
A CHILD'S PLAYGROUND OR A PREDATOR'S HUNTING GROUND?—HOW TO PROTECT CHILDREN ON INTERNET SOCIAL NETWORKING SITES

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I. INTRODUCTION

Playing on swing sets has become an archaic childhood past-time, replaced by the virtual world of chat rooms, blogs, and instant messenger.¹ Children today are growing up “watching, listening to and interacting with technology and media for any purpose, including TV, radio, iPods, video games, computers and the Internet.”² This new generation of Internet-savvy children is prevalent in cyberspace³ where entertainment, friendships, and refuge become accessible at the click of a finger.⁴ Unfortunately, despite the educational, recreational, interpersonal, and even therapeutic value the Internet offers the

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¹ See Cable in the Classroom, Fact Sheet: PTA Back-to-School Media Briefing (Aug. 10, 2006), <http://www.ciconline.org/parenting> (follow “Fact Sheet: Research on Children and the Internet” hyperlink). As of 2005, approximately nine out of ten teenagers were Internet users (amounting to twenty-one million youth) and fifty-one percent of them reported going online daily. AMANDA LENHART ET AL., PEW INTERNET & AM. LIFE PROJECT, TEENS AND TECHNOLOGY, at i (2005), http://www.pewinternet.org/pdfs/PIP_Teens_Tech_July2005web.pdf. Teenagers are even more likely to use the Internet than the average adult. See Pew Internet & Am. Life Project, February to March 2007 Demographics of Internet Users, http://www.pewinternet.org/trends/User_Demo_6.15.07.htm (last visited Nov. 8, 2007) (stating that seventy-one percent of all American adults reported using the Internet “at least occasionally” or had “sen[t] or receive[d] email, at least occasionally.”).

² Cable in the Classroom, *supra* note 1.

³ Cyberspace is a unique medium of newsgroups, chat rooms, electronic mail, and the World Wide Web “located in no particular geographical location but available to anyone, anywhere in the world, with access to the Internet.” *Reno v. ACLU (Reno II)*, 521 U.S. 844, 851 (1997).

⁴ See LENHART ET AL., *supra* note 1.

global community, cyberspace has cultivated a dangerous environment for this nation's youth.⁵ Online sexual solicitations⁶ and online exposure to obscene or otherwise unwanted sexual material⁷ are the two biggest challenges society must overcome in order "to protect our children from these cowardly villains who hide in the shadows of the Internet."⁸

Online predators are becoming increasingly successful in soliciting youth.⁹ Predators come in all shapes and sizes, with no easy stereotype for law enforcement to target.¹⁰ The online predator community runs the gamut, including male and female teenagers, young adults, and adults.¹¹ The Internet provides predators with anonymity and nearly unlimited access to information, particularly on social networking sites such as MySpace or Facebook, creating a pressing societal concern.¹²

This Comment will discuss how the Internet, as a supposed safe haven free from sexual predators, has become "as high a priority as securing our border from terrorists."¹³ Legislators, policymakers and the judiciary have slowly begun to address solutions for protecting children from harm on the Internet. Social networking sites have implemented their own initiatives, and government prosecutorial task forces have worked together to help assuage the growing problem of online child exploitation.¹⁴ Society is facing a serious challenge, despite the proposed legislation, policy initiatives, and legislation already in place.

⁵ See JANIS WOLAK ET AL., NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN, ONLINE VICTIMIZATION OF YOUTH: FIVE YEARS LATER, at vii (2006), http://www.missingkids.com/en_US/publications/NC167.pdf.

⁶ Sexual solicitations involve adults requesting children to engage in sexual activities or discussions, or providing children with unwanted sexual information and sexually explicit pictures. DAVID FINKELHOR ET AL., NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN, ONLINE VICTIMIZATION: A REPORT ON THE NATION'S YOUTH, at x (2000), http://www.missingkids.com/en_US/publications/NC62.pdf.

⁷ Unwanted exposure is when children, without expecting or wanting to, are exposed to nudity or pornography when searching the Web or opening e-mail links. *Id.*

⁸ Declan McCullagh, *Senator: Illegal Images Must be Reported*, CNET NEWS, Dec. 11, 2006, http://news.com.com/2100-1028_3-6142332.html (remarks by Attorney General Alberto Gonzales in his December 8, 2006 speech).

⁹ See EVA J. KLAIN ET AL., NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN, CHILD PORNOGRAPHY: THE CRIMINAL-JUSTICE-SYSTEM RESPONSE 7 (2001), http://www.ncmec.org/en_US/publications/NC81.pdf.

¹⁰ *Id.* at 5.

¹¹ *Id.*

¹² See FINKELHOR ET AL., *supra* note 6, at 1.

¹³ Declan McCullagh, *Congress Spanks Naughty Sex Sites*, CNET NEWS, July 16, 2006, http://news.com.com/Congress+spanks+naughty+sex+sites/2100-1028_3-6098325.html (Remarks of House Speaker J. Dennis Hastert).

¹⁴ See *infra* Part V.A.

Part II of this Comment will detail the problems of sexual solicitations and unwanted exposure to sexually explicit material on the Internet. Part III will discuss online social networking sites, particularly MySpace, and the concerns about online predators lurking on such sites. Part IV analyzes congressional initiatives and the Supreme Court's involvement in child protection legislation. Part V critiques previously enacted or proposed policy and legal solutions and offers new ideas involving the need for a national policy campaign. The next feasible step involves implementing a large-scale advertising and publicity campaign to rid the online community of sexual predators and secure the Internet for safe usage by children.

II. THE OVERARCHING PROBLEM: THE INTERNET AS A PREYING GROUND

A. Sexual Solicitations on the Internet

Perpetrators sexually approach or solicit one in five children on the Internet.¹⁵ Sexual solicitations typically begin with a perpetrator learning about a child's personal interests from his or her online profile and then striking up a conversation with that child.¹⁶ A perpetrator will often depict similar character traits as the child in order to gain his or her trust and develop an online friendship.¹⁷ Upon acquiring a child's confidence, a perpetrator will inquire about a child's physical appearance and sexual activity, and subsequently make propositions for "cybersex,"¹⁸ encouraging a child to engage in sexual behavior.¹⁹

¹⁵ FINKELHOR ET AL., *supra* note 6, at 9. "Children," for the most part, includes youths ages ten through seventeen who comprise the several million who are solicited on the Internet every year. *Id.* at 33. Over seventy-five percent of targeted victims are fourteen years of age or older. *Id.* at 2.

¹⁶ See WOLAK ET AL., *supra* note 5, at 18 (explaining that most initial sexual solicitations occur in live chat rooms or via instant messages).

¹⁷ See Megan M. McCune, Comment, *Virtual Lollypops and Lost Puppies: How Far Can States Go To Protect Minors Through The Use Of The Internet Luring Laws*, 14 COMM'LAW CONSP'CTUS 503, 513 (2006) (describing the online luring process).

¹⁸ Cybersex is "a form of fantasy sex, which involves interactive chat-room sessions where the participants describe sexual acts and sometimes disrobe and masturbate." FINKELHOR ET AL., *supra* note 6, at 3. Sixty-five percent of cybersex incidents occur through solicitations in a chat room and twenty-four percent occur through instant messages. *Id.* at 4.

¹⁹ For example, a twelve year-old girl reported being asked to "play with herself" while the perpetrator sent her sexual messages. *Id.* A thirteen year-old boy said a female asked him the size of his privates and wanted him to "jack off." *Id.* Another twelve year-old girl reported that "[a] man in his 30s 'asked me to describe myself and to stick a pen in my private parts and set up a digital camera and show the parts of my body.'" WOLAK ET AL., *supra* note 5, at 19.

Sexual solicitors frequently send children naked pictures of themselves²⁰ or other sexually explicit²¹ pictures and Web site addresses, often involving adult-child interactions, to “groom”²² minors into believing that sexual activity between children and adults is both enjoyable and socially acceptable.²³ Offenders also use child pornography²⁴ to legitimize their own abusive behaviors²⁵ and to teach children how to pose in sexual positions or engage in various sex-

²⁰ WOLAK ET AL., *supra* note 5, at 19. For example, a sixteen year-old girl described a thirty-five year-old man who took nude pictures of himself and sent them to her via e-mail. *Id.* A thirteen year-old boy reported that a man sent him a drawing of himself having sex with a dog. FINKELHOR ET AL., *supra* note 6, at 4.

²¹ “Sexually explicit material” includes images of naked persons, people having sex, and scenes depicting sexual violence. *See* FINKELHOR ET AL., *supra* note 6, at 14. Federal law defines “sexually explicit conduct” as:

(i) graphic sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex, or lascivious simulated sexual intercourse where the genitals, breast, or pubic area of any person is exhibited;

(ii) graphic or lascivious simulated;

(I) bestiality;

(II) masturbation; or

(III) sadistic or masochistic abuse; or

(iii) graphic or simulated lascivious exhibition of the genitals or pubic area of any person;

18 U.S.C. § 2256(2)(B) (Supp. IV 2004).

²² Grooming occurs when perpetrators display child pornography in order to “interest a victim in or overcome inhibitions about sexual activity.” JANIS WOLAK ET AL., NAT’L CTR. FOR MISSING & EXPLOITED CHILDREN, CHILD-PORNOGRAPHY POSSESSORS ARRESTED IN INTERNET-RELATED CRIMES: FINDINGS FROM THE NATIONAL JUVENILE ONLINE VICTIMIZATION STUDY 18 (2005), available at http://www.ncmec.org/en_US/publications/NC144.pdf.

²³ *See* KLAIN ET AL., *supra* note 9, at 6.

²⁴ Federal law defines “child pornography” as:

[A]ny visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where—

(A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;

(B) such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or

(C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

18 U.S.C. § 2256(8) (2000 & Supp. IV 2004). A “minor” is defined as “any person under the age of eighteen years.” *Id.* § 2256(1). The United Nations defines child pornography as “any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child, the dominant characteristic of which is depiction for a sexual purpose.” KLAIN ET AL., *supra* note 9, at 1.

²⁵ KLAIN ET AL., *supra* note 9, at 6 (explaining that the smile of a child in pornography often depicts consent or seduction in the perpetrator’s eyes, which helps to validate and confirm their pedophilic belief systems).

ual behaviors.²⁶

In over half of these incidents solicitors request photographs of youth, and in twenty-seven percent of such occurrences solicitors ask for sexual photographs.²⁷ These pornographic depictions involve abusive activities that “exacerbate the already vulnerable status of children” who consequently become mere sexual objects in pornographic work.²⁸ Compliance with a solicitor’s pornographic requests often results from youths who lack the prudence or maturity to understand the implications or consequences of such pictures.²⁹ Children’s meager knowledge of the nature of sexual acts bolsters the fact that children cannot meaningfully consent to participating in child pornographic activities, and thus, suffer harm from its production.³⁰

In addition to society’s moral and social condemnation of child pornography, the possession of child pornography has no constitutional protection.³¹ Federal child pornography laws have criminalized taking, distributing, or possessing explicit images of children under the age of eighteen.³² Courts have rationalized such laws by stressing that child pornography “freezes in time the offender’s preferred age of the victim and child’s reaction” and serves as a permanent record of child abuse.³³ It takes merely one sexually explicit picture to become duplicated, circulated, and permanently memorialized in cyberspace without means of retrieval.³⁴

With the emergence of the Internet, child pornography is more accessible today in the United States than it has been in the past thirty years.³⁵ Computers were an anomaly in the 1970s and home computer usage barely advanced

²⁶ *Id.*

²⁷ See WOLAK ET AL., *supra* note 5, at 19.

