

**OCAF White Paper  
on Internet Pornography**

**“The Agincourt Project”**

**An Action Proposal for the Elimination of  
Illegal Pornography and Child Pornography  
from the Internet**

**Presented by "OCAF"  
Oklahomans for Children and Families  
Copyright 1997**

Have nothing to do with the fruitless deeds of darkness, but rather expose them, for it is shameful even to mention what the disobedient do in secret. But everything exposed by the light becomes visible, for it is light that makes everything visible.

- Ephesians 5:11-14 NIV

"Criminal liability is clearly appropriate for this intentional conduct in distributing illegal obscenity and child pornography, just as for any other wholesale or retail merchant of illegal pornography."

- Bruce A. Taylor, Chief Legal Counsel

National Law Center for Children and Families

"Knowing distribution of this material is in violation of federal law. If you, as an ISP, carry these groups, you know damn well what the content is. If you CONTINUE to carry them beyond this point \*anyone\* who wants to make a case out of it can report you."

- Operator of a major midwestern ISP

"I could probably look through USENET right now and find at least one hundred things that I'm pretty sure are illegal. Is anybody taking action? Precious little so far...."

- Internet Consultant

"Normally, you'll get sex stuff by visiting your local porno shop, a place filled with high prices and rather dubious looking people. You wouldn't want your best friend to catch you there, would you? With alt.binaries.pictures.erotica and similar groups, you can see those same pictures in the comfort of your own home, without paying a frightful lot of money, and without much chance of embarrassment. In this way, pornography is destigmatized in a way that dramatically increases its consumption."

- Internet FAQ

## Abstract

This document is intended as both an educational tool for the public and as a prosecution primer for local law enforcement agencies. There IS illegal pornography and child pornography on the Internet. It is being distributed by local Internet Service Providers (ISPs) who know that it is on their local computers and who seek to profit from it. [OCAF Note: We understand that only a judge or jury can ultimately determine the illegality of a pornographic image. However, in our experience, many images similar to those found every day in the USENET newsgroups have previously been determined to be illegal.]

The question is not "how much" illegal pornography and child pornography is on the Internet. The question is not "what percentage" of USENET newsgroups are represented by these illegal images.

But the real questions are simple:

- "Is it there?" The answer is "yes".
- "Is it illegal?" The answer is "yes".
- "Do the local ISPs know it is on their local computers?" The answer is "yes".
- "Should these ISPs be prosecuted?" If they refuse to remove it, again, regrettably, the answer is "yes".

This document, then, presents the facts about the destructive effects of illegal pornography and child pornography. It presents the details on how local ISPs select what illegal pornography and child pornography to make available to their subscribers and in what quantities. And it presents an action plan to eliminate illegal pornography and child pornography from the Internet.

Our goal is to get this document in the hands of every local broadcaster. And in the hands of every local newspaper. And in the hands of every local prosecutor in the United States.

Please help us.

