

# Telecom Reform Conference Addresses Online Pornography

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Members and staff of a House-Senate conference committee on telecommunications reform have reached consensus on many thorny and contentious issues included in the House- and Senate-passed Telecommunications Competition and Deregulation Act of 1995 (H.R. 1555 and S. 652). The House and Senate passed this landmark legislation on February 1.

If the bill is signed into law by the President, there are provisions that are certain to result in litigation. Provisions approved by conferees impose unprecedented restrictions on communications among individuals and impose fines and penalties for transmitting material that is "indecent." Sen. James Exon (D-NB) is sponsoring this amendment and in the House, Reps. Christopher Cox (R-CA), Ron Wyden (D-OR), [Rick White](#) (R-WA), Henry Hyde (R-IL), and [Robert Goodlatte](#) (R-VA) have taken the lead on this issue. The common goal of the amendments is to establish additional ways to federally prosecute online pornographers by criminalizing indecent communications.

Members of the House and Senate conference committee on telecommunications reform legislation met on December 14 and considered the various amendments intended to address online pornography. Ultimately, the conferees agreed to the language adopted by House conferees, which imposes new criminal liabilities on the transmission of indecent material. The "indecent" standard adopted by the conferees was in lieu of a "harmful to minors" standard.

Although both the "harmful to minors" and "indecent" standards are problematic for libraries and educational institutions, there are significant differences between them. Forty-eight states have adopted harmful to minors standards to criminalize the display of pornography to minors. Some state laws exempt libraries from these provisions. In addition, the harmful to minors standard has been held to be constitutional. The meaning of indecent, however, is linked to a local community's interpretation of that which is "patently offensive." Unlike the harmful to minors standard, the indecent standard in the telecommunications bill does not include exemptions or exceptions for cultural, literary, political, or scientific materials or content.

As they stand, the provisions imposing new criminal penalties on the transmission of material considered "indecent" pose a number of very significant challenges to libraries and educational institutions. The decentralized nature and scale of networked services in university settings makes it extremely difficult to monitor communications. In addition, such monitoring would be in violation of long-standing principles of confidentiality, privacy, and freedom of expression espoused by the library and education communities.

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