²⁸ “The contents of [child pornographic] pictures and film range from posed photographs of naked and semi-naked children to more explicit shots of their genitalia being massaged, and to explicit sexual activities with adults, children and animals . . . including infants being ejaculated upon.” ROGER J.R. LEVESQUE, *SEXUAL ABUSE OF CHILDREN: A HUMAN RIGHTS PERSPECTIVE* 62, 63 (1999).

²⁹ See WOLAK ET AL., *supra* note 5, at 20.

³⁰ See *id.* at 61–62 (explaining how educating children will reduce the risk of harm).

³¹ KLAIN ET AL., *supra* note 9, at 6. Courts have legitimized regulating the possession, production, and distribution of child pornography. See, e.g., *New York v. Ferber*, 458 U.S. 747 (1982) (finding the Government has a compelling interest in protecting children’s physiological, emotional, and mental well-being from pornographic material).

³² See *supra* note 24.

³³ KLAIN ET AL., *supra* note 9, at 6. For example, in upholding a New York statute criminalizing the “use of a child in a sexual performance,” the Supreme Court stated that “the materials produced are a permanent record of the children’s participation and the harm to the child is exacerbated by their circulation.” *Ferber*, 458 U.S. at 750, 759.

³⁴ See WOLAK ET AL., *supra* note 5, at 20.

³⁵ KLAIN ET AL., *supra* note 9, at 2.

through the 1980s.³⁶ As computer technology has improved and Internet access has become immensely widespread,³⁷ online child pornography has transformed into a “sophisticated global cottage industry.”³⁸ The development of technology has also facilitated the ease, while decreasing the cost, of the production and the distribution of child pornography on the Internet.³⁹ Perpetrators hide behind the enhanced encryption technologies of the Internet in order to send and request sexually explicit photographs.⁴⁰ These federal crimes largely contribute to the serious online pornography epidemic.⁴¹

New technology has also facilitated the manipulation of children’s photographs. Perpetrators are easily able to morph a real child’s face and superimpose it upon a sexually explicit image or use specialized graphics to design a virtual image of a child engaged in sexual activity.⁴² Congress attempted to protect these “virtual victims” through the enactment of The Child Pornography Prevention Act of 1996 (“CPPA”), which sought to prohibit visual depictions that are or *appear to be* of minors comprising sexually explicit pictures.⁴³ Shortly after its enactment, the Free Speech Coalition challenged the CPPA as violative of the First Amendment.⁴⁴ Although Congress enacted the CPPA to protect youth from the indirect consequences stemming from the creation of virtual pornography,⁴⁵ the Supreme Court found that virtual pornographic images of youth do not create victims and thus “no underlying crime” exists.⁴⁶ In holding the CPPA to be substantially overbroad, the Court stressed that “the

³⁶ JENNIFER CHEESEMAN DAY ET AL., U.S. CENSUS BUREAU, COMPUTER AND INTERNET USE IN THE UNITED STATES: 2003, at 1 (2005), <http://www.census.gov/prod/2005pubs/p23-208.pdf> (reporting that in 1984, the proportion of households with a computer was eight percent).

³⁷ In 2003, approximately sixty-two million, or fifty-five percent, of households had Internet access, a threefold increase from 1997. *Id.*

³⁸ Margaret A. Healy, Child Pornography: An International Perspective 5 (Aug. 27, 1996), <http://www.csecworldcongress.org/en/stockholm/Background/index.htm> (follow “Child Pornography” hyperlink). At least twenty percent of the Internet pornography industry involves children. KLAIN ET AL., *supra* note 9, at 23. Unlawful computer transmissions and advertisements for child pornography on the Internet have increased excessively—from thirty-three percent of child-exploitation cases involving computers in 1997 to forty-three percent in 1998 to eight-one percent in 1999. *Id.*

³⁹ KLAIN ET AL., *supra* note 9, at 23.

⁴⁰ *Id.*

⁴¹ *Id.* at 7.

⁴² *Id.* at 1–2.

⁴³ See Child Pornography Prevention Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (codified as amended in scattered sections of 18 U.S.C.).

⁴⁴ *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 240 (2002).

⁴⁵ *Id.* at 241. Congress claimed that virtual pornography would further encourage pedophilic activity, thus increasing the production and distribution of child pornography. Congress was also concerned that virtual images would be used to help groom children. *Id.*

⁴⁶ *Id.* at 237.

government may not prohibit speech because it increases the chance an unlawful act will be committed 'at some indefinite future time.'"⁴⁷

1. Aggressive Sexual Solicitations

One-third of all solicitations are aggressive in nature.⁴⁸ Aggressive solicitations, the most dangerous of sexual advances, move beyond the confines of the Internet into "real life."⁴⁹ The predator is typically a person unknown to the youth offline, who seduces children via money or gifts and guides children blindly through the virtual world into their actual hands.⁵⁰ Particularly with the recent development of social networking sites, such as MySpace and Facebook, the online community is combating a surge of aggressive online solicitations.⁵¹

One of the most pressing concerns regarding online aggressive solicitations is the ensuing sexual assaults that occur in real life. Aggressive solicitors strategically prey on the vulnerability and naïveté of a child, developing close "online" relationships with the child in order to subsequently convince him or her to meet in person.⁵² In one reported case, a man in his thirties urged a fifteen year-old girl to run away to his house, where he sexually assaulted her.⁵³ In another incident, a sixteen year-old girl went to a party with a man she met online, after which he attempted to rape her.⁵⁴

Many face-to-face encounters involve offenders who travel across state lines to meet their victims, most often in private locations.⁵⁵ A dangerous reality is that eighty-three percent of victims willingly accompany their offenders, often

⁴⁷ *Id.* at 253 (quoting *Hess v. Indiana*, 414 U.S. 105 (1973)). The court explained that section 2256(8)(B) and (D) of CPPA limit free speech and extend to images which are not legally considered obscene. *Id.* at 234.

⁴⁸ See *WOLAK ET AL.*, *supra* note 5, at 15.

⁴⁹ *Id.* Aggressive sexual solicitations begin with online solicitation and progress to offline mail, telephone, or in-person. *FINKELHOR ET AL.*, *supra* note 6, at 1.

⁵⁰ A 2006 study revealed that seventy-five percent of solicitors asked the youth to meet in person; thirty-four percent called the youth on the phone; eighteen percent came to the youth's home; twelve percent gave the youth money, gifts, or other items; nine percent sent offline mail to the youth; and three percent bought travel tickets for the youth. *WOLAK ET AL.*, *supra* note 5, at 18.

⁵¹ See *infra* discussion Part III.

⁵² *WOLAK ET AL.*, *supra* note 5, at 18.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ See James Wolak et al., *Internet-initiated Sex Crimes against Minors: Implications for Prevention Based on Findings from a National Study*, 35 J. ADOLESCENT HEALTH 424.e11, 424.e17 (2004), <http://download.journals.elsevierhealth.com/pdfs/journals/1054-139X/PIIS1054139X04001715.pdf> (finding that forty percent of initial meetings between an offender and a child involve participants from different locations).

riding with them in a car to an offender's home or hotel, mall, movie theater, or restaurant.⁵⁶ Approximately forty percent of victims spend at least one night with their offender.⁵⁷

Most sexual solicitations, including aggressive solicitations, go unreported.⁵⁸ Some youth treat such occurrences as trivial, failing to understand that they were being targeted.⁵⁹ Others become fearful that society will disapprove of the sites they visited on the Internet, or they become embarrassed and confused and consequently remain silent.⁶⁰ Perpetrators also use threatening or rewarding tactics to manipulate and silence children from reporting to authorities.⁶¹ Many youths and parents are unsure of accessible remedies and fail to report incidents merely because they do not know where or to whom to report.⁶² The latter problem is one in which Internet providers are actively combating by educating communities of viable reporting options.⁶³

B. Unwanted Exposure to Sexual Material

While pornography in paper or video format has been around for decades, the invention of the Internet led to an explosion in the online pornography industry. In 1998, twenty-eight thousand adult Web sites existed on the World Wide Web.⁶⁴ Today, that number is in the millions with sexual material at the

⁵⁶ *Id.*

⁵⁷ *See id.*

⁵⁸ *See* WOLAK ET AL., *supra* note 5, at 41. In more than half of sexual solicitation incidents, youths fail to tell anyone of their experience. Only five percent of such incidents were reported to law enforcement or other authorities. *Id.*

⁵⁹ FINKELHOR ET AL., *supra* note 6, at 5.

⁶⁰ *Id.*

⁶¹ KLAIN ET AL., *supra* note 9, at 7 (describing perpetrators' tactics to include bribes, love, affection, attention, punishment, violence, coercion, peer pressure, and fear).

⁶² FINKELHOR ET AL., *supra* note 6, at 29. A 2000 study showed that sixty-nine percent of parents had not heard of where to report incidents. In particular, of the thirty-one percent of parents who were familiar with where to report; one percent were familiar with the CyberTipline, one percent with the Cyber Angels, one percent with the FBI, one percent with Safe Surf, three percent with Internet service providers (most often being America Online), and twenty percent said they had heard of places but failed to remember the name. An even higher percentage of youths are unfamiliar with helpful resources. Twenty-four percent of youths stated they had heard of places to report and only seventeen percent could name the actual resource. *Id.* The numbers vary slightly in 2006, with thirty-five percent of parents having heard of reporting resources but could not name a specific reporting site. The numbers of youth in 2006 who said they knew of places to report declined to eighteen percent. *See* WOLAK ET AL., *supra* note 5, at 48.

⁶³ *See infra* discussion Part V.A.1.

⁶⁴ H.R. REP. NO. 105-775, at 7 (1998). In 2000, online pornography revenues were comparable to online book sales and exceeded the online revenue of airline tickets. Kenneth Li, *Silicone Valley: Porn Goes Public*, INDUSTRY STANDARD, Nov. 6, 2000, available at

fingertips of every Internet user.⁶⁵

New technology has facilitated the ease of unwanted exposure to sexual material on the Internet.⁶⁶ The accidental accessing of pornographic or otherwise obscene Web sites has skyrocketed.⁶⁷ This can result from users misspelling a Web address, randomly searching the Internet, opening an e-mail, or clicking on links attached to an e-mail or an instant message.⁶⁸ The pornography industry markets to Internet users by utilizing advanced pop-up advertisements, adware, and other software, which deceive users and direct them to pornography sites.⁶⁹ Users also accidentally reach sexually explicit Web sites because of their “innocuous domain names.”⁷⁰

The exorbitant amount of sexually explicit material inundating cyberspace generates an entire universe of risks for children. While banning sexual content on the Internet entirely would likely resolve the issue, the Supreme Court has time and again rejected as unconstitutional legislation which proposes such a resolution.⁷¹ With Congress unable to proscribe sexually explicit content on the Internet (with the exception of child pornography), efforts have been made to limit risk of exposure to the content, rather than the content itself. For instance, pursuant to the Children’s Internet Protection Act (“CIPA”),⁷² schools and

<http://www.thestandard.com/article/0,1902,19696,00.html>.