## Table of Contents

- 1.0 Prologue - The Battle of Agincourt
- 2.0 The Agincourt Project
- 3.0 Oklahomans for Children and Families (OCAF)
  - 3.1 On Open Letter to ISPs from the Principal Author
- 4.0 Illegal Pornography IS Illegal
  - 4.1 Obscenity
  - 4.2 Child Pornography
  - 4.3 Material Harmful to Minors
  - 4.4 Indecency
- 5.0 Pornography is a Public Health & Safety Issue
  - 5.1 Child Molestation
  - 5.2 Rape & Sexual Violence
  - 5.3 Pornography Addiction
  - 5.4 Sexually Transmitted Diseases
  - 5.5 Destructive Attitudes and Values
- 6.0 The Internet
  - 6.1 Internet Functions
    - 6.1.1 File Transfer Protocol (FTP)
    - 6.1.2 World Wide Web
    - 6.1.3 Newsgroups
    - 6.1.4 Confusion Concerning Newsgroups
  - 6.2 News Servers
  - 6.3 Additional Considerations
  - 6.4 Is the Internet Safe?
- 7.0 The Case Against the ISP
  - 7.1 The ISP Is Not a Common Carrier (With Respect to Newsgroups)
  - 7.2 The ISP Decides What Illegal Pornography To Put On His News Server
  - 7.3 The ISP Knows That What Is On His News Server Is Illegal
  - 7.4 The ISP Sells Access To This Illegal Material
  - 7.5 Summary
- 8.0 An Action Proposal
  - 8.1 Contact Local Law Enforcement
  - 8.2 Contact Local Media
  - 8.3 Contact Local Elected Officials
  - 8.4 Contact Local Businesses on the Internet
  - 8.5 Contact Local Places of Worship
  - 8.6 Contact National Online Services
  - 8.7 Contact Major Internet Businesses
  - 8.8 Contact Major Internet Businesses Again
  - 8.9 Contact OCAF for More Information
- 9.0 Appendix A - Excerpts from Internet Documents
  - 9.1 A Conversation Among ISPs
  - 9.2 Two Excerpts from a Newsgroup FAQ (Frequently Asked Questions)
  - 9.3 More Excerpts from an ISP FAQ
  - 9.4 Two Excerpts from a News Server FAQ
  - 9.5 Excerpts from InterNetNews (INN) FAQs
- 10.0 Appendix B - Major Businesses Involved in the Internet
- 11.0 Appendix C - ISP Flow Chart
- 12.0 Appendix D - Prosecutors' Resources
- 13.0 Appendix F - Oklahoma's Obscenity Law

## **1.0 Prologue - The Battle of Agincourt**

Immortalized in Shakespeare's "Henry V", and brilliantly portrayed in Kenneth Branagh's recent movie of the same name, the Battle of Agincourt took place on October 25, 1415. Henry, leading a "small band of brothers" on foot, all of whom were war-weary from previous battles, encountered the fresh French troops near the village of Agincourt in northern France. The French, armored and on horseback, outnumbered the English four to one. Near the end of the battle, the French showed their true colors and killed the children waiting behind in the English camp. When the carnage had ended, the English had lost only 113. The French had lost more than 5,000.

Whatever the merits of Henry's claim to the French throne, the English were fighting for God and country. And the French were fighting to preserve their assets.

Non nobis, Domine, sed nomini tuo da gloriam.

## **2.0 The Agincourt Project**

The Agincourt Project, then, takes the spirit of Henry's fight to America's battle against pornography. We believe that illegal pornography and child pornography can be eliminated from the Internet. And the first battle in that war will be with the local Internet Service Providers. They are the current distributors of the illegal pornography and child pornography that is present in the USENET newsgroups. We believe they can be stopped under current laws.

We outline later in this document our Action Proposal. But first, some basics.

## **3.0 Oklahomans for Children and Families (OCAF)**

Oklahomans for Children and Families (OCAF) was founded in 1984 and was formerly known as Oklahomans Against Pornography. OCAF is a non-profit corporation, qualified under IRC Section 501(c)(3). Contributions to OCAF are tax deductible.

OCAF is an alliance of concerned citizens including civic, business, religious, health care, and educational organizations. Our mission is to significantly reduce sexual violence and the victimization of women and children in Oklahoma County and throughout the state of Oklahoma by eliminating child pornography and other illegal pornography and regulating sexually oriented businesses and materials harmful to minors. We seek to accomplish this by educating Oklahomans regarding the danger and harm of pornography, by mobilizing concerned citizens to action, by working cooperatively with justice officials to enforce obscenity/child protection laws, and by giving assistance to victims.

Because of the changing nature of pornography, and because pornography is so readily available on the Internet, our mission cannot be achieved without widening our scope.

Since its beginning, OCAF helped close 150 sexually oriented businesses in Oklahoma County. (Of course, that could not have been achieved without the efforts of a supportive police department, DA's office, city council, and state legislature.) During that time, reported rapes in Oklahoma County decreased by over 26%! That, during a time when rapes statewide were increasing!

There IS a direct connection between pornography and sexual violence.

And there is a direct connection between citizen involvement and the solution to the pornography problem!

