites *already* contain text and metatags containing the words “xxx,” “porn,” “sex,” etc., and thus those sites are already easy to identify and block. As found in the recent COPA case, filtering software already is effective at blocking sexually explicit sites. It does not make sense that the Committee would ask a working group to assess a possible “solution” without also assessing the underlying “problem.”

4. Prohibiting the Placement of “Sexually Explicit” Content on the “Home Page”: As made clear in the recent COPA decision, direct regulation of Internet content faces significant constitutional hurdles, many of which would be raised by this requirement. The focus of this Committee should instead be on promoting the education of child safety lessons to both children and adults.

5. Implying that the Internet is Far More Dangerous Than It Is: In a number of places (including Sections 202(1) and 204), the draft overstates the amount of danger for children that exists on the Internet. The great majority of children have rich, rewarding, and safe – and completely lawful and constitutionally protected – online experiences. As Dr. David Finkelhor has explained, the people who are most at risk online are also at risk offline. Congress should focus attention on addressing the underlying problems that put children at risk in the first place.

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CDT appreciates this opportunity to present its views to the Committee. We would be happy to answer any further questions on this topic.