⁶⁵ See Mike Musgrove, *Technology’s Seamier Side*, WASH. POST, Jan. 21, 2006, at D01 (stating that there are 4.2 million pornographic Web sites).

⁶⁶ WOLAK ET AL., *supra* note 5, at 10 (describing how increased speed and capacity to download pictures, digital cameras, Web cameras, cell phone cameras, online media players and peer-to-peer file sharing allow for efficient transmittal and receipt of sexually explicit images).

⁶⁷ FINKELHOR ET AL., *supra* note 6, at 27 (“Sixty-three percent of unwanted exposure [via e-mail] came to an address used solely by the youth [and] in ninety-three percent of instances the sender was unknown to the youth.”).

⁶⁸ *Id.* A few examples of such occurrences include an eleven year-old boy who typed in “fun.com” and a pornographic site appeared; a fifteen year-old boy who was researching wolves for a school paper viewed a Web site of a woman having sex with a wolf; and a twelve year-old girl opened an e-mail with subject line “Free Beanie Babies” which contained nude pictures. *Id.*

⁶⁹ WOLAK ET AL., *supra* note 5, at 10 (describing how marketers intentionally hide pornographic material in games, music, or links that youths are likely to download). Other searches, such as for cartoons, have sent youths to sites displaying cartoon pornography. *Id.* at 32.

⁷⁰ See *Am. Library Ass’n, Inc. v. United States*, 201 F. Supp. 2d 401 (E.D. Pa. 2002) (noting common examples of deceitful Web addresses which direct users to pornographic sites to include: <http://www.whitehouse.com>, <http://www.boys.com>, <http://www.girls.com>, <http://www.coffeebeansupply.com>, and <http://www.BookstoreUSA.com>).

⁷¹ For a discussion of the ongoing Supreme Court litigation of the constitutionality of the Communications Decency Act and the Children’s Online Protection Act see *infra* Part IV.A.2. See also LEVESQUE, *supra* note 28, at 61–62 (describing how pornography regulation encroaches on private moral choices involving educational and artistic benefits).

⁷² Children’s Internet Protection Act, Pub. L. No. 106-554, tit. XVII, 114 Stat. 2763A-

libraries receiving federal assistance are required to install filtering software⁷³ on their computers to restrict access to inappropriate content online.⁷⁴ Parents have also begun to use filters at home.⁷⁵ However, despite greater use of screening tools, unwanted exposure of youths to sexually explicit content on the Internet has substantially increased over the past six years.⁷⁶ Most exposure occurs on a child's home computer.⁷⁷

III. MYSPACE—SOCIAL NETWORKING SITES PROVIDE A NEW ONLINE ENVIRONMENT FOR INTERNET LURING AND HARASSMENT

A. What is a Social Networking Site?

As the Internet continues to transform and expand at an alarming rate, youths have concurrently begun to migrate to instant messaging and social networking sites,⁷⁸ which have been called “the mode of choice for today's online youth.”⁷⁹ Interactive communication on social networking sites opens a

355 (2000).

⁷³ Filtering software gives a user, typically a parent, the ability to choose settings and block profanity and specific content on the Web, such as nudity and violence. *Filtering Software*, PC MAGAZINE, Aug. 3, 2004, available at <http://www.pcmag.com/article2/0,1895,1618808,00.asp>. One popular filtering software, Cybersitter 9.0, uses a database of regularly updated word patterns to block certain content including sex, drugs, hate speech, and violence. Parents choose from thirty-two categories of content tailored to their child's needs to filter inappropriate content that parents have specified on Web browsing, e-mail, instant messaging, and newsgroups. Parents also have the option to block all instant messaging, newsgroups, and file sharing. *Id.*

⁷⁴ 20 U.S.C. § 9134(f)(2000); see also discussion *infra* Part IV.A.1.

⁷⁵ According to a 2006 study, fifty-five percent of households used filtering or blocking software, up from thirty-three percent in 2000. WOLAK ET AL., *supra* note 5, at 1. The increase may be due to publicity and prevention programs, enhanced versions of software, new problems on the Internet arising over the past six years that require intervention, or basic frustration with computer performance as a result of sexual “pop-up” ads. *Id.*

⁷⁶ *Id.* at 3. In 2006, thirty-four percent of youths received unwanted exposure to sexual material, up from twenty-five percent in 2000. *Id.* at 8.

⁷⁷ *Id.* at 31. Seventy-nine percent of exposures occurred at home, nine percent occurred at school, five percent occurred at friends' homes, and five percent occurred in other environments, including libraries. *Id.*

⁷⁸ Social networking sites are interactive Web sites which allow users to enroll by creating a profile with pictures, personal information, and videos, and they often require that users supply a name, date of birth, and e-mail address. Users can make “friends” with others who also enroll on such a site. “Friends” can communicate instantly, post comments, and exchange pictures. Some sites are open to anyone while others may be limited to invitation only. Few sites charge a fee for usage. See Rebecca Porter, *Lawyers, Advocates Look to Protect Kids from Web Networking Dangers*, TRIAL, Oct. 2006, at 16, 16.

⁷⁹ LENHART ET AL., *supra* note 1, at ii. Seventy-five percent of online teenagers use

virtually endless window for members to explore their creativity by being able to share interests, pictures, diaries, artwork, creative writing, music, and videos with other members.⁸⁰ Participants can meet new friends and keep in touch with old ones by chatting over real-time instant messaging, by sending e-mail messages, and by posting comments on friends' pages.⁸¹ Members are encouraged to plan events, participate in forums, blog creative stories, and instill positive social change, thereby "revolutioniz[ing] the way [people] communicate and interact online."⁸²

Friendster,⁸³ one of the first social networking sites to exist in cyberspace, began the social networking trend with MySpace⁸⁴ and Facebook⁸⁵ following suit soon thereafter. In the past five years, social networking sites have grown to a population of nearly two-hundred million users.⁸⁶ MySpace, the largest of these online communities, gains 160,000 new members every day.⁸⁷ While MySpace is used among the adult community for online communication between friends and families, matchmaking, finding long-lost friends or classmates, and networking with businesses and co-workers, it has rapidly become one of the most popular online destinations for youths.⁸⁸

instant messaging and forty-eight percent of those users use it at least once per day. *Id.* at iii.

⁸⁰ See, e.g., A Guide to MySpace for Parents with Teens, <http://creative.Myspace.com/safety/safetyguideparents.pdf> (last visited Nov. 8, 2007).

⁸¹ NAT'L CTR FOR MISSING & EXPLOITED CHILDREN, KEEPING KIDS SAFER ON THE INTERNET 5 (2006), http://www.missingkids.com/en_US/publications/NC168.pdf [hereinafter KEEPING KIDS SAFER].

⁸² A Guide to MySpace for Parents with Teens, *supra* note 80.

⁸³ Friendster launched in 2002. About Friendster, <http://www.friendster.com/info/index.php?statpos=footer> (last visited Nov. 8, 2007).

⁸⁴ MySpace commenced in July 2003. See John Bradley, *MySpace: Working your Monkeysphere in a Digital World*, 70 TEX. B.J. 33, 34 (2007) (discussing MySpace's founding in July 2003).

⁸⁵ Facebook is the most recent social networking site, launching in February of 2004. Facebook Overview, <http://www.facebook.com/press.php> (last visited Nov. 8, 2007).

⁸⁶ MySpace members total over one hundred million. Bradley, *supra* note 84, at 34. Friendster totals over forty-seven million users. About Friendster, *supra* note 83. Facebook now has over thirty-seven million registered users across over forty-seven thousand regional, work-related, collegiate, and high school networks. Facebook is also the sixth-most trafficked site in the United States and the number one photo-sharing site. Facebook Overview, *supra* note 85.

⁸⁷ Anita Kisse, *MySpace.com Raises Concerns Among Parents, Teachers*, KATU-TV, Aug. 20, 2006, <http://www.katu.com/news/3617641.html>.

⁸⁸ Over six million social networking members are teenagers. Porter, *supra* note 78, at 16 (stating that sixty-one percent of teenagers thirteen to seventeen years old had a personal profile on a social networking site). The minimum age requirement to become a MySpace member is fourteen. A Guide to MySpace for Parents with Teens, *supra* note 80. Friendster mandates all users to be sixteen years of age or older. See Friendster Terms of Service, <http://www.friendster.com/info/tos.php?statpos=footer> (last visited Nov. 8, 2007). Facebook members must be thirteen years of age or older. See Facebook Terms of Use,

B. Concerns About MySpace

While the Internet provides youths with a network of social benefits, the rapid departure from chat rooms to social networking sites poses increasing challenges “to make sure yesterday’s remedies are not superseded by tomorrow’s realities.”⁸⁹ MySpace has become a one-stop shopping catalog for child predators.⁹⁰ Not only can a predator talk online with a child and view a child’s pictures, but online predators can gather easily-accessible personal information posted on a member’s page—information about a child’s friends, her school, and her intimate secrets and interests—to target the youth and establish “cyber-relationships.”⁹¹ Predators often rely on the anonymity of social networking sites by posing as youth of comparable age and with similar interests as the youth they exploit.⁹² This dangerous phenomenon allows predators to develop “friendships” with their targets and gain their trust. MySpace’s broad forum, where infiltration of one child’s profile opens the door to hundreds more, allows sexual solicitors to easily target a larger array of victims than the typical one-on-one contact offered by chat rooms or instant messaging.⁹³ Youths even compete for the largest number of online “friends” and will accept new contacts on their own member pages even if such contacts are complete strangers.⁹⁴ With a breadth of personal information so easily accessible, extortion on social networking sites has also become a pressing concern.⁹⁵ Text and images on a member’s page become irretrievable public information, even after a site has been deleted, easily allowing predators to use posted personal information to continuously threaten and bribe their victims.⁹⁶

<http://www.facebook.com/terms.php> (last visited Nov. 8, 2007).

⁸⁹ WOLAK ET AL., *supra* note 5, at 57; *see also*, Bradley, *supra* note 84, at 33 (describing the MySpace community and the potential dangers stemming therefrom).

⁹⁰ *See* Kissee, *supra* note 87. “A survey of 10 to 17 year olds revealed 34% had posted their real names, telephone numbers, home addresses, or the names of their schools online where anyone could see; 45% had posted their dates of birth or ages; and 18% had posted pictures of themselves.” KEEPING KIDS SAFER, *supra* note 81, at 5.

⁹¹ Porter, *supra* note 78, at 16; *see also* Connecticut Opens MySpace.com Probe, CONSUMER AFFAIRS, Feb. 5, 2006, <http://www.consumeraffairs.com/news04/2006/02/myspace.html> (stating that social networking site users include photos and personal information such as cell phone numbers and schools in their profiles).

⁹² Bradley, *supra* note 84, at 34 (explaining that predators often register as teenage members and no longer have to stalk local parks or malls to find victims).

⁹³ *See* Connecticut Opens MySpace.com Probe, *supra* note 91 (explaining that some view MySpace as a “predator’s dream come true” because of the ease in locating individuals and their friends).

⁹⁴ KEEPING KIDS SAFER, *supra* note 81, at 5.

⁹⁵ *Id.* at 6.

