

August 4, 2006



1634 I Street, NW Suite 1100  
Washington, DC 20006  
202.637.9800  
fax 202.637.0968  
<http://www.cdt.org>

## **CDT Calls on Senate to Reject the “Deleting Online Predators Act of 2006”**

### **Proposal Passed by House Would Violate Constitution and Curb Lawful Internet Access**

The Center for Democracy & Technology (“CDT”) urges the U.S. Senate to reject the proposed “Deleting Online Predators Act of 2006” (“DOPA”) as unwise, ineffective, and unconstitutional. The House of Representatives passed DOPA on suspension, without full consideration by any House committee, and without an opportunity for Members or the public to raise the host of serious problems found in DOPA. The bill has been referred to the Senate Commerce Committee.

Under the DOPA proposal, schools and libraries that receive federal funding would be required to block access to *all* chat rooms and social networking sites, and in all likelihood most blogging sites as well. DOPA would violate the constitutional rights of both minors and adults, and would significantly exacerbate the digital divide that separates families that can afford to have broadband access in their home from those that cannot. The children of less wealthy families would be largely frozen out of the modes of communication and self expression that are very popular with more affluent teenagers.

The asserted goal of DOPA – to protect minors from online predators – is of course highly desirable, but the DOPA statute fails to deliver on its promise of protection. Because no federal statute can squelch the typical American teens’ desire to connect and communicate with their friends (using the coolest and newest of technologies), the main effect of DOPA would be to lead minors to get online in situations that can be far less supervised than schools and libraries. Rather than pushing minors to leave the school and library setting (where librarians and school administrators are *already* handling the issues raised by social networking sites), a far more effective way for Congress to protect kids would be to promote educational efforts aimed at both minors and their parents about how to safely use the Internet. Every expert and blue ribbon panel to assess the question of how best to protect kids online has concluded that education is by far the most effective approach.

DOPA would amend the Children’s Internet Protection Act (“CIPA”), that requires schools and libraries to use filtering tools to screen out obscenity and content that meets the constitutionally approved definition of “harmful to minors.” Although the Supreme Court upheld CIPA in 2003, DOPA raises a host of constitutional problems that would lead to a clear finding of unconstitutionality. Those constitutional – and policy – defects include:

- DOPA would block minors' access (and burden adults' access) to a category of speech – mere conversation, including social, political, medical, and an unlimited range of topics – that no court has ever allowed the government to censor or regulate. Just as courts have repeatedly struck down efforts to protect minors by expanding the types of content that can be regulated (to include, for example, violent content), the courts will strike down this effort to create a whole new category of regulated speech.
- Moreover, unlike CIPA (which regulated *only* content that could lawfully be blocked from minor's access), the vast bulk of the speech blocked by DOPA – teens chatting with their friends, posting photos and linking to their favorite music – is perfectly healthy (or at least harmless), and is *completely* legal. DOPA would burden a vast quantity of constitutionally protected speech because a very small amount of that speech presents risks to minors. A far better approach would be to educate minors about those risks.
- Critically, for many users, the sites blocked by DOPA provide the users' only source and outlet for political information. Indeed, a range of political candidates have created campaign sites on the social networking services. Blocking access to, and the ability to express, this type of speech strikes at the core of the First Amendment.
- DOPA would completely bar minors from accessing non-educational social conversation sites from libraries or schools. In the CIPA case, it was a critical to the Supreme Court that no one would be fully barred from being able to access content to which they had a constitutional right to access (because the Court required that the filtering software be disabled in appropriate situations). In stark contrast, DOPA would flatly prohibit a library or school from *ever* allowing a minor to participate in, for example, an online conversation among teens discussing the latest movies (or any other topic deemed not to be “educational”). For libraries, the flat prohibition would be true *even* if a child's parent gave permission for such access.
- DOPA would vest in the Federal Communications Commission the power to define how broadly the blocking of access would reach. The FCC's exercise of that power would by itself raise significant constitutional issues. Either the FCC would apply DOPA to block *all* online resources that (using the statutory language) “enable[] communications among users,” or the FCC would have to engage in a highly subjective and unconstitutional process of deciding what types of otherwise legal and constitutionally protected online social interactions are good or bad, and thus which of the myriad ways that one can communicate over the Internet should be blocked under DOPA. There is no way that the FCC can implement DOPA in a constitutional manner.
- Raising both constitutional and important policy concerns, DOPA would also be a major step backwards in our nation's effort to close the gaping digital divide that exists between affluent families able to bring broadband into their home and those families whose children can only access the Internet at a school or library. Although

affluent teens would be able to connect over the latest and hottest social networking site, those less well off would have no way to interact with their peers online.

- Another critical difference between CIPA and DOPA is that CIPA primarily interfered with the ability of *recipients* of speech to get access to the speech, while DOPA – in striking contrast – directly burdens the ability of speakers to speak in the first place. The constitutional issues raised by DOPA are magnified because it would flatly prevent some completely legal and harmless speech from taking place at all.
- Finally, DOPA is bad policy because it substitutes the one-size-fits-all approach of Congress for the multitude of local-community-determined approaches already being implemented by librarians and school administrators all around the country. It flatly prevents librarians, for example, from creating a program that would couple classes on responsible Internet usage with giving the class attendees the ability to use the Internet responsibly. By imposing its crude blunderbuss approach on schools and libraries across the country, DOPA is likely to hurt – not help – on-going efforts to find the best ways to protect kids online.

CDT urges the Senate to subject DOPA to the full gamut of Congressional hearings and consideration, and after such analysis to reject the proposal. For more information, contact CDT Executive Director Leslie Harris or Staff Counsel John Morris at (202) 637-9800.