

Creating Kid-Friendly Webpace: A Playground Model for Internet Regulation*

*The level of discourse reaching a mailbox simply cannot be limited to that which is suitable for a sandbox.*¹

I. Introduction

Today, more than 25 million children in the United States, or 40% of children two to seventeen years old, are using the Internet.² This is three times the number of children who were online in 1997, and the number is expected to increase to 44 million by 2005.³ The growth in Internet usage among children reflects the pervasiveness of computers in homes, schools, and libraries across the country.⁴

With this growth in children's use of the Internet comes a growing concern for their online safety.⁵ This concern has focused primarily on the issues of children's privacy, their access to pornography, and their safety from predators while online. So far, efforts to address these issues have produced mixed results. Past attempts to protect children on the Internet have focused on regulating and controlling Internet content as a whole and on keeping children out of areas of the Internet deemed inappropriate for them.

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1. *Reno v. ACLU*, 521 U.S. 844, 875 (1997) (quoting *Bolger v. Youngs Drug Prod. Corp.*, 463 U.S. 60, 74-75 (1983)).

2. Michael Pastore, *40 Percent of America's Kids Online*, Cyberatlas, at http://www.cyberatlas.internet.com/big_picture/demographics/article/0,1323,5901_390941,00.html (last visited Aug. 24, 2003).

3. *Id.*

4. *Id.* Fourteen million children ages two to seventeen go online at school, while nearly eighteen million access the Internet from home. *Id.*; see also John Carlo Bertot & Charles R. McClure, *Public Libraries and the Internet 2000: Summary Findings and Data Tables*, at <http://www.nclis.gov/statsurv/2000plo.pdf> (last visited Aug. 23, 2003) (finding that 94.5% of public libraries in the United States offer public access to the Internet).

5. See, e.g., Stefanie Olsen, *America Online Scraps Teen Shopping*, CNET News.com, at <http://news.com.com/2100-1023-966276.html> (last modified Nov. 18, 2002) (reporting incidents of teens purchasing pornography, alcohol, and tobacco online); Nua Internet Surveys, *Girl Scout Research Institute: Many Teenage Girls Harassed Online*, at http://www.nua.ie/surveys/index.cgi?f=VS&art_id=905357736&rel=true (last visited Oct. 30, 2003) (reporting that 30% of teenage girls polled by the Girl Scout Research Institute said they had been sexually harassed in an online chat room); Declan McCullagh, *RIAA: Child Porn Rife on P2P Networks*, at <http://news.com.com/2100-1028-5073817.html> (last modified Sept. 9, 2003) (reporting on claims that peer-to-peer networks could be used by pedophiles to lure children).

The latest effort in this battle for the protection of children online has turned the focus inside out. Instead of keeping kids out, the new focus is on keeping kids in. The idea is to create a separate, kid-friendly webspace—a fenced-in virtual playground, free from adult content, potential predators, and privacy breaches. This new idea has given rise to new legislation involving the .us domain name system. The Dot Kids Implementation and Efficiency Act of 2002 calls for the creation of a new, second-level Internet domain within the United States country code domain dedicated solely to age-appropriate, children’s content.⁶

This Note examines the kids.us legislation, its ability to withstand constitutional challenges, and its implications on the future of children’s Internet use. Part II discusses the early attempts to protect children online through federal and state regulation and various private, commercial, and technological efforts. Part III discusses the legal implications for the kids.us domain’s attempts to regulate content, protect privacy, and provide an environment safe from predators. Part IV suggests a scheme for implementation and governance of the kids.us domain. This Note concludes that, in light of all of the failed past attempts to regulate the Internet as a whole, the development of a webspace dedicated solely to children’s content represents a viable alternative to traditional regulatory schemes and, ultimately, a better way of addressing the issues of child online safety and Internet content regulation.

II. Early Attempts to Protect Children Online

A. Federal Regulation

The first attempt at federal regulation of sexually explicit material on the Internet came from Congress in the form of the Communications Decency Act of 1996 (CDA).⁷ Two provisions of the CDA, codified as 47 U.S.C. § 223(a) and § 223(d), dealt specifically with sexually explicit material on the Internet. Section 223(a) prohibited the knowing transmission of obscene or indecent messages to any recipient under eighteen years of age.⁸ Section 223(d) prohibited the knowing sending or displaying of any communication that depicted “in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs” to anyone under eighteen years of age.⁹ Basically, the CDA made it a felony to transmit or knowingly display indecent material over the Internet to

6. Dot Kids Implementation and Efficiency Act of 2002, Pub. L. No. 107-317, 116 Stat. 2766 (to be codified at 47 U.S.C. § 941).

7. 47 U.S.C. § 223 (Supp. II 1996) (repealed 1997).

8. *Id.* § 223(a).

9. *Id.* § 223(d).