⁹⁶ *Id.*

The growing popularity and trust in social networking sites⁹⁷ has increased the risk of aggressive sexual solicitations, where predators extend their online relationships to in-person assaults.⁹⁸ In a recent case, a nineteen year-old college man contacted a thirteen year-old girl, "Julie Doe," online, and after meeting for dinner and a movie, he sexually assaulted her.⁹⁹ Julie Doe's mother sued MySpace, alleging negligence, gross negligence, fraud, and negligent misrepresentation.¹⁰⁰ In February 2007, the U.S. District Court for the Western District of Texas granted MySpace's motion to dismiss those claims.¹⁰¹ The court held that MySpace, as an "interactive service," is entitled to immunity under the Communications Decency Act of 1996¹⁰² and is protected from materials posted on its site originating with a third-party user of the service.¹⁰³ Four other families have since sued MySpace, alleging that social networking sites have a legal duty to enforce security measures and policies in order to prevent the victimization of children.¹⁰⁴

In addition to sexual solicitation, harassment¹⁰⁵ and "cyberbullying"¹⁰⁶ have

⁹⁷ A 2006 study found that twenty percent of youth believed it was completely safe to share personal information on a public blog or networking site. Press Release, Nat'l Ctr. for Missing & Exploited Children, New Study Reveals 14% of Teens have had Face-to-Face Meetings with People They've Met on the Internet (May 11, 2006), available at http://www.netismartz.org/pdf/cox_teensurvey_may2006.pdf.

⁹⁸ In a survey of 1,160 thirteen to seventeen year-old social networking members, fourteen percent had met face-to-face with a person they met on the Internet and one-third had considered meeting someone they met on the Internet; forty-five percent had been asked for personal information by an online stranger. *Id.*

⁹⁹ Doe v. MySpace, 474 F. Supp. 2d 843 (W.D. Tex. 2007).

¹⁰⁰ *Id.* at 846.

¹⁰¹ *Id.*

¹⁰² The Communications Decency Act of 1996 provides in part that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1) (2000).

¹⁰³ *MySpace*, 474 F. Supp. 2d at 850.

¹⁰⁴ Truman Lewis, *New MySpace Security Measures May Be Too Late*, CONSUMER AFFAIRS, Jan. 18, 2007, http://www.consumeraffairs.com/news04/2007/01/MySpace_zephyr.html. The first suit involves a fifteen year-old girl, "Julie Doe II," who was kidnapped and sexually assaulted by her online "friend." "Julie Doe III," a fifteen year-old girl from Texas, was lured, drugged and assaulted by someone she met online. The third suit involves a fourteen year-old girl from New York, "Julie Doe IV," whereby the online predator used alcohol and drugs to intoxicate her, and then he and another man sexually assaulted her. The last case involves two adult MySpace users who lured, intoxicated, sexually assaulted and raped fourteen year-old "Julie Doe V" and fifteen year-old "Julie Doe VI," two sisters from South Carolina. *Id.*

¹⁰⁵ Harassment includes threatening and offensive behavior directed at children. FINKELHOR ET AL., *supra* note 6, at x.

¹⁰⁶ Cyberbullying is a type of harassment, which encompasses sending or posting harmful, cruel, or violent text or images on the Internet or via other digital communication de-

become a concern on social networking sites, typically among teenagers.¹⁰⁷ Unlike sexual predators who hide behind the Internet's anonymity, online harassers are rarely strangers.¹⁰⁸ Cyberbullies use online "wall postings"¹⁰⁹ and real-time messages to threaten other teenagers, post embarrassing pictures of classmates, and send humiliating, cruel, and degrading messages.¹¹⁰ Online social networking sites have thus become a "virtual bathroom wall"¹¹¹ for bullies to scapegoat others and spread rumors to a large online audience, leaving youth distressed, angry, and embarrassed.¹¹² Online harassers have also deceived victims during instant messaging conversations into revealing sensitive personal information, which the harassers then forward to a wide range of people.¹¹³ Cyberbullying can be a dangerous phenomenon. Children have received death threats, been killed by other children, and committed suicide after having been victimized by online harassment.¹¹⁴

vices. Cyberbullying involves a child, preteen, or teen who becomes tormented, threatened, harassed, humiliated, embarrassed, or otherwise targeted by another child, preteen, or teen using the Internet, interactive and digital technologies, or mobile phones. NANCY E. WILLARD, *CYBERBULLYING AND CYBERTHREATS* app. K (Research Press 2007), available at <http://www.cyberbully.org/cyberbully/appendix/appK.pdf>

¹⁰⁷ Nine percent of youth Internet users were harassed online in 2006, up from six percent in 2000. WOLAK ET AL., *supra* note 5, at 1. Seventy-two percent of online harassment occurred to youths between fourteen and seventeen years of age. *Id.* at 39.

¹⁰⁸ *Id.* at 39–40 (explaining study results finding "forty-four (44) percent of harassers were offline friends or acquaintances").

¹⁰⁹ A "wall" is a forum on one's social networking page where friends can post comments. Members can remove comments from the wall, restrict access to the wall, or turn it off entirely. See Facebook, Profiles, Mini-Feed, and the Wall Help, <http://www.facebook.com/help.php?page=3> (last visited Nov. 8, 2007).

¹¹⁰ See WILLARD, *supra* note 106, at 265–67 (explaining various types of cyberbullying).

¹¹¹ WOLAK ET AL., *supra* note 5, at 39.

¹¹² See WILLARD, *supra* note 106, at 266 ("Greg, an obese high school student, was changing in the locker room after gym class. Matt took a picture of him with his cell phone camera. Within seconds, the picture was flying around the phones at school.").

¹¹³ *Id.* at 266 ("Katie sent a message to Jessica pretending to be her friend and asking lots of questions. Jessica responded, sharing really personal information. Katie forwarded the message to lots of other people with her own comment, 'Jessica is a loser.'").

¹¹⁴ *Id.* at 267–68. ("Celia met Andrew in a chat room. Andrew wrote: 'bring a gun to school . . . i can't imagine going through life without killing a few people . . . people can be kissing my shotgun straight out of doom . . . If I don't like the way u look at me, u die . . . I choose who lives and who dies.'").

IV. CONGRESSIONAL ACTIONS TO PROTECT YOUTHS ON THE INTERNET AND THE SUPREME COURT'S RESPONSE

A. Protecting Children from Exposure to Unwanted Sexual Material

1. *Child Online Protection Act*

As society's fear of the detrimental effects that sexually explicit material can have on children has grown, Congress enacted numerous pieces of legislation to restrict its online production and distribution. This fear appears well placed in light of the vast amounts of online pornography viewed, sold, and exchanged on the bustling online marketplace. The Child Online Protection Act ("COPA")¹¹⁵ was Congress's second attempt to protect minors from harmful content on the Internet.¹¹⁶

COPA was enacted as a remedy to overcome the unconstitutionally vague provisions found in the Communications Decency Act ("CDA"), which cast a "far darker shadow over free speech" and "threatened to torch a large segment of the Internet community."¹¹⁷ The legislators specifically crafted COPA to eliminate vagueness and restrict the CDA in three ways: (1) it applies only to material displayed on the World Wide Web; (2) it only encompasses communications made for "commercial purposes;"¹¹⁸ and (3) it restricts issues to "material that is harmful to minors."¹¹⁹ Specifically, COPA mandates both criminal

¹¹⁵ Child Online Protection Act, Pub. L. No. 105-277, 112 Stat. 2681-736 (1998).

¹¹⁶ Congress's first legislative effort was the Communications Decency Act of 1996, Pub. L. No. 104-104, 110 Stat. 133, which regulated obscene and indecent speech on the Internet. The ACLU challenged parts of the CDA on First Amendment grounds and the Supreme Court upheld the preliminary injunction by the district court, holding the "indecent" and "patently offensive" provisions of CDA abridge the freedom of speech protection of the First Amendment. *Reno v. ACLU* [*Reno II*], 521 U.S. 844, 849 (1997). The Court explained that "the interest in encouraging freedom of expression in a democratic society outweighs any theoretical but unproven benefit of censorship." *Id.* at 885.

¹¹⁷ *Reno II*, 521 U.S. at 882.

¹¹⁸ "A person shall be considered to make a communication for commercial purposes only if such person is engaged in the business of making such communication." 47 U.S.C. § 231(e)(2)(A) (2000).

¹¹⁹ Material that is harmful to minors is defined as:

[A]ny communication, picture, image, graphic image file, article, recording, writing, or other matter of any kind that is obscene or that—

(A) the average person, applying contemporary community standards, would find, taking the material as a whole and with respect to minors, is designed to appeal to, or is designed to pander to, the prurient interest;

(B) depicts, describes, or represents, in a manner patently offensive with respect to minors, an actual or simulated sexual act or sexual contact, an actual or simulated normal or perverted sexual act, or a lewd exhibition of the genitals or post-pubescent

and civil penalties for businesses that send online sexually explicit materials and communications that are “harmful to minors,” unless the business requires some proof of adulthood.¹²⁰

Unfortunately, COPA has been held to violate the First Amendment.¹²¹ The American Civil Liberties Union (“ACLU”) first challenged COPA in 1999, alleging that it violated constitutionally protected speech under the Free Speech Clause of the First Amendment and the Due Process Clause of the Fifth Amendment.¹²² The U.S. Court of Appeals for the Third Circuit affirmed the district court’s preliminary injunction, holding that the community standards test in COPA¹²³ rendered the statute unconstitutionally overbroad.¹²⁴ The Supreme Court reversed, and held that “COPA’s reliance on community standards to identify ‘material that is harmful to minors’ does not *by itself* render the statute substantially overbroad for purposes of the First Amendment.”¹²⁵ Upon remand, the Third Circuit again affirmed the district court’s injunction, holding that COPA was not narrowly tailored to serve a compelling governmental interest, was overbroad, and failed to provide the least restrictive means for the government to prevent minors from accessing harmful materials on the Internet.¹²⁶ The Supreme Court granted certiorari to hear the case for the second time and upheld the Third Circuit’s decision, finding that the use of filters is the least restrictive alternative and potentially even more effective than COPA.¹²⁷

The case was once again remanded to the U.S. District Court for the Eastern

female breast; and

(C) taken as a whole lacks serious literary, artistic, political, or scientific value for minor.

Id. § 231(e)(6). Minors are defined as “any person under 17 years of age.” *Id.* § 231(e)(7).

¹²⁰ 47 U.S.C. § 231 (2000).

¹²¹ See *ACLU v. Reno* [*Reno III*], 31 F. Supp. 2d 473 (E.D. Pa. 1999), *aff’d*, *ACLU v. Reno* [*Reno IV*], 217 F.3d 162 (3d Cir. 2000), *vacated*, *Ashcroft v. ACLU* [*Ashcroft I*], 535 U.S. 564 (2002), *remanded to ACLU v. Ashcroft* [*Ashcroft II*], 322 F.3d 240 (3d Cir. 2003), *affirmed by Ashcroft v. ACLU* [*Ashcroft III*], 542 U.S. 656 (2004), *remanded to ACLU v. Gonzales*, 478 F. Supp. 2d 775 (E.D. Pa. 2007).

¹²² *Reno III*, 31 F. Supp. 2d at 477.

¹²³ See 47 U.S.C. § 231(e)(6)(A) (explaining that the average person, applying contemporary community standards, would find that the sexually explicit material appeals to prurient interests).

