Online Obscenity

As new technologies develop, pornographers are among the first to rush in and exploit them. The recent explosion in telecommunication technology has greatly expanded the Information Superhighway, and pornographers have not been asleep at the wheel.

Last February, Congress began to address the problem of online pornography. Sen. Jim Exon (D-Neb.) first proposed changing the old dial-a-porn law to cover "cyberporn." Exon's approach was intended to prohibit trafficking in obscene material (a legal term describing hard-core pornography which enjoys no First Amendment protection). Exon also sought to protect children from online indecent material (a legal term describing patently offensive sexual material which enjoys First Amendment protection, i.e., it cannot be totally proscribed but may be regulated in certain ways).

Improving Language

Exon's approach, while well-intentioned, was fraught with loopholes and unworkable language. Sen. Dan Coats (R-Ind.) began to work on a tighter approach. On the eve of the Senate votes in June, Exon and Coats met to discuss ways to work together to fight hard-core cyberporn and to protect children from exposure. Family Research Council's Legal Director was invited to take part in this intense negotiation (along with attorneys from Prodigy, America Online, and MCI). Ultimately, a strong piece of legislation emerged.

The Exon/Coats amendment:

- extends the dial-a-porn law to cover computer-based as well as telephone communication and doubles penalties and prison terms;
- strengthens existing law by prohibiting non-commercial as well as commercial distribution of illegal porn; and
- closes a huge gap in the current federal law by prohibiting the distribution of indecent material to minors. The Exon/Coats amendment proved to be the right mix, winning an overwhelming Senate vote of 84-16 on June 14.

No Techno-Fixes

The Exon/Coats language is now being considered by potential House sponsors. Meanwhile, several inappropriate and ineffective alternatives are being floated. Rep. Ron Klink (D-Penn.) has promoted language which asks Attorney General Janet Reno to "study" the issue to determine whether something need be done and how to equip parents to do it.

There is no serious debate about whether computer porn is a problem which should be addressed. Given the Clinton Justice Department's lackadaisical attitude toward child pornography and obscenity, making DOJ study the problem would only guarantee delay in reaching an answer.

Reps. Chris Cox (R-Cal.) and Ron Wyden (D-Ore.) have proposed an even weaker "solution." They have drafted an amendment which would bar federal law enforcement involvement, and, instead, encourage computer software companies to develop blocking programs to sell to parents. This techno-fix approach is no real answer — knowing, as we do, that computer hackers' greatest thrill is a new restriction.

Let's set the record straight. First, prohibition or regulation of illegal pornography does not violate anyone's First Amendment rights. Second, it is the government's job to fight crime, whether in cyberspace or out. Third, software blocking programs may help, but without a law delineating wrongdoing from right doing, the protection of children will depend upon the "good character" of the very people who would exploit them.

Carnegie-Mellon: Pervasive Porn

On June 26, a research team at Carnegie-Mellon University released an exhaustive study of online pornography. The study is entitled *Marketing Pornography on the Information Superhighway: A Survey of 917,410 Images, Descriptions, Short Stories, and Animations Downloaded 8.5 Million Times by Consumers in Over 2,000 Cities in Forty Countries, Provinces, and Territories.* The groundbreaking study measures, for the first time ever, the content and severity of the pornography computer users actually consume, rather than what people say they want to consume. Here are a few of the shocking results:

- 83.5% of pictorial images available on Usenet newsgroups are pornographic;
- 48.4% of all downloads from "adult" commercial outlets are child porn;
- The top two picture categories on the "adult" market leader are child porn and bestiality;
- 99.1% of these bestiality images depict women; only .9% depict men;
- 98.9% of online porn consumers are men.

This study proves what pro-family and anti-porn groups have long known: that hard-core pictures are readily accessible on the Internet.

Porn industry "apologists" like the ACLU and the Electronic Frontier Foundation are scrambling to minimize the impact of the Carnegie-Mellon study. In the upcoming weeks, you'll see them taking cheap shots at this comprehensive study because it seriously threatens their radical agenda. Yet, the Carnegie-Mellon study cannot be ignored. It highlights the toxic combination of interactive media and morally corrosive material, and the threat it poses to the minds and hearts of our children.

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Religious Speech: Leveling the Playing Field

William T. Spont

The Supreme Court ended its 1994-95 term with a flurry of favorable decisions on the religious liberty and free speech fronts.

