

Supreme Courts Hears CDA Oral Arguments

The Justices of the Supreme Court heard radically different perspectives on how best to shield minors from "indecent" material on the Internet during a lively 70-minute exchange between Seth Waxman, Deputy Solicitor General of the Department of Justice and Bruce Ennis, from Jenner and Block, who represented a coalition of interests including ALA, ARL, CNI, America Online, Inc., and the Association of American Publishers. The hearing was the last step in the challenge to the Communications Decency Act (CDA), the controversial section included in the Telecommunications Act of 1996. Provisions in the law makes transmitting "indecent" materials punishable by two years in prison and a fine of \$250,000.

In February 1996, immediately following passage of the CDA, the Citizens Internet Empowerment Coalition (CIEC) filed a lawsuit in Philadelphia challenging the statute. They argued that the Internet is a unique communications technology which deserves First Amendment protections at least as broad as those enjoyed by the print medium. They also contend that parents are best suited to determine how to protect minors from "indecent" materials, not the government. The suit was later joined with a related one brought by the American Civil Liberties Union (*Reno v. American Civil Liberties Union*). On June 12, the Federal Court in Philadelphia, in a 3-0 decision, granted a preliminary injunction against the CDA, setting the stage for its consideration by the Supreme Court.

Permitting additional time for arguments - a sign of the importance of the issue - allowed the Justices to hear a range of issues including the availability of screening technologies, potential liability of parents and non-profit institutions such as libraries, the concept of public space, and international concerns. Whereas the government contended that the Internet, "threatens to give every child a free pass to every adult bookstore and video store," Ennis argued that the CDA would, in effect, chill constitutionally protected speech of adults on the Internet and that the network cannot be subject to restrictions which apply to other media, such as radio and television.

Of keen interest to the Court was the issue of liability of parents, institutions, and students under this law. Justice Breyer asked whether teenage boys who exchange e-mails about their "sexual experiences" would be criminals? "Do you suddenly make large numbers of high school students across the country guilty of a Federal offense?"

Similar concerns were voiced by Justices O'Connor and Kennedy regarding libraries and not-for-profit institutions. Other Justices, in particular Justice Souter, were concerned with the implications for parents in making a computer available to their children. Waxman conceded that the CDA could indeed make parents liable, but argued that the Court could consider an exemption for parents. Justice Souter's response indicated skepticism with this approach. "That would be grabbing a limitation out of thin air," he explained. Clearly libraries and not-for-profit institutions would require similar exemptions.

Also of interest was the exchange between the lawyers and the Justices regarding how to characterize the Internet. Justice O'Connor commented that the Internet could be viewed as a "public place because anyone can get online and have a conversation. It is much like a street corner or park." Finally, Ennis noted that as much as 40% of the "indecent" material found on the Internet was available via international sources, defeating any legal regimes proposed domestically. Justice Kennedy was not convinced by this critique, noting that the U.S. could take a leadership position on this issue.

A decision from the Court is expected in June or July. [Additional information](#), including the full text of the oral argument and related information is available.

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