But reported rapes in Oklahoma County are increasing again. And those increases correlate remarkably with the increased availability of illegal pornography and child pornography on the Internet.

OCAF was also involved in the arrest and successful prosecution (1994) of a local BBS operator who was trafficking in illegal pornography. That was only the second such prosecution in the country.

In October, 1995, OCAF was responsible for the first arrest in the country of a comic book store owner who was selling an obscene comic book.

OCAF has always found itself on the front lines in America's battle against illegal pornography and child pornography. And now we have taken on the Internet Service Providers (ISPs). And we need your help.

Oklahomans for Children and Families, **5900 N. Mosteller Dr., #707, Oklahoma City, OK 73112**

Phone 405-843-4449 Fax 405-843-3876 Email [ocaf@ocaf.org](mailto:ocaf@ocaf.org) Web Site [www.ocaf.org](http://www.ocaf.org)

### **3.1 An Open Letter to ISPs from the Principal Author**

To the Internet Service Providers of America:

No document such as this can come into existence without the assistance of many, many people. Attorneys, prosecutors, volunteers, and victims of illegal and child pornography, ALL have had their input. But this document also has a principal author. That's me, Paul Cardin. I'm not a politician or a preacher. I'm a Public Accountant. Just an average guy. But my family has been victimized.

Several years ago, my wife and I adopted two older children - a 7 year old boy and a 10 year old girl. Both had been victims of early childhood abuse - physical and sexual. We found out then that that's the rule rather than the exception for adoptable older children.

There are tens and tens of thousands of older children needing adoption in the United States - almost all the victims of early childhood abuse. They have their pictures in big books organized by states, like huge diaries chronicling the savage nature of America's under-belly. Tens and tens of thousands of stories of rape, incest, and the vilest forms of abuse and neglect imaginable.

Unfortunately, the effects of such abuse are long-term. Thus, my children are still victims as they continue to struggle with the wounds of their past. And they will continue to struggle, I fear, for years to come.

And new wounds are accumulated. The victims of such abuse distrust authority. Who can blame them? Their concepts of parenting and family will forever be different from ours. At 15, my daughter ran away. She was on the street for one night. But one night was all that it took to be raped.

I tell you these things, Mr. Internet Service Provider, to let you know that my passion in this fight does not come from religious fervor or from some goody-two-shoes approach to life. My family understands all too well the direct correlation between illegal and child pornography and the crimes that have victimized us.

As I asked my daughter's permission [she's now 18] to tell here the basic facts of her struggles, I saw again in her eyes that reservoir of pain I've come to know so well. I pray you will never have to know that pain or see it in your daughter's eyes. But in the years since this controversy over cyber-porn first began, thousands of children have been abused. And thousands of women have been raped. And my daughter was one of them.

Enough is enough!

If you are one of the ISPs who has chosen to keep illegal pornography and child pornography off of your news server, God bless you and thank you. If you are not, then understand well that the time for "Shame on you!" is over.

The battle has been engaged.

Remove it now, or prepare to be prosecuted.

Respectfully,

Paul D. Cardin, P.A.

### **4.0 Illegal Pornography IS Illegal**

*The following is excerpted from Chapter One of the "Take Action Manual" (1995-1996) of the "Enough Is Enough!" Campaign. Material used with permission.*

Pornography is just about everywhere. This country now has over 20,000 outlets selling prosecutable, hard-core pornography which would be found illegal by educated citizens in most American communities. In fact, there are now more outlets for hard-core pornography in the United State than McDonalds' restaurants.

Unfortunately, the very ease of availability of pornography discourages some people from fighting it. People assume some court or Congress must have legalized pornography or there wouldn't be so much of it on the open market.

Actually, most pornography IS illegal. Pornography is a broad general term which can be defined as "all sexually oriented material intended primarily to arouse the reader, viewer or listener."

