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## COPA: Throwing out the good with the bad

By Ralph G. Neas

**Millions of tech-savvy Americans have watched the debate over proposals by Attorney General John Ashcroft to expand federal authority to monitor information exchanged via the Internet, mobile telephones and other technologies.**

As they follow developments at the U.S. Capitol, many citizens may be unaware of an equally important debate that will soon begin across the street—one that could dramatically shape what Americans can read, post or send on the World Wide Web.

In the coming months, the U.S. Supreme Court will decide the fate of the Child Online Protection Act (COPA). As they consider the issues at stake, justices would do well to recall the Court's 1997 *Reno* decision, which described the Internet as "a vast library including millions of readily available and indexed publications." Indeed, a large branch of this library could be shut down if COPA is allowed to stand.

It was in the *Reno* decision that the Court declared the Communications Decency Act to be unconstitutional. Only 18 months after *Reno*, Congress recklessly enacted its close cousin: COPA. This 1998 law imposes stiff criminal and civil penalties—fines as high as \$150,000 per day and imprisonment for up to six months—for Web content that is deemed "harmful to minors."

While COPA defenders claim the law simply protects minors from pornography, the law covers "any communication for commercial purposes" on the Internet. More troubling is the phrase "harmful to minors," a standard for which there is no universal definition. In its brief supporting COPA, the government argues that in America, views are "reasonably constant among adults" as to what is suitable for minors. Really?

In 1973, the Supreme Court disagreed, finding that America "is simply too big and too diverse" to articulate a single obscenity standard for all 50 states. That was 28 years ago. Today, our nation is more diverse than ever—in terms of culture, ethnicity and religion.

Besides, there is ample proof that Americans hold widely differing views on which television programs, books or other materials are appropriate for children. Aldous Huxley's *Brave New World* ranks 5th on a major publisher's "List of the Best English Language Novels of the 20th Century." Yet, the book was removed from a high school library in Foley, Ala., after a parent complained that it disparaged religion, marriage and the family.

The American Library Association maintains a list of books that parents or school boards have attacked and attempted to remove from libraries or reading lists. Incredibly, a recent search determined that 37 books have the distinction of being both on ALA's "banned book" list and on the

California Department of Education's online database of recommended books for K-12 students. Is this what COPA supporters call a consensus?

By imposing one national standard, the '98 law creates a lowest common denominator—forcing Internet content providers to satisfy the most stringent standard in order to "play it safe." The chilling effect of COPA would restrict people's ability to send and receive a wide range of information on health concerns, political issues, sex education and other matters.

Under COPA, Web site operators could be discouraged from maintaining content such as information on breast cancer, copies of Kenneth Starr's report to Congress on the Lewinsky affair, or online images of Michelangelo's sculpture of "David."

COPA also fails to recognize that the Internet has no border-crossing guards. Content posted in other parts of the world is just as available as information published next door. In *Reno*, the Supreme Court recognized that there is no foolproof way to prevent minors from receiving a variety of Internet communications. In other words, COPA could never be enforced on a scale that would satisfy its supporters' goal.

There are reasonable steps that parents can take without a destructive law like COPA. Filtering software, while far from perfect, is something millions of parents choose to help draw parameters for children's Internet use. Other parents visually monitor their children's Web use. Unlike COPA, neither of these approaches restricts the material that is available to other children, other parents, or to adults.

It is ironic that COPA supporters—many of whom identify themselves as pro-family—have chosen a route that would replace the values and judgments of individual parents with a one-size-fits-all standard that squelches First Amendment freedoms. Defenders of COPA don't seem to get it, but let's hope the Supreme Court does.

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