¹²⁴ *Reno IV*, 217 F.3d at 166.

¹²⁵ *Ashcroft I*, 535 U.S. at 585 (emphasis in original).

¹²⁶ *Ashcroft III*, 542 U.S. at 664 (citing *Ashcroft II*, 322 F.3d at 240, 266–271).

¹²⁷ *Id.* at 667 (finding that adults can control the filters by turning them on or off as necessary; using filters does not criminalize any category of speech thus diminishing the chilling effect on speech; COPA does not prevent minors from accessing harmful foreign materials, which filters can prevent; filters can be applied to all forms of Internet communication including e-mail, not just the World Wide Web).

District of Pennsylvania, which ultimately struck down COPA and issued a permanent injunction against its enforcement.¹²⁸ The court took into consideration the large proportion of sexually explicit material that originates from foreign Web sites¹²⁹ and the availability, ease and cost-efficiency of filtering and blocking software that restricts certain material on Web sites.¹³⁰ The court also looked at the lack of reliable age verification services,¹³¹ as well as the economic burden imposed on Web site owners and the impediment on privacy in requiring payment by credit cards before entering a Web site.¹³² While the court recognized that “protecting children from sexually explicit material on the Web” is a compelling government interest, the court nevertheless held that COPA violates the First and Fifth Amendments because it was not narrowly tailored to further Congress’s interest, was not the least restrictive and most effective alternative in achieving Congress’s compelling interest, and was impermissibly vague and overbroad.¹³³

2. *Children’s Internet Protection Act*

Since libraries began to offer Internet access, librarians have increasingly been confronted with patrons accessing sexually explicit material and pornography on the Internet.¹³⁴ People of all ages search for and expose others to pornographic images by displaying them on library computer screens or printing images on library printers.¹³⁵ As a result, Congress passed one of its first pieces of successful legislation to protect children from harmful online material. Under the Children’s Internet Protection Act (“CIPA”),¹³⁶ public libraries that receive government funding in order to provide Internet access must adopt an Internet safety policy that protects minors from online obscenity, child pornography, and other material harmful to minors.¹³⁷ Congress mandated that the

¹²⁸ *ACLU v. Gonzales*, 478 F. Supp. 2d 775 (E.D. Pa. 2007).

¹²⁹ *Id.* at 789 (denoting that thirty-two percent of adult membership Web sites and fifty-eight percent of free adult sites originate from foreign jurisdictions).

¹³⁰ *See id.* at 789–97.

¹³¹ *Id.* at 800.

¹³² *Id.* at 803–07.

¹³³ *Id.* at 777–78.

¹³⁴ *See United States v. Am. Library Ass’n*, 539 U.S. 194, 200 (2003).

¹³⁵ *Id.*

¹³⁶ Children’s Internet Protection Act, Pub. L. No. 106-554, tit. XVII, 114 Stat. 2763A-335 (2000).

¹³⁷ *See* 20 U.S.C. § 9134(f) (2000 & Supp. IV 2004). CIPA provides that:

No funds made available under this subchapter for a library . . . may be used to purchase computers used to access the Internet, or to pay for direct costs associated with accessing the Internet, for such library unless—

(A) such library—

Internet safety policy include a technology protection measure that restricts or filters obscene or inappropriate content that a computer operator has set to “blocked” status.¹³⁸ To prevent First Amendment challenges to constitutionally protected speech, CIPA provides a caveat for adult use, allowing a library administrator or supervisor to disable the filters for adult patrons who need to access blocked sites “for bona fide research or other lawful purposes.”¹³⁹

In *United States v. American Library Ass’n*, the Supreme Court rejected a First Amendment challenge to CIPA.¹⁴⁰ The Court held that CIPA does not violate the Free Speech Clause, finding CIPA to be a valid exercise of Congress’s spending power, imposing no unconstitutional conditions on public libraries.¹⁴¹ While the dissent focused on the over-inclusiveness of filter usage,¹⁴² the Supreme Court majority reiterated how patrons may request, without being required to provide an explanation, that librarians disable the filters with respect to certain sites or when necessary to conduct certain research.¹⁴³ The Court stressed that the traditional mission of libraries is to provide an array of beneficial and interesting material to the community,¹⁴⁴ veering away from bestowing “universal coverage.”¹⁴⁵ The Internet as a research tool is “no more than a technological extension of the book stack.”¹⁴⁶ Since most libraries exclude pornography from their print collections, the Court rationalized that forbidding Internet pornography should not be treated any differently.¹⁴⁷ Thus it is

(i) has in place a policy of Internet safety for minors that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are—

- (I) obscene;
- (II) child pornography; or
- (III) harmful to minors; and

(ii) is enforcing the operation of such technology protection measure during any use of such computers by minors

Id. § 9134(f)(1).

¹³⁸ *Am. Library Ass’n*, 539 U.S. at 201 (citing 47 U.S.C. § 254(h)(7)(I) (2000)).

¹³⁹ 20 U.S.C. § 9134(f)(3) (2000).

¹⁴⁰ *Am. Library Ass’n*, 539 U.S. at 194.

¹⁴¹ *Id.*

¹⁴² *Id.* at 220–31 (Stevens, J., dissenting) (arguing that filters would fail to block all obscene material and could block lawful material, appropriate for adults and minors to view).

¹⁴³ *Id.* at 209.

¹⁴⁴ *Id.* at 203. “Public libraries pursue the worthy missions of facilitating learning and cultural enrichment.”

¹⁴⁵ *Id.* at 204; see also W. KATZ, COLLECTION DEVELOPMENT: THE SELECTION OF MATERIALS FOR LIBRARIES 6 (1980) (“The librarian’s responsibility . . . is to separate out the gold from the garbage, not to preserve everything.”).

¹⁴⁶ S. REP. NO. 106-141, at 7 (1999).

¹⁴⁷ *Am. Library Ass’n*, 539 U.S. at 208.

duly reasonable that Congress insist that public funds be spent to fulfill the library's traditional mission of providing appropriate educational and informative material to the public.¹⁴⁸

B. Protecting Children from Sexual Solicitations on the Internet

1. *Deleting Online Predators Act*

In response to the increasing national awareness of sexual solicitations on social networking sites such as MySpace, Congress has proposed various pieces of legislation. For example, Representative Mike Fitzpatrick (R-PA) introduced the Deleting Online Predators Act ("DOPA"), a bill that would amend the Communications Act of 1934, expanding the requirements of CIPA.¹⁴⁹ DOPA aims to use filtering and blocking software to restrict access to chat rooms and commercial social networking sites at federally funded public schools¹⁵⁰ and libraries.¹⁵¹ While DOPA fails to define "chat rooms" or "social networking sites," deferring to the Federal Communications Commission for such a determination,¹⁵² lawmakers intended for this legislation to address sites such as MySpace, Friendster, and Facebook.¹⁵³ Similar to CIPA's filtering caveat, DOPA would allow schools to disable the restrictions for adults or minors with adult supervision, for educational purposes.¹⁵⁴ DOPA also requires the Federal Trade Commission to issue a consumer alert and establish a Web

¹⁴⁸ *See id.* at 211–12.

¹⁴⁹ Deleting Online Predators Act of 2006 (DOPA), H.R. 5319, 109th Cong. (as referred to S. Comm. on Commerce, Sci., and Transp., July 27, 2006) (R. 13.2(a) unenacted resolutions). The bill was proposed on May 9, 2006 and was passed by The House of Representatives in July 2006, but died in the Senate. The bill was reintroduced by Rep. Mark Kirk (R-IL) in the House on February 16, 2007. *See* H.R. 1120, 110th Cong. (2007). Senator Ted Stevens (R-Alaska) introduced the Protecting Children in the 21st Century Act on January 4, 2007, which incorporates DOPA. *See* S. 49, 110th Cong. (2007).

¹⁵⁰ DOPA would require a school to certify that it "protects against access to a commercial social networking website or chat room unless used for an educational purpose with adult supervision." H.R. 5319 § 3(a)(i)(II).

¹⁵¹ DOPA would require a library to certify that it "protects against access by minors without parental authorization to a commercial social networking website or chat room, and informs parents that sexual predators can use these websites and chat rooms to prey on children." *Id.* § 3(b)(i)(II).

¹⁵² *Id.* § 3(c) (mandating that the Federal Communications Commission define the terms "social networking website" and "chat room" after considering several enumerated factors).

¹⁵³ *See* Declan McCullagh, *Chat Rooms Could Face Expulsion*, CNET NEWS, July 27, 2006, http://news.com.com/Chat+rooms+could+face+expulsion/2100-1028_3-6099414.html.

¹⁵⁴ *See* H.R. 5319 § 3(d).

site to educate parents and teachers about the dangers of the Internet.¹⁵⁵

Proponents of the bill argue that DOPA is a well-intentioned piece of legislation and that the restrictions are necessary to protect children from online predators.¹⁵⁶ Social networking sites “have become a haven for online sexual predators who have [transformed] the Web [into] their own virtual hunting ground.”¹⁵⁷ Moreover, by restricting access at schools and libraries, DOPA will help meet parents’ expectations of sending their children to safe learning environments.¹⁵⁸

Opponents have criticized the bill as being overbroad and ambiguous, preventing access to thousands of commercial Web sites that allow personal profiles and interactive communication among users.¹⁵⁹ DOPA adversaries claim that by restricting access to schools and libraries receiving federal funding, DOPA fails to provide an effectual remedy for home environments and private schools.¹⁶⁰ The American Library Association (“ALA”), one of the largest opponents of DOPA, offers the following reasons for its opposition: (1) DOPA’s overbreadth would block access to valuable Web sites; (2) DOPA ignores the benefits of interactive, collaborative Web sites; (3) education of online applications and unsafe practices is more effective than blocking access; (4) local laws, rather than federal laws, should be addressing these problems; (5) by blocking access to all interactive Web sites, DOPA unfairly denies members of indigent communities access to appropriate content as they do not have computers or Internet access at home.¹⁶¹

In addition to DOPA’s restricted access to social networking sites at schools and libraries, legislators in Georgia have proposed a bill to ban all minors seventeen years of age and under from creating or maintaining a social networking

¹⁵⁵ See *id.* § 4 (explaining that the FTC should alert the community about online sexual predators on social networking sites and chat rooms and the ease by which predators access children’s personal information).

¹⁵⁶ Rep. Judy Biggert (R-IL) mentioned that children are taught not to talk to strangers; however, the Internet increases the temptation and facilitates the ability to interact with strangers. 152 CONG. REC. H5889 (daily ed. July 26, 2006). Rep. Frederick Upton (R-MI) referenced the “stalking ground” that social networking sites have become, as predators have access to a wealth of information from online personal profiles posted on networking sites. *Id.* at H5884.

¹⁵⁷ *Id.* at H5886 (statement of Rep. Fitzpatrick).

¹⁵⁸ *Id.* at H5889 (statement of Rep. Biggert).

¹⁵⁹ DOPA was intended to target MySpace, but the bill may sweep unnecessarily broadly to thousands of commercial Web sites that allow users to post personal profiles, including Slashdot (permits public profiles), Amazon (allows author profiles and personal postings), RedState.com (allows public profiles) and News.com (allows profiles of favorite games and music). McCullagh, *supra* note 153.

