

INTERNET CHILD PORNOGRAPHY

In 2002, the state legislature passed the **Internet Child Pornography statutes**, though in 2004, a federal district court held that, in light of an abundance of evidence that implementation of the Internet Child Pornography Act had resulted in massive suppression of **speech protected by the First Amendment**, the Act was unconstitutional.

The Act, which set forth various definitions, including "child pornography," "internet," and "internet service provider," required an internet service provider to remove or disable access to child pornography items residing on or accessible through its service, though there was no requirement to actively monitor its service or affirmatively seek evidence of illegal activity on its service. The Act also provided a penalty for violations and gave the Attorney General concurrent prosecutorial jurisdiction with the county district attorney for violations, provided a procedure for the application to the court of common pleas for an order to remove or disable the item, and a procedure for the issuance of an order for the removal of the item. The Attorney General had exclusive jurisdiction to notify Internet service providers of the order to remove or disable the item and the providers were permitted to designate an agent to receive such notices. Additionally, the statutes provided for the Attorney General to make an annual report to various members of the legislature providing information on the number of notifications issued and the prosecutions made and making any recommendations for amendatory language.

The **federal district court held that the internet child pornography statutes violated the First Amendment on a substantive level**, when analyzed under the least restrictive intermediate scrutiny standard, because the regulation did not further the acknowledged government interest in curbing child pornography, as both providers and audience for that material could send and receive it on unblocked websites, and the incidental impact on protected speech was much greater than was essential to furtherance of the interest, as the technology limitations of filtering techniques resulted in a shutdown of over **1,900,000 sites carrying protected speech** in the process of shutting down less than 400 sites carrying child pornography. Moreover, the dormant commerce clause, prohibiting state activities having a burden on interstate commerce clearly excessive in relation to putative local benefits, was violated by the Pennsylvania statute requiring Internet service providers to block Internet websites displaying child pornography; while the benefit was the shutting down of 376 websites displaying child pornography, it was accomplished by cutting off access to over 1,190,000 nationwide and worldwide sites, producing impermissible extraterritorial effect.

Observation: Congress has the authority to regulate the downloading of child pornography from the Internet pursuant to its power under the Commerce Clause to regulate the use of "channels of interstate commerce" and "instrumentalities of interstate commerce." Despite such power, the statutory ban on virtual child pornography in the Child Pornography Prevention Act of 1996 abridges the freedom to engage in a substantial amount of lawful speech, and thus is overbroad and unconstitutional under the First Amendment, and additionally cannot be sustained against an overbreadth challenge under the First Amendment on the theory that pedophiles may use virtual child pornography to seduce children, as the speech ban is not narrowly drawn and goes well beyond the interest in prohibiting illegal conduct, by restricting the speech available to law-abiding adults.
