

Other Relevant Statutory Frameworks

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Objectives

After this presentation, you will be able to

- Identify many of the statutory frameworks designed to protect children beyond the provisions explicitly applying to child pornography
- Describe the evolution of legislative efforts to protect children from sexual exploitation and online abuse and many of the legal issues involved

Efforts to protect against

- Sexual exploitation
- Exposure to sexually explicit or “indecent” material
- Exposure to material considered “harmful to minors”
- Violations of personal info privacy
- Access to obscenity or “inappropriate” information on the Internet via library computers

Acronyms, Acronyms

CDA: Communications Decency Act (1996)
CPPA: Child Pornography Prevention Act (1996)
COPA: Child Online Protection Act (1998)
COPPA: Children's Online Privacy Protection Act (1998)
CIPA: Children's Internet Protection Act (2000)
COPPA: Child Obscenity and Pornography Prevention Act (2002 & 2003), *included in:*
PROTECT: Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act (2003)

CDA

- Communications Decency Act (1996)
- Would have required that “indecent” material—including pornography—be outlawed in public forums accessible by children (e.g., the Internet)
- This part held to violate First Amendment
– *Reno v. ACLU*, 521 U.S. 844 (1997)

CPPA

- Child Pornography Prevention Act (1996)
- Added CP provisions to federal Code to reflect advances in technology
- “Virtual” (CG) images, “appears to be,” and “conveys the impression” struck down
– *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002)
 - “Pandering,” upheld by *U.S. v. Williams*, 553 U.S. 285 (2008), added as partial response by PROTECT Act (2003)

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18 U.S.C. § 1466A

- Obscene visual representations of the sexual abuse of children
- Also added by PROTECT Act of 2003
- Modified *Miller* test but essentially applies *Miller*
- *Any* visual depiction even if no real minor is depicted

COPA

- Child Online Protection Act (1998)
 - 47 U.S.C. § 231
- “Son of the CDA”
- Penalizes anyone who, for “commercial purposes,” knowingly posts “material that is *harmful to minors*” (e.g., pornography, whether or not legal for adults)
- Applies only to World Wide Web
- “Minor” = *any* person under 17

COPA

- “Affirmative defenses” available
 - Only if/when prosecuted
 - If publisher restricts access by minors via
 - Requiring use of credit or debit card, adult access code, or adult PIN
 - Accepting digital certificate verifying age
 - By “any other reasonable measures ... feasible under available technology”

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Not to be mistaken for

18 U.S.C. § 1470

- Transfer of obscene material to minors
- Using mail or Internet to knowingly transfer obscene matter to person under 16

18 U.S.C. § 2252B

- Misleading domain names on the Internet
– Added in 2003
- Knowingly using misleading domain name w/intent to deceive any person into viewing obscenity, or
- w/intent to deceive minor into viewing material that's "harmful to minors"

18 U.S.C. § 2252C

- Misleading words or digital images on the Internet
 - Added by Adam Walsh Act, 2006
- Knowingly embedding words or images into website source code with intent to deceive
 - Any person into viewing obscenity
 - A minor into viewing material “harmful to minors” (as defined in 2252B)

or for

COPPA

- Children’s Online Privacy Protection Act (1998)
 - 15 U.S.C. § 6501 et seq.
- Punishes collection of personally identifiable information of less-than-13-year-olds without written parental consent
- Not seriously challenged
- Primarily of concern to web site operators

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COPPA

- Not illegal for children under 13 to give their information online, but requires parental permission. Due to the trouble, most websites do not allow accounts to those under 13.
 - For example, Facebook and MySpace terms of service bar accounts for persons under 13 (among others).
- Children's evasion of online systems is a major challenge for website operators.
- FTC cannot mandate that general audience websites implement age-verification tools.

or CIPA

- Children's Internet Protection Act (2000)
- Requires public schools and libraries to install Internet filters on their computers to prevent viewing of "inappropriate" information
- Penalty: loss of "E-rate" funding for Internet access, tech innovations
- S. Ct. upheld
 - *United States v. American Library Association*, 539 U.S. 194 (2003)

Child Online Protection Act

- Enjoined and never enforced
- Has already made two trips to S. Ct.
- S. Ct. upheld (2002) application of local "community standards" to determine appropriateness of content
- Third time before Cir. Ct. again held to be unconstitutional
 - *American Civil Liberties Union v. Mukasey*, 534 F.3d 181 (3rd Cir. 2008)

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ACLU v. Mukasey

- Government failed to meet burden of showing that COPA is least restrictive means of advancing the interest in protecting children from exposure to harmful material on the Web.

ACLU v. Mukasey

- COPA is content-based restriction on speech
 - Presumptively invalid
 - Subject to strict scrutiny
- Everyone seems to agree that government has compelling interest to protect minors from exposure to harmful (sexually explicit) material on the Web. *But ...*

ACLU v. Mukasey

- Not narrowly tailored
 - HTM definition
 - What if only a tiny portion of a web site is arguably HTM?
 - Age of “minors”
 - Protecting 3 year olds as well as 16 year olds?
 - “Commercial” would also burden free web sites (e.g., that run ads to pay for the sites)

ACLU v. Mukasey

- Not the least restrictive means to achieving the government's purpose of protecting children from harmful materials on the Web
 - Filters found to be more effective and less restrictive than COPA

ACLU v. Mukasey

- Also found to be impermissibly overbroad and vague
- So the government loses again
- *Cert denied*, Mukasey v. ACLU, 2009 U.S. LEXIS 598 (2009)

In the States

- “Harmful to minors” and similar statutes aimed at “luring” and “grooming”
- Subject to similar constitutional attacks
 - Massachusetts
 - *American Booksellers Found. For Free Expression v. Coakley*, D. Mass., No. 10-11165 (*complaint filed* July 13, 2010)
 - Oregon
 - *Powell’s Books v. Kroger*, No. 09-35153 (9th Cir. Sept. 20, 2010)

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And, finally ...

- CPOEA
 - Child Protection and Obscenity Enforcement Act of 1988 (amended by Adam Walsh Child Protection and Safety Act of 2006)
- Stringent record-keeping requirements placed on producers of sexually explicit materials (actual or simulated)
 - 18 U.S.C. § 2257 and § 2257A
 - Verification of model ages and identities

CPOEA

- Upheld against constitutional attack
 - *Free Speech Coalition, Inc. v. Holder*, 2010 U.S. Dist. LEXIS 75471 (E.D. PA July 27, 2010)
- Statutes and reg's found to be content neutral (thus "intermediate scrutiny" test)
- Narrowly tailored to combat child pornography
 - Gov't disavowed enforcement against non-commercial protected speech

Questions?

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