¹⁶⁰ See 152 CONG. REC. H5884 (statement of Rep. Markey).

¹⁶¹ *Id.* at H5885 (letter from the ALA to the House).

Web site without parental permission.¹⁶² If enacted, this Act would effectively raise the minimum age requirements for member enrollment. The bill would also force sites such as MySpace and Facebook to allow unlimited parental access to their children's pages.¹⁶³

2. Adam Walsh Child Protection and Safety Act of 2006

In the summer of 1981, a six year-old boy named Adam Walsh was abducted from a department store and brutally murdered.¹⁶⁴ Since the abduction of their son, John and Reve Walsh have helped prevent attacks on children, have advocated for greater protection from child exploitation, and have helped bring child predators to justice. On July 27, 2006, Congress passed the Adam Walsh Child Protection and Safety Act (the "Adam Walsh Act") "to protect children from sexual exploitation and violent crime, to prevent child abuse and child pornography, to promote Internet safety, and to honor the memory of Adam Walsh and other child crime victims."¹⁶⁵ The Act "represents the most extensive rewriting of federal laws relating to child pornography, sex offender registration and child exploitation in a decade."¹⁶⁶

Among a comprehensive list of Internet-related laws, the Adam Walsh Act implements a "National Sex Offender Registry" by incorporating all state sex offender registry data into one publicly-available database,¹⁶⁷ and imposes severe penalties for sex offenders who fail to register.¹⁶⁸ Such a registry enables law enforcement to better track sex offenders crossing state lines, gives parents necessary information to protect children in their respective communities, and helps social networking sites delete profiles of registered sex offenders from their sites. The Adam Walsh Act expands regional task forces to prevent online predators from reaching children and develops extensive training for federal, state, and local law enforcement to better respond to incidents of online sexual solicitation.¹⁶⁹ The Adam Walsh Act also authorizes the Attorney General, in consultation with the National Center for Missing and Exploited Children ("NCMEC"), to implement a public awareness campaign to educate children,

¹⁶² S.B. 59, 2007 Gen. Assem. (Ga. 2007).

¹⁶³ *Id.*

¹⁶⁴ America's Most Wanted, The Unknown Adam Walsh Killer, <http://www.amw.com/fugitives/case.cfm?id=39789> (last visited Nov. 8, 2007).

¹⁶⁵ Adam Walsh Child Protection and Safety Act of 2006, PL 109-248, 120 Stat. 587.

¹⁶⁶ McCullagh, *supra* note 13.

¹⁶⁷ 42 U.S.C.A. §§ 16,918-20 (West Supp. 2007).

¹⁶⁸ 18 U.S.C.A. § 2250 (West Supp. 2007) (providing that sex offenders who fail to register "shall be fined under this title or imprisoned not more than 10 years, or both").

¹⁶⁹ 42 U.S.C.A. §§ 16,942 & 16,944.

parents, and community leaders about online protection measures for children.¹⁷⁰ Lastly, the Adam Walsh Act mandates fines and imprisonment for those who use misleading words or images on the Internet to deceive Internet users into viewing obscenities.¹⁷¹

3. *Stop the Online Exploitation of Our Children Act of 2006 and KIDS Act of 2007*

Implementing his ambition to bolster prosecutions and to enhance online protection for children, Senator John McCain introduced the Stop the Online Exploitation of Our Children Act of 2006 (“Stop Act”).¹⁷² The Stop Act’s main purpose is to enhance the reporting process of child exploitation by online service companies¹⁷³ and to ensure that sex offenders register information relevant to their online activities, including their e-mail addresses, instant messaging, and chat room identifiers.¹⁷⁴ The rapid development and expansion of digital

¹⁷⁰ *Id.* § 16,986.

¹⁷¹ 18 U.S.C.A. § 2252C (providing that violators shall be fined and imprisoned for a maximum of ten years generally or twenty years with respect to deceiving minors).

¹⁷² Stop the Online Exploitation of Our Children Act of 2006, S. 4089, 109th Cong. (2006).

¹⁷³ The Stop Act defines “online service” to include:

- (i) Internet content hosting service;
- (ii) domain name registration service;
- (iii) Internet search service;
- (iv) Internet social networking site, chat room, message board, or any other similar service using the Internet;
- (v) Internet service that provides e-mail, instant messaging, or any other similar service using the Internet;
- (vi) electronic communication service;
- (vii) Internet service provider (including any wireless carrier that provides Internet access);
- (viii) Internet image or video sharing service; and
- (ix) Remote computing service

Id. § 2.

¹⁷⁴ *Id.* at pmbl. The Stop Act will better define and expand the type of online companies obligated to report relevant information and will require online service providers to report a defined set of information about the perpetrator, such as the individual’s e-mail address, screen name, Web site address, physical address, and IP address from which (s)he connected to the Internet. The Stop Act will affix reporting obligations to the federal criminal code, and as a consequence, will impose higher penalties to companies who willfully or negligently fail to report. *See id.* § 2(a) (amending 18 U.S.C. 2257 to include subsection (c) Contents of Report). Online service providers will be required to preserve all data they report to NCMEC for at least 180 days and forbid the providers from destroying any other information related to child pornography. *See id.* (amending 18 U.S.C. 2257 to include subsection (i) Evidence Preservation). The Stop Act will also encourage expansion of online child protection by permitting NCMEC to share reports and cooperate with foreign law enforcement agencies, as well as authorize \$20.3 million for grants to the Internet Crimes Against

technology has become a catalyst for child exploitation on the Internet, sometimes resulting in brutal and aggressive crimes of child sexual abuse, and pornographic images of very young children.¹⁷⁵ Internet service providers must report any such violation to the CyberTipline at NCMEC, which in turn forwards this information to federal and state law enforcement for further prosecution.¹⁷⁶

With similar intentions of removing sex offenders from chat rooms and social networking sites, Senators John McCain and Charles E. Schumer recently proposed the Keeping the Internet Devoid of Sexual-Predators Act of 2007 (“KIDS Act”).¹⁷⁷ The Act would bar sexual predators from online communities in order to create a safer environment for children.¹⁷⁸ This invaluable new piece of legislation will “require registered sex offenders to submit e-mail addresses, instant message addresses or other identifying Internet information to law enforcement to be placed on the National Sex Offender Registry.”¹⁷⁹ Social networking Web sites would be able to utilize sex offender listings to ban sexual predators from its sites.¹⁸⁰ MySpace and Facebook have both already endorsed the KIDS Act.¹⁸¹

V. ANALYZING CURRENT POLICY AND LEGAL INITIATIVES AND LOOKING TO FUTURE ALTERNATIVES IN A NATIONAL PUBLICITY CAMPAIGN

A. Successful Interventions

1. Social Networking Sites Self-Regulate—MySpace Expands Security

Children Task Forces (a \$5 million increase). Press Release, U.S. Senator John McCain, McCain Introduces Bill to Stop the Online Exploitation of Our Children (Dec. 6, 2006), available at http://mccain.senate.gov/press_office/view_article.cfm?ID=774.

¹⁷⁵ Press Release, U.S. Senator John McCain, *supra* note 174 (describing that eighty-three percent of offenders from a recent survey were caught with images of children twelve years old or younger, thirty-nine percent of offenders were caught with images of children younger than six years old and nearly twenty percent had images of children younger than three years of age).

¹⁷⁶ KLAIN ET AL., *supra* note 9, at 17.

¹⁷⁷ Keeping the Internet Devoid of Sexual Predators Act of 2007, S. 431, 110th Cong. (2007).

¹⁷⁸ Press Release, U.S. Senator John McCain, Senators McCain and Schumer Introduce KIDS Act of 2007 (Jan. 30, 2007), available at http://mccain.senate.gov/press_office/view_article.cfm?id=829.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

Measures

Since *Doe v. MySpace*, where the thirteen year-old plaintiff posed as an eighteen year-old,¹⁸² family protection groups have criticized MySpace for its failure to provide safeguards that would confirm a user's age.¹⁸³ This inadequacy has created the potential for children younger than fourteen to enroll on the site.¹⁸⁴ Unlike adults, whose identities can be confirmed by public records, no such records exist for children.¹⁸⁵ As a result, age verification software for children is highly impracticable.¹⁸⁶ In an effort to overcome age deception, MySpace recently hired a former Department of Justice prosecutor as its security officer to enact new procedures to limit underage access to its site.¹⁸⁷ It also assigned one-hundred employees (approximately one-third of its employee force) with the task of security and customer care.¹⁸⁸ For instance, MySpace now "proactively investigates possible underage users" and automatically deletes all users under the age of fourteen found to be misrepresenting their age.¹⁸⁹ MySpace also recently developed free parental notification software, "Zephyr," which entitles parents to access limited information concerning a child's username, age, and location.¹⁹⁰ While parents would be restricted from accessing the content of a child's password-protected profile, e-mail or instant messages, parents would have access to the username, age, and location listed on their child's profile.¹⁹¹ Zephyr is a useful tool that balances a parent's concern for protecting children from engaging in risky behavior with a child's desire for privacy. While some children may avoid detection altogether by creating MySpace profiles on computers outside the home,¹⁹² it takes only one login to their MySpace profile from a computer running the Zephyr software to obtain the requisite information.¹⁹³

To protect age-appropriate young members from online predators, MySpace

¹⁸² *Doe v. MySpace*, 474 F. Supp. 2d 843 (W.D. Tex. 2007).

¹⁸³ *Judge Dismisses Texas Sexual-Assault Lawsuit Against MySpace*, FOX NEWS, Feb. 19, 2007, <http://www.foxnews.com/story/0,2933,252155,00.html>.

¹⁸⁴ *See id.*

¹⁸⁵ Anick Jesdanum, *Age Verification at Social-Network Sites Could Prove Difficult*, USATODAY, July 14, 2006, http://www.usatoday.com/tech/news/internetprivacy/2006-07-17-age-check-proves-difficult_x.htm.

¹⁸⁶ *Id.*

¹⁸⁷ McCullagh, *supra* note 153.

¹⁸⁸ *Id.*

¹⁸⁹ A Guide to MySpace for Parents with Teens, *supra* note 80.

¹⁹⁰ *See* Lewis, *supra* note 104.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ Julia Angwin, *MySpace Moves to Give Parents More Information*, WALL ST. J., Jan. 17, 2007, at B1.

default provisions for users under sixteen years of age are set to restrict viewership of their profiles only to authorized friends on their contact lists.¹⁹⁴ In addition, adults over eighteen are blocked from contacting members under sixteen unless the adult member can verify the young member's last name or e-mail address,¹⁹⁵ information that is not readily posted on a user's page.¹⁹⁶

To further its commitment to online safety, MySpace also bans sex offenders from its site through a new program called Sentinel Safe, a national database of sex offender registry data from all fifty states.¹⁹⁷ Sentinel Safe advances the goals provided by the Stop Act and KIDS Act, allowing MySpace to use one searchable database to cross-reference users with those in the database in order to remove registered sex offenders from the MySpace community.¹⁹⁸ Unfortunately, one drawback to such a solution is the possibility that sex offenders will create false names or false e-mail addresses in order to find a loophole into the system.

