



July 15, 2010

Chairman Mark Pryor  
Subcommittee on Consumer  
Protection, Product Safety, and  
Insurance  
U.S. House of Representatives  
Washington, DC 20515

Ranking Member Roger Wicker  
Subcommittee on Consumer  
Protection, Product Safety, and  
Insurance  
U.S. House of Representatives  
Washington, DC 20515

Re: Subcommittee hearing on ‘Protecting Youths in an Online World’

Dear Chairman Pryor, Ranking Member Wicker, and Members of the Subcommittee:

Thank you for offering the American Civil Liberties Union (ACLU) the opportunity to submit this statement for the record in connection with the Subcommittee’s hearing titled ‘Protecting Youths in an Online World.’ The ACLU is a non-partisan organization with more than a half million members, countless additional activists and supporters, and 53 affiliates nationwide. While recognizing the concern many Americans have about the dangers facing children on the Internet, we urge the Subcommittee to avoid taking steps that would criminalize protected first amendment speech and, instead, to support programs that would educate and inform children, parents and educators about online risk prevention and Internet safety practices.

The Internet presents new ways for young people to communicate– but it does not inherently increase the dangers that have been present in human society for centuries. Reported incidents involving youths online have produced heartbreaking stories with which all Americans sympathize. From these reports, one might conclude that the online world is becoming an increasingly dangerous place for children. But it is also well-documented that online activity, particularly among youth, is increasing exponentially and so it is only logical that online incidents - such as online harassment, bullying or worse - would also be increasing. We must not let the compelling nature of these anecdotal reports stand in for a more reasoned assessment of the threats facing young people online.

It is understandable to want to protect young people online. But before taking action in a way that would narrow the rights of adults and youth online, there should be a clear understanding of the differences between online threats and the kinds of issues young people have been dealing with for generations. There is evidence to suggest that some of the reported risks young people face online may be exaggerated. For example, one respected social media researcher at Harvard said that child abduction by a stranger is an extremely rare threat – 12 out of 300,000 in a year.<sup>1</sup> It stands to

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<sup>1</sup> Technology Review, “The Moral Panic over Social-Networking Sites” (Aug. 7, 2006) (quoting Danah Boyd).

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reason that such abductions resulting from online activity are similarly rare. And despite dire warnings that 20% of children have been sexually solicited in chat rooms, by instant messenger, or email, it is routinely overlooked that these solicitations overwhelmingly originate with other young people – 96% - and that such solicitations are easily and typically ignored.<sup>2</sup> The phenomenon of “cyberbullying” has also received attention recently and in a rush to address this problem, lawmakers have forgotten that bullying has been around since long before the Internet. Previously young people harassed and intimidated each other face to face, through third parties, through the mails, by telephone, across the airwaves, and – only now – via Internet communications. Yet there is very little research to suggest the dangers to young people are dramatically worse online than offline. Before taking legislative steps that may restrict online free speech, we urge Congress to make sure it accurately assesses the severity of the threat and narrowly focuses any legislative proposal.

Federal attempts to circumvent the first amendment and regulate online behavior with the goal of protecting youths are nothing new. They began in the mid-1990s with the Communications Decency Act (CDA), which attempted, among other things, to protect minors from harmful material on the Internet by criminalizing the knowing transmission of obscene or indecent messages to any minor recipient or the knowing sending or display of any message that depicts patently offensive activities.<sup>3</sup> After the Supreme Court struck down the CDA, Congress tried again by enacting the Child Online Protection Act (COPA), which provided for civil and criminal penalties for anyone who knowingly posts material that is harmful to minors on the web for commercial purposes.<sup>4</sup> Both laws were declared unconstitutional for overreaching – imposing a broader speech restriction than necessary to achieve the narrow objective of protecting children from obscene material.<sup>5</sup>

Other federal legislative efforts have been more successful. The Child Online Privacy Protection Act (COPPA) protects children under 13 from the collection of personally identifying information by operators of commercial websites or online services. The Children’s Internet Protection Act (CIPA) mandates that schools and libraries employ software filters to restrict access by minors to inappropriate material as a condition of receiving federal funds. Many federal and state legislative initiatives have attempted to impose restrictions, sometimes successfully, on sex offenders in their use of the internet even after completion of their sentences.

Criminalizing online speech is unconstitutional and will be ineffective. Harassing speech will either continue online in violation of the law or it will simply shift to other spheres within which it simultaneously exists. This does not serve to minimize the potential dangers facing young people online, but rather it demonstrates that we may be better served by working to educate youth on the responsibilities associated with electronic communications.

Legislation has been introduced to inform children, parents, and educators about the risks and opportunities associated with online communications. H.R. 3630 and related bill H.R. 3222, the

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<sup>2</sup> Id.

<sup>3</sup> Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (Title V – Communications Decency Act of 1996) (CDA was an add-on to the bill and received no substantial public airing of its provisions, unlike the remainder of the bill).

<sup>4</sup> 47 USC s. 231

<sup>5</sup> See *Reno v. ACLU*, 521 U.S. 844, 117 S. Ct. 2329 (1997) (CDA facially overbroad); *ACLU v. Mukasey*, 534 F.3d 181 (3d Cir. 2008) (cert. denied) (COPA not narrowly tailored and not the least restrictive alternative).

“Adolescent Web Awareness Requires Education Act (AWARE Act), offered by Representative Wasserman Schultz, both have elements aimed at doing so. The latter bill, in particular, would direct grant funds to the development of Internet safety education programs and would provide training and tools to teachers and parents to help keep young people in a position to use the Internet safely. The former bill – H. R. 3630 – would put a greater emphasis on crime awareness which in our view misplaces priorities about the Internet, a facility that should be viewed as a vast and expanding resource and not primarily as a place of criminality and intimidation. However, the bill also includes some of the same opportunities for education of children, parents and educators and, as such, represents a better step forward than an overbroad attempt to criminalize certain kinds of online speech.

Young people are always quick to adopt new technologies and this should be recognized and encouraged as we move into the digital age. The Internet has made it easier for them to learn about the world and communicate with others. While some might say that such ease of communication necessitates the need for special restrictions on minors who haven’t learned the restraint that comes with maturity, we believe that any restriction specifically aimed at curbing the speech rights of minors in the new electronic forum is a step in the wrong direction and not in keeping with the ideals of our constitutional framework.

We do not take issue with the Subcommittee’s interest in looking at the issues of harassment, intimidation, or abuse faced by youth, but we would encourage taking a broad view of the phenomenon, not limited to the particular tools of communications used to convey such messages that may lead to harmful actions. For example a review of the tools that the Internet can provide to assist in limiting bullying or harassment, such as documentation of incidents and identifying when intervention is necessary, could yield valuable insights for fighting the problem. If additional legislation at the federal level is deemed necessary, we would urge the Subcommittee to carefully define its terms before moving forward, taking care to draw any prohibitions very narrowly so as to avoid limitations on protected First Amendment rights. In the meantime, as we still stand on the opening threshold of the Internet age, there is much good that can be done by expanding public awareness of both the benefits and risks associated with online activity and we would encourage the Subcommittee to support such efforts.

If you have questions or comments on ACLU’s position on this issue, please feel free to contact Michael Macleod-Ball at 202-675-2309 or by email at [mmacleod@dcaclu.org](mailto:mmacleod@dcaclu.org).

Sincerely,



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