Awakening Religious Liberty

Critics who advocate a high wall of separation between church and state (a standard having no constitutional or historical basis) are still reeling from the "one-two punch" the Court delivered on June 29. In *Rosenberger v. University of Virginia*, the Supreme Court changed course and acted to bar financial discrimination based upon religious beliefs. Writing for a 5 to 4 majority, Justice Anthony Kennedy concluded that it was unconstitutional for the University to deny student activities funds for the campus publication, *Wide Awake: A Christian Perspective.*

At UVA, any activity that "primarily promotes or manifests a particular belief in or about a deity or an ultimate reality" was denied student activities funds. *Wide Awake's* first issue included stories on stress, prayer, C.S. Lewis, and evil and free will. Because Wide Awake Productions published a magazine espousing belief in God and ultimate truth, it was denied the same subsidy that was available to over 100 other independent student activities.

In the opinion, Justice Kennedy wrote, "[T]he guarantee of neutrality [in government treatment of speech] is respected, not offended, when the government, following neutral criteria and even-handed policies, extends benefits to recipients whose ideologies and viewpoints, including religious ones, are broad and diverse." Justice Kennedy went on to say that "[t]he guideline invoked by the University [to deny payments to *Wide Awake*] effects a sweeping restriction on student thought and student inquiry."

The *Rosenberger* opinion is also important for what it *doesn't* say. Although only passing reference is made to *Lemon v. Kurtzman*, the decision appears to abandon part of what is known as "the *Lemon* test." That test, under which all Establishment Clause cases have been operating since *Lemon* was rendered in 1971, says that if a government policy has the unintended effect of "advancing" religion, it violates the Establishment Clause, even if the purpose of the policy is neutral and secular in nature. Here, however, the Justices appear to acknowledge that even though distribution of student activities funds to Wide Awake Productions would have the effect of advancing Christian beliefs, there is no Establishment Clause violation.

The Wrong Have Rights

The Court was less closely divided in the other religious liberty case rendered on the same day. The Court ruled 7 to 2 in *Capitol Square Review Board v. Pinette* that the Ku Klux Klan has a First Amendment right to erect a cross during Christmas in a public park in Columbus, Ohio. In his customary spectacular style, Justice Antonin Scalia, writing for the Court, said: "Our precedent establishes that private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression. . . A free-speech clause without religion would be *Hamlet* without the prince."

Justices John Paul Stevens and Ruth Bader Ginsburg dissented from the opinion, and Justice Clarence Thomas wrote a separate concurring opinion to say that the Klan's use of the cross was political in nature, not religious.

One issue upon which the case turned was whether the presence of the cross produced a perceived state "endorsement" of a religious message. Justices Scalia, Thomas, Kennedy, and the Chief Justice, William Rehnquist, rejected that test as a viable standard for Establishment Clause cases. Justices Sandra Day O'Connor, David Souter, and Stephen Breyer applied the test and concluded that the risk of such a misperception was minimal.

The Supreme Court also vacated (that is, sent back to the lower court for reconsideration in light of the KKK ruling) a lower court decision which blocked the Knights of Columbus from placing a creche on the town green in Trumbull, Conn. This and the *Pinette* ruling were praised by members of an Orthodox Jewish organization who have sought to erect a menorah in public parks.

GLIB Answered

Earlier, the Supreme Court ruled that the South Boston war veterans were not constitutionally required to include an Irish "gay rights" unit in their annual St. Patrick's Day Parade. The 9-0 ruling in *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston* turned not on the issue of gay rights but on free speech principles.

Justice David Souter, in his majority opinion for the Court, wrote that parades are "a form of expression, not just motion," and that the government "is not free to interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one." Finding that the "gay rights" group was advocating the message of gay pride, and not merely participating as individuals, the Court ruled that the war veterans were not required to provide a forum for a message which they did not want to convey.

Also crucial to the decision was the Court's acceptance of the parade as a private event. Because the parade was deemed a private rather than a public event, it was exempted from a state public accommodations law which prohibits discrimination on the basis of sexual orientation. Family Research Council was among several groups that joined the Christian Legal Society in an amicus brief filed with the high court.

The Court of World Opinion

Next month, *Washington Watch* will feature a special report on the United Nations. Has it become a nest of anti-family activism? What is the United Nations doing in the People's Republic of China? What are the prospects for the children's rights convention in the new Congress? Look for the answers to these and other questions in the August *Washington Watch.*

Coming to a Terminal Near You ... FRC Online.

The Family Research Council will soon occupy its own home page on Town Hall, an Internet mall founded by the Heritage Foundation and *National Review* magazine. Look for detailed information in the September *Washington Watch.*