Former Massachusetts Attorney General Tom Reilly has also offered a plethora of solutions to enable MySpace and other social networking sites to improve safety and security.¹⁹⁹ He demands that MySpace increase its minimum age requirement from fourteen to eighteen, claiming MySpace fails to provide safeguards to protect children from sexually explicit activity.²⁰⁰ However, such a proposal appears unrealistic considering the extensive teenage population on MySpace²⁰¹ and the positive social and educational benefits that MySpace offers to youths.²⁰² Reilly also proposes that every MySpace page have a "Report Inappropriate Content" link where members can report inappropriate behavior or sexually explicit content to which MySpace task forces will respond within twenty-four hours.²⁰³ He also suggests that MySpace implement filters that block sexually explicit or violent content, remove all inappropriate advertisements, and offer free downloadable software that would

¹⁹⁴ A Guide to MySpace for Parents with Teens, *supra* note 80.

¹⁹⁵ *Id.*

¹⁹⁶ MySpace prohibits members from providing "telephone numbers, street addresses, last names, URLs or email addresses" as well as false or misleading information to other members. MySpace Terms and Conditions (Apr. 11, 2007), <http://www.MySpace.com/Modules/Common/Pages/TermsConditions.aspx>.

¹⁹⁷ Truman Lewis, *MySpace Builds Database to Target Predators*, CONSUMER AFFAIRS, Dec. 6, 2006, http://www.consumeraffairs.com/news04/2006/12/myspace_sentinel.html.

¹⁹⁸ *Id.*

¹⁹⁹ *Massachusetts Puts Heat on MySpace.com*, CONSUMER AFFAIRS, May 5, 2006, http://www.consumeraffairs.com/news04/2006/05/ma_myspace.html.

²⁰⁰ *Id.*

²⁰¹ Sixty-one percent of teenagers under age eighteen use social networking sites. Porter, *supra* note 78, at 16.

²⁰² See discussion *infra* Part III.A.

²⁰³ *Massachusetts Puts Heat on MySpace.com*, *supra* note 199.

enable parents to block the use of MySpace entirely.²⁰⁴

2. Prosecutorial Remedies

The federal government is an enormous asset to mitigating the online luring pandemic troubling society. Prosecutors rely on a lucrative piece of legislation, the Adam Walsh Act, which makes it a federal crime to persuade, induce, entice, or coerce anyone under the age of eighteen into sexual activity of any kind, including via the Internet.²⁰⁵ The Adam Walsh Act does not require perpetrators to cross state lines and merely requires a showing of some *intent* to solicit a minor.²⁰⁶

The Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act (“PROTECT Act”)²⁰⁷ enhanced the ability of law enforcement to investigate and prosecute cases of child sexual exploitation on the Internet.²⁰⁸ In particular, the PROTECT Act expanded the definition of child pornography from any visual depiction that “*appears to be*, of a minor engaging in sexually explicit conduct” to any visual depiction that “*is indistinguishable from*, that of a minor engaging in a sexually explicit conduct.”²⁰⁹ The major implication of this change is that virtual child pornography is now deemed a crime.

Undercover operations have been particularly effective approaches in helping to combat sexual exploitation of children online. Launched in 1995, the Sexual Assault Felony Enforcement (“SAFE”) team is a multi-agency task force of agents who pose as minors in Internet chat rooms and social networking sites and talk online with potential sexual predators.²¹⁰ Operation Innocent Images furthered this goal and targeted all individuals who travel across state lines to solicit children or produce or distribute child pornography.²¹¹ Similar to SAFE, Operation Innocent Images agents²¹² pose as children, but may also

²⁰⁴ *Id.*

²⁰⁵ See discussion *infra* Part IV.B.2.

²⁰⁶ See *id.*

²⁰⁷ Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003, Pub. L. No. 108-21, 117 Stat. 650.

²⁰⁸ *Congress Scales Back Provisions of Kid Porn Bill Addressing Sentencing*, 71 U.S. L. Wk. 2664 (2003).

²⁰⁹ Compare 18 U.S.C. § 2256(8)(B) (2000), with 18 U.S.C.A. § 2256(8)(B) (West Supp. 2007).

²¹⁰ The SAFE team is composed of federal, state, and local investigators including law-enforcement agencies such as the United States Attorney’s Office, FBI, United States Customs Service and United States Postal Inspection Service. KLAIR ET AL., *supra* note 9, at 48.

²¹¹ *Id.* at 46.

²¹² Approximately two-thirds of Operation Innocent Images agents are assigned from the FBI while the remainder are agents assigned from their local law-enforcement agencies. *Id.*

pose as other sexual predators in order to investigate more extensively and gather pertinent information related to the perpetrator.²¹³

Extending beyond actual law enforcement, volunteer organizations such as Perverted-Justice.com also monitor online sexual solicitors. Volunteers pose as underage children, enter chat rooms, and wait for predators to initiate conversation, often quickly becoming deluged with messages.²¹⁴ These carefully trained volunteers monitor the conversations for sexual solicitations and once a predator shows clear intent or interest in performing pedophilia beyond the walls of a chat room, volunteers verify the predator's intentions, often by having a volunteer with a child-like voice contact the predator.²¹⁵ Relevant information about the "wannabe pedophiles" is then posted on chat logs on the Perverted-Justice.com site to inform society about the dangerous predators lurking in cyberspace.²¹⁶ Perverted-Justice works in conjunction with law enforcement, who regularly use its information and files, and who successfully convicted forty perpetrators between June of 2003 and January 1, 2006.²¹⁷

Project Safe Childhood, a Department of Justice initiative launched in 2006, combines the effort of federal, state, and local law enforcement to "protect our children as they navigate the Internet."²¹⁸ In particular, it aims to "investigate and prosecute crimes against children facilitated through the Internet or other electronic media and communications devices."²¹⁹ The initiative relies on the collaboration of law enforcement, every United States Attorney, and the Internet Crimes Against Children ("ICAC") taskforce program²²⁰ to further this goal.²²¹

Lastly, NCMEC's CyberTipline has become the "9-1-1" of the Internet and one of the most important tools for law-enforcement and families, bridging the

²¹³ *Id.*

²¹⁴ The PeeJ Guide, <http://www.perverted-justice.com/guide> (last visited Nov. 8, 2007).

²¹⁵ See McCune, *supra* note 17, at 503 n.2.

²¹⁶ The PeeJ Guide, *supra* note 214. Perverted-Justice posts chat logs of "wannabee pedophiles," those who have not yet committed pedophilic acts but constitute an imminent threat to the community. *Id.*

²¹⁷ See McCune, *supra* note 17, at 503 n.2.

²¹⁸ Press Release, Dept. of Justice, Fact Sheet: Department of Justice Project Safe Childhood Initiative (Feb. 15, 2006), available at http://www.usdoj.gov/opa/pr/2006/February/06_opa_081.html.

²¹⁹ *Id.* The initiative is comprised of five key components: (1) "integrated federal, state, and local efforts to investigate and prosecute child exploitation cases;" (2) "major case coordination by the Criminal Division;" (3) "increased federal involvement in child pornography and enticement cases;" (4) "training of federal, state and local law enforcement;" and (5) "community awareness and educational programs." *Id.*

²²⁰ The ICAC program is a "national network of 46 regional task forces funded by the Department's Office of Justice Programs." *Id.*

²²¹ *Id.*

gap between those who report crimes and law enforcement who prosecute crimes.²²² The CyberTipline “serve[s] as the national online clearinghouse for tips and leads about child sexual exploitation.”²²³ Between its inception on March 9, 1998 and the end of 2005, the CyberTipline successfully received over 360,000 reports.²²⁴

B. Publicizing and Advertising Campaigns: The Next Step

Social networking sites and law enforcement have developed and implemented various solutions to protecting children online. However, while social networking sites have taken measures to overcome Internet crime, such sites also have limitations. For instance, perpetrators may find loopholes in the system and a ways to infiltrate sites’ new protective barriers. Also, networking sites’ reliance on members reporting crimes will cause delayed responses. By the time a member becomes aware of such a crime, such a member may already have been victimized, or it may just take time for the proper authorities to take protective or remedial action.

Prosecutorial solutions also have certain drawbacks. For instance, the process of finding online perpetrators is lengthy and resource-consuming. Even if a perpetrator is located, prosecutors must still build their case, prove a crime beyond a reasonable doubt, and then once proven, perpetrators must still be sentenced. In addition, the prosecutorial function is essentially retroactive, meaning the punitive measures set forth are not necessarily preventing crimes, but reacting to children who have already been hurt in some way.

The ultimate solution, therefore, is a comprehensive approach. Building upon the successful aspects of social networking site interventions and prosecutorial remedies, society will be able to utilize all viable successes and implement new solutions, such as a national publicity campaign. Throughout the nation’s history, publicity campaigns have been highly successful at increasing awareness of critical dangers to communities and at significantly ameliorating social problems. This section will analyze the success of three campaigns addressing various national dilemmas over the years and will analogize to offer solutions regarding the social epidemic of online predators.

²²² WOLAK ET AL., *supra* note 5, at 23. Congress created the CyberTipline to “allow persons to report online (and via toll-free telephone) specific sexual crimes committed against children.” *Id.*

²²³ *Id.*

²²⁴ *Id.* (noting that between 2006 and 2005, NCMEC received 111,686 reports of child pornography, 3,755 reports of online enticement, 2,067 reports of child sexual molestation, 882 reports of misleading domain names, 719 reports of child victims of prostitution, 663 reports of unsolicited obscene material sent to a child, and 302 reports of child sex tourism).

1. Successful Historical Advertising Campaigns

Launched in 1944, Smokey the Bear and his slogan “Only You Can Prevent Forest Fires” has been the longest running campaign in history.²²⁵ At its commencement, nine out of ten forest fires were caused by human accidental encounters; thus the campaign aimed to educate the public on utilizing safer tactics in the forest in order to prevent forest fires.²²⁶ During the 1950s and 1960s, the Ad Council featured Smokey the Bear with famous celebrities on radio advertisements, which attracted a considerable amount of public recognition.²²⁷ As a consequence, Congress repositioned Smokey under the Secretary of Agriculture’s control to further forest fire prevention education.²²⁸ This successful campaign drastically reduced the number of forest acres destroyed annually from 22 million to 4 million.²²⁹

McGruff the Crime Dog is another popular celebrity character who has become a symbol depicting crime prevention. In 1979, McGruff’s “Take a Bite Out of Crime” campaign helped overcome the overwhelming apathy and fear that hindered the public from addressing high crime rates.²³⁰ Initiated with small steps, such as encouraging citizens to lock their doors and create neighborhood watch groups, McGruff’s crime-watch campaign has empowered citizens to reduce theft and disorder in communities.²³¹ By 1986, nineteen million people had actively engaged in crime prevention and one hundred thousand neighborhoods had implemented some form of neighborhood watch.²³² Property crimes reached an all-time low in 1984, attributed to community collaboration as a result of the campaign.²³³ The McGruff campaign expanded in 1985 to target kidnapping, and again in 2001 to target drug abuse prevention.²³⁴ Children and adults responded in overwhelming capacities.²³⁵

The Drunk Driving Prevention campaign was launched in 1983 by the Ad Council and the National Highway Traffic Safety Prevention Administration at

²²⁵ Ad Council, Forest Fire Prevention—Smokey Bear (1994-Present), <http://www.adcouncil.org/default.aspx?id=129> (last visited Nov. 8, 2007).