Types of Pornography:

- Illegal
  - Obscenity
  - Child Pornography
  - Material Harmful to Minors
  - Broadcast Indecent Material
- Legal
  - Erotic & Semi-Nude

As the above indicates, there are four clear categories of pornography that are illegal:

1. Adult obscenity (i.e. "hard-core pornography)
2. Child pornography
3. Material harmful to minors
4. Indecency

While each category of illegal pornography has a specific legal definition established by the courts, some short-hand explanations can help you understand the differences.

#### **4.1 Obscenity**

In the 1973 case of Miller v. California, the U.S. Supreme Court declared that "obscenity" is not protected by the Constitution and may be made illegal by the states or federal government.

The required guidelines for determining obscenity are set out in the United States Supreme Court's decisions in Miller v. California, 413 U.S. 15, 24-25 (1973), Smith v. United States, 431 U.S. 291, 301-02, 309 (1977), and Pope v. Illinois, 481 U.S. 497, 500-01 (1987), comprising the following three-prong test:

- Whether the average person, applying contemporary adult community standards, would find that the work, take as a whole, appeals to the prurient interest (i.e., an erotic, lascivious, abnormal, unhealthy, degrading, shameful, or morbid interest in nudity, sex, or excretion);

**AND**

- Whether the average person, applying contemporary adult community standards, would find that the work depicts or describes, in a patently offensive way, sexual conduct (i.e.: ultimate sexual acts, normal or perverted, actual or simulated; masturbation; excretory functions; lewd exhibition of the genitals; or sado-masochistic sexual abuse);

**AND**

- Whether a reasonable person would find that the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

In short, illegal adult obscenity is simply sexual exploitation, prostitution, and rape in pictures and in progress. While we can wish the Supreme Court used a simpler definition, obscenity or hard-core pornography is easily recognized by its graphic obsession with and explicit portrayal of sexual conduct and deviant behaviors.

## 4.2 Child Pornography

The legal status of child pornography is straight-forward - visual depiction's of children under 18 engaged in sexual conduct are illegal. Congress and all states have passed laws dealing with child pornography, and the Supreme Court upheld them in *New York v. Ferber*, 458 U.S. 747 (1982) (for production and distribution) and *Osborne v. Ohio*, 495 U.S. 103 (1990) (for possession). Unfortunately only about half of the fifty states have child pornography laws which provide strong and meaningful protection for children.

When children are shown in pornography there is no need to debate "serious value" or to apply "community standards." That's because the first victims of child pornography are always the children who appear in it. Child pornography is the photographic record of child abuse, and government clearly has the authority to protect children. *[OCAF Note: In Oklahoma it is a felony to posses child pornography.]*

As a result of strong federal prosecutions, child pornography - as of this writing - is not freely available over the counter in the United States. It is, however, a thriving underground "cottage" industry where the molesters who use child pornography also produce and distribute it.

*[OCAF Note: Many "titles" of USENET newsgroup articles and of USENET newsgroups themselves are apparently advertising child pornography.]*

*[OCAF Note: In Oklahoma, as in many states, it is also illegal to publish material using models intended to look like minors.]*

## 4.3 Material Harmful to Minors

Pornography that is not illegal for sale to adults may be illegal when sold to minors (children under 18). This is called "material harmful to minors" or "variable obscenity."

In *Ginsberg v. New York*, 390 U.S. 629 (1968), the U.S. Supreme Court modified its three-part obscenity test to apply to material "harmful to minors". The "test" for what is "harmful to minors" is as follows:

The term "harmful to minors" means any communication, picture, image, graphic image file, article, message, recording, writing, or other matter of any kind that:

- taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;

**AND**

- depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, ultimate sexual acts, normal or perverted, actual or simulated, sado-masochistic sexual acts or abuse, or lewd exhibitions of the genitals, pubic area, buttocks, or post-pubertal female breast;

**AND**

- taken as a whole, lacks serious literary, artistic, political or scientific value for minors.

There are many magazines in America which mix their pornography with interviews, fashion articles, sports, etc. Thus, there are many videos or films which have some value and are not offensive to adults but are clearly unacceptable for children. It can be illegal to sell or exhibit these magazines to children.

