Requiring registration to access internet pornography: abridging free speech or s...

Kelly Loomis Mr. Gamble Gov 111 5 December 2005 Requiring Registration to Access Internet Pornography: Abridging Free Speech or Safeguarding Children? Pornography is the internet's number one income generator. With such an abundance of pornography available, children have increased access to view it than in days before the internet. Most Americans are alarmed by this, with 73% of Americans who believe that " the government should do something about" children's access to pornography (Rourke 56). In addition, " 94% of respondents agree ‘ it should be illegal for adults to use the Internet to make pornographic material available to children under the age of 18'" (Rourke 56). As a response to this, Congress introduced the Child Online Protection Act (COPA) of 1998, which would make it a crime for " commercial Web sites to post material ‘ harmful to minors' unless the site has made a good faith effort to screen out those under the age 17" (Rourke 57). COPA would require that pornographic material be placed behind " screens" that adults could easily bypass. Those opposed to this act initiated a " legal challenge on First Amendment groups" (Rourke 57), which is the foundation of this debate. The Act ultimately was struck down in the Supreme Court with a 5 to 4 vote. But it is likely that legislators will attempt to again pass a similar legislation due to the close loss. Anthony M. Kennedy, Associate Justice of the US Supreme Court, believes COPA abridged free speech. COPA is the second time that Congress has tried to " criminalize" certain Internet speech, making it a safer place for minors. The first failed attempt was the Communications Decency Act of 1996, which was deemed unconstitutional " because it was not narrowly tailored to serve a compelling governmental interest and because less restrictive alternatives were available" (Rourke 58). COPA would impose a $50, 000 criminal penalty fine and a six-month

prison sentence for violating this act. Since the temporary passage of COPA, Congress had set forth more laws that regulate the Internet to try to protect minors. It had prohibited Loomis 2 misleading Internet domain names to prevent Web site owners from disguising pornographic Web sites. Also a statute creating a " Dot Kids" domain which is restricted to material suitable for children ages 13 and under was enacted. Those concerned with protecting the First Amendment filed suit against this statute in the US District Court for the Eastern District. The District Court granted a preliminary injunction after consideration for both sides' arguments. The court decided that the respondents were likely to " prevail on their argument that there were less restrictive alternatives to the statute: ‘ On the record to date, it is not apparent…that [petitioner] can meet its burden to prove that COPA is the least restrictive means available to achieve the goal of restricting the access of minors' to harmful material." Particularly, " it noted that ‘ the record before the Court reveals that blocking or filtering technology may be at least as successful as COPA would be in restricting minors' access to harmful material online without imposing the burden on constitutionally protected speech that COPA imposes on adult users or Web site operators'" (Rourke 59). Congress is convinced that there is a less restrictive alternative to COPA. They must be sure that speech is restricted no more than necessary to keep minors safe, for legitimate speech may not be chilled or punished. The " primary alternative considered by the District Court was blocking and filtering software" (Rourke 60). This software is less restrictive than COPA and possibly more effect in limiting minor's access to harmful materials. Kennedy admits that filtering software is not perfect, and in fact may block materials that are not harmful to minors, and may not

block some that are harmful. Still, the government has failed to prove that the less restrictive alternatives should be dismissed. Stephen G. Breyer, an Associate Justice in the US Supreme Court, believes COPA is a way to safeguard children against Internet pornography. He argues that " COPA does not censor the material it covers. Rather, it requires providers of the ‘ harmful to minors' material to restrict minors' access to it by verifying age" (Rourke 66). The screening process may prove to be burdensome for some adults seeking access to the material, either monetarily or by potential embarrassment. These burdens may deter some adults from entering these sites. Justice Kennedy states that filtering software would be a " less restrictive alternative." However, Justice Breyer argues, this is not an Loomis 3 alternative insomuch as it is the status quo against which Congress enacted the statute. Of course the present way of doing things is less restrictive than something new, as " it is always less restrictive to do nothing than to do something" (Rourke 67). Justice Breyer points out four inadequacies in Justice Kennedy's " filtering" solution: 1) the filtering is faulty, as is admitted by Justice Kennedy himself; 2) filtering software would cost at least $40 to install, which not every family is able to spend; 3) the filtering software is partly dependent on parent's decisions on where their children may surf, and those decisions must be enforced by the parents; 4) the software lacks precision. In fact, on this last point, the ACLU " told Congress that filtering software ‘ block[s] out valuable and protected information, such as information about the Quaker religion, and web sites including those of the American Association of University Women, the AIDS quilt, [and] the Town Hall Political Site'" (Rourke 68). Justice Breyer concludes that " there is no serious, practically available ‘ less restrictive'

way…to further this compelling interest. Hence the act is constitutional" (Rourke 69). The Supreme Court ruled in Roth v. United States that the First Amendment does not protect obscenity, but it is difficult to determine what is classified " obscene". Former Chief Justice Warren Burger " wrote that materials were obscene if: 1. The work, taken as a whole, appealed " to a prurient interest in sex." 2. The work showed " patently offensive" sexual conduct that was specifically defined by an obscenity law. 3. The work, taken as a whole, lacked " serious literary, artistic, political, or scientific value" (Edwards 113). Congress has recently decided that the Internet does not yield the same free-speech protection of the First Amendment that printed material has, and is subject to government regulation. " Every nation must choose where to draw the line between freedom and order. In the United States, we generally choose liberty" (Edwards 161). This is well demonstrated in this case. I believe adults have to right to view whatever legal material they find intriguing. I also believe it is the responsible adults who realize that it is up to us, the adults, to enact limits and restrictions in order to protect our children. It may prove to be a pain in Loomis 4 the neck for an Internet- porn aficionado to verify his age at every adult website he visits. But frankly, I find it to be burdensome to prove that I am of legal age when I choose to buy alcohol or cigarettes, or want to visit a bar (although, as I get nearer thirty years old, I am rather flattered…but still annoyed). There are certain things that we want to do that require us to be a certain age. I agree with Justice Breyer that the COPA act did not prove to be too restrictive. I honestly hope that another act like COPA is voted into legislation. I believe it is important that we stop whining over our minor inconveniences and realize the potential good we're doing by protecting the

nation's children. Works Cited Edwards III, George C. et al. Government in America. New York, Pearson, 2006. Rourke, John T. You Decide!. New York, Pearson, 2005.