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ Ad Council, Crime Prevention—McGruff the Crime Dog (1979 – present), <http://www.adcouncil.org/default.aspx?id=136> (last visited Nov. 8, 2007).

²³¹ *Id.*

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.*

²³⁵ *Id.* (stating that nine out of ten teenagers and adults who participated in crime prevention activities trusted McGruff and ninety-seven percent of children reported they would act on McGruff’s messages).

a period when society's attitude toward drinking and driving was naïve and permissive.²³⁶ The initial tagline—"Drinking & Driving Can Kill A Friendship"—originally targeted teenagers and young adults.²³⁷ The campaign successfully created a conscientious community who became aware of the dangers of drunk driving and who began to refrain from driving while intoxicated.²³⁸ Car fatalities caused by alcohol decreased by twenty-five percent between 1980 and 1990.²³⁹ Targeting friends became the next focus and in 1990 the "Friends Don't Let Friends Drive Drunk" campaign was initiated,²⁴⁰ resulting in a ten percent decrease in the number of people killed by drunk drivers between 1990 and 1991.²⁴¹ The shift from an apathetic and uninformed position on the grave consequences of drunk driving, to a thirty-percent reduction in drunk driving accidents, shows how successful the campaign has been.²⁴²

2. Campaigns to Target Online Sexual Exploitation

Sexual predators have existed for decades and prior campaigns focused on the threat of "playground predators" to prevent child molestation.²⁴³ As Internet social networking sites are becoming a timely concern, society must tailor its response with a related but targeted message. One of the first public service campaigns to address the issue is the "behind every picture there's pain" program, which aims to raise public awareness and impede the expansion of online child pornography.²⁴⁴ While still in its pioneer phases, the relevant advertising agencies seek to promote the message of victimized youth throughout the media.²⁴⁵ The goal is to inform the public of the nature of these horrific activities, as well as to educate communities about what they can do to "cleanse the Internet of this filth."²⁴⁶

Raising awareness and providing proactive solutions are the essential objec-

²³⁶ Ad Council, Drunk Driving Prevention (1983 – present), <http://www.adcouncil.org/default.aspx?id=137> (last visited Nov. 8, 2007).

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ FINKELHOR ET AL., *supra* note 6, at 37; *see also* McCune, *supra* note 17, at 506 (discussing the common "don't talk to strangers" rule that most youth apply in the real world but often fail to utilize in cyberspace).

²⁴⁴ Wiresafety, Behind every Picture..., http://wiresafety.org/special_programs/behind_every_picture/index.html (last visited Nov. 8, 2007).

²⁴⁵ *Id.*

²⁴⁶ *Id.*

tives in creating a new model to protect today's "Internet children." To tackle the goal of education, it will be necessary to publicize, using pamphlets, Web sites, and public service announcements, the array of offensive Internet behavior that occurs on youth-populated social networking sites. Campaigns must stress that a cookie-cutter definition of an online predator does not exist.²⁴⁷ As a result, society must focus on a predator's dangerous behavior rather than attempt to classify a predator into a well-defined stereotype.²⁴⁸ The public must also become aware of the fact that adults who produce and distribute sexually explicit pictures of minors are committing serious violations of federal child pornography law.²⁴⁹

Encouraging community collaboration and pro-social behavior has historically been an effective way to establish positive social norms.²⁵⁰ Similar goals of empowering communities with the ability to instill change will help enhance Internet accountability in the context of online sexual predators. A successful campaign will not only provide the necessary information to increase the knowledge base of this cyber-dilemma, but it will empower home, school, and community environments with a means to implement proactive changes. Youth education programs can expand their current curricula and incorporate effective strategies on how to interact safely on the Internet. Just as Smokey or McGruff, through their use of catchy slogans and friendly characters, have been able to engage the youth to reduce forest fires and crime, a similar cyber-character can teach children how to effectively utilize social networking sites and online instant messaging to socialize, learn, and remain safe from online predators. In addition, society can encourage youths to avoid speaking with strangers online by expanding the "don't talk to strangers" rule into the cyber-world.

Effective Internet safety programs are gradually developing. NetSmartz, run by the NCMEC, targets millions of homes and classrooms with its Internet safety education curriculum.²⁵¹ The goal of Netsmartz is to raise awareness about sexual solicitation on the Internet and to encourage parents to be involved in their children's Internet uses.²⁵² Netsmartz offers both online and offline learning workshops to children, parents, guardians, educators, and law enforcement that teach safe practices on the Internet.²⁵³ In targeting children,

²⁴⁷ FINKELHOR ET AL., *supra* note 6, at 37.

²⁴⁸ *Id.*

²⁴⁹ WOLAK ET AL., *supra* note 5, at 60.

²⁵⁰ *Id.*

²⁵¹ NetSmartz, About Us, <http://www.netsmartz.org/overview/aboutus.htm> (last visited Nov. 8, 2007).

²⁵² *Id.*

²⁵³ *Id.*

NetSmartz provides age-appropriate, interactive animated online lessons to entertain children while they learn, and can be presented to children individually at home or simultaneously to an entire group at school.²⁵⁴

Moreover, the Ad Council partnered with the NCMEC and the U.S. Department of Justice to promote their campaign, “Think Before You Post,” which targets teenage girls.²⁵⁵ The goal of this campaign is to deter teenage girls from posting personal information or photographs of themselves that could put them in danger of exploitation.²⁵⁶ The public service announcements (“PSAs”), which include TV, radio, magazine, and Web advertising, focus on educating female youth that the Internet is not a “private place” and that posted information can be accessed by anyone, including “ill-intentioned” perpetrators.²⁵⁷ The PSAs also direct youth to the CyberTipline to report incidents of abuse or to obtain further information regarding Internet safety.²⁵⁸

Unfortunately, there is a minor population of youth who take risks on the Internet by “engaging in sexual conversations, seeking out X-rated sites, posting pictures of themselves online, or harassing other Internet users.”²⁵⁹ Campaigns should offer simple and comprehensible steps for parents to take at home in order to minimize such risk-taking behavior. For instance, parents should talk with their children about with whom they communicate with online. Parents and children should visit social networking sites together, with parents remaining open and honest about the risks of sexually explicit material and of predators.²⁶⁰ Particularly when targeting teenagers, parents should acknowledge their children’s independence and developmental needs, while educating them about the dangers social networking sites can present. For instance, parents can encourage youths not to respond to any messages which may be disheartening, hurtful, or threatening.²⁶¹ Actively involving teenagers in publicity campaigns will effectively empower them to implement suggested proposals, especially with teenagers who often reject suggestions as an inva-

²⁵⁴ How to Use NetSmartz, <http://www.netsmartz.org/overview/howtousens.htm> (last visited Nov. 8, 2007).

²⁵⁵ Press Release, Ad Council, The Ad Council Partners with the U.S. Department of Justice and National Center for Missing & Exploited Children to Help Prevent Online Sexual Exploitation (Mar. 23, 2007), *available at* <http://www.adcouncil.org/newsDetail.aspx?id=192>.

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ FINKELHOR ET AL., *supra* note 6, at 30. Eight percent of youths admitted voluntarily accessing a pornographic site. Five percent had posted a picture of themselves on a Web site and seven percent had willingly talked about sex with a stranger online. *Id.* at 32.

²⁶⁰ *See* WOLAK ET AL., *supra* note 5, at 59–62.

²⁶¹ *Id.*

sion of privacy or control.

Additional viable solutions to minimize risks on social networking sites include encouraging *all* youth members (not only fourteen and fifteen year-olds, as mandated by MySpace) to utilize the privacy settings on a member's page and to restrict access only to those who are posted "friends" or those who know the youth personally.²⁶² Youths should never divulge personal information or arrange to meet online acquaintances in person without first obtaining parental permission, and they should block all instant messages or wall postings received from strangers.²⁶³ Youths should also choose gender-neutral, ambiguous screennames that hide one's identity and location.²⁶⁴

Teachers and professionals who interact with youths, such as school psychologists and guidance counselors, should receive specialized training in sexual exploitation prevention strategies. Such training should be mandated for all future educators by school district education policies or as a prerequisite to obtaining a state teaching certificate. Such a requirement could also apply retroactively to current professionals by implementing required courses taught, for instance, by experts from NCMEC. Encouraging parents to seek such training would be ideal. School districts or community organizations should thus provide access and opportunity for parents to become educated in cyber-technology and sexual exploitation on the Internet.

Campaigns should also focus on the importance of reporting incidents of sexual solicitations, unwanted exposures to pornography, and harassment. Internet service providers are currently mandated under federal law to report violations to the CyberTipline and the Stop Act will advance such reporting requirements.²⁶⁵ Social networking sites must also expand and increase the visibility of reporting options. Reporting is of particular concern as most youths and their families are either unfamiliar with the existence of reporting resources or youths, due to naïveté, neediness, disability, or poor judgment, fail to understand the harms of or the proper response to being propositioned on the Internet.²⁶⁶ Reporting, therefore, must become a national, comprehensive goal, not only for service providers, but for all children, parents, educators, policy-makers, and law enforcement.

²⁶² KEEPING KIDS SAFER, *supra* note 81.

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ See discussion *supra* Part IV.B.3.

²⁶⁶ FINKELHOR ET AL., *supra* note 6, at 29–30.

VI. CONCLUSION

Protecting children from online sexual solicitations and online exposure to obscene or otherwise unwanted sexual material is a challenging, yet pressing societal concern. The advent of social networking sites, particularly among the youth population, has led to an increasing concern regarding online predators and unsafe environments for children. While social networking sites provide an array of nurturing and positive benefits, society needs to be aware of the dangers of such sites and of the appropriate remedies for creating safer online communities for youths.

In responding to unwanted exposure to sexual material on the Internet, Congress enacted the CDA and COPA, both of which have failed constitutional scrutiny and have been deemed violative of the First Amendment. Congress, however, successfully implemented CIPA, a more limited statute, which mandates that libraries filter online obscenity, child pornography and other harmful material in order to protect children. In confronting the problems of online sexual solicitation, policymakers and lawmakers have implemented numerous pieces of legislation: DOPA extends CIPA and mandates the usage of filtering and blocking software at public schools and libraries in order to restrict access to chat rooms and commercial social networking sites; the Adam Walsh Act will create a National Sex Offender Registry, will expand regional online task forces, and will help implement a public awareness campaign to educate society about online safety; the Stop Act of 2007 will enhance the reporting of child exploitation by online service companies; and the KIDS Act will require registered sex offenders to register their online personal information, accessible on the National Sex Offender Registry.

Social networking sites have also proactively implemented solutions. MySpace has taken measures to limit underage access to its site, to engage parents in their children's membership, and to work with task forces in blocking sexual predators from lurking on the site. Law enforcement has also implemented prosecutorial remedies, such as expanding online task forces, utilizing undercover operations, and modifying the language of child pornography statutes to broaden the scope of crimes committed.

The next feasible step in protecting children is to utilize a comprehensive approach by expanding upon current successful interventions of social networking sites and law enforcement and implementing a national policy campaign. A large-scale advertising and publicity campaign will help raise awareness of the dangers that exist on the Internet and will educate children, parents, teachers, law enforcement, and the community of available remedies and proactive solutions. A national campaign will help to permanently rid the online community of sexual predators and secure the Internet as a safe and friendly environment for children.