*[OCAF Note: This is why many ISPs limit access to newsgroups to individuals who prove they are over 18. However, if the material in the newsgroups is otherwise illegal, the law is still being broken.]*

## 4.4 Indecency

Similar in effect to harmful to minors laws, indecency laws aim to protect children from the harmful effects of pornography. Indecency involves the use of the telephone, radio or broadcast TV to transmit materials inappropriate for children over the airwaves. Indecency has been defined by the U.S. Supreme Court as "any language or material

that depicts or describes in terms patently offensive as measured... by [national] contemporary community standards for the [telephone or] broadcast medium, sexual or excretory activities or organs." *F.C.C. v. Pacifica Foundation* (1978).

Because the public airwaves are available to anyone (including millions of children) with access to a telephone, TV or radio, the Federal Communication Commission (FCC) has the authority to regulate the content of telephone and broadcast messages for the public good. "Indecent" sexually oriented material, while not illegal if distributed on the open market strictly to adults, becomes illegal if broadcast over the telephone, radio or TV because it invades the privacy of the home and exposes children to harmful materials.

## **5.0 Pornography is a Public Health & Safety Issue**

*The following is excerpted from Chapter Two of the "Take Action Manual" (1995-1996) of the "Enough Is Enough!" Campaign. Material used with permission.*

*[OCAF Note: The "Take Action Manual" is available from OCAF. See Appendix E - OCAF Order Form]*

Illegal pornography is widely sold in the United States; so what? Shouldn't our police and prosecutors worry about robbers and drug dealers, not "dirty books?"

Once people understand that much pornography is illegal, some still argue that the laws aren't important enough to be enforced.

In this chapter, we'll look at the evidence that the explosive growth of pornography contributes directly to the explosive growth of serious health and safety problems in the United States. Pornography is NOT a victimless crime.

The harm of pornography can be seen in five primary areas:

1. The way it facilitates child molestation.
2. Its relationship to rape and sexual violence.
3. Its compulsive or "addictive" nature for many men.
4. Its direct role in the transmission and encouragement of sexually transmitted diseases.
5. Most disturbingly, the way it shapes attitudes and values

### **5.1 Child Molestation**

Many people are shocked to learn that law enforcers estimate that around 1 in 3 girls and 1 in 7 boys will be sexually assaulted before age 18. The typical child molester will abuse more than 360 victims over the course of his lifetime. He is able to abuse 30-60 before he is even caught for the first time. (Dr. Gene Abel, Emory University). This abuse has affected millions of American Families.

The relationship of pornography to child sexual abuse is compelling. Dr. William Marshall studied convicted child molesters at Kingston Penitentiary in Ontario, Canada. Of these, 77% of those who molested boys said they were regular users of hard-core pornography. And 87% of those who molested girls said they were regular users of hard-core pornography. (W. Marshall, Report on the Use of Pornography by Sexual Offenders, Report to the Federal Department of Justice, Ottawa, Canada. 1983.)

The LAPD Sexually Exploited Child (SEC) Unit examined the relationship between extrafamilial child sexual abuse and pornography in their cases over a ten year period from 1980-1989. Pornography was directly involved in 62% of the cases and actually recovered in 55% of the total cases. As the study's author concludes: "Clearly, pornography, whether it be adult or child pornography, is an insidious tool in the hands of the pedophilic population... The study merely confirms what detectives have long known: that pornography is a strong factor in the sexual victimization of children." (Ralph W. Bennett, "The Relationship Between Pornography and Extrafamilial Child Sexual Abuse," *The Police Chief*, February 1991).

The typical child molester has four uses for pornography in the commission of his crime:

1. To lower the inhibition of the child by showing him/her pictures.

2. As a teaching tool for the child to show him/her exactly what the molester wants done.
3. To blackmail and threaten the child with exposure if they ever tell anyone what the molester is doing to them.
4. As a tool for stimulation and masturbation by the molester. They are obsessed with children. Many actually believe the experience is good for the child.

## 5.2 Rape & Sexual Violence

Pornography also serves as a significant contributor to the epidemic of rape and sexual violence in America. Like child molestation, rape in the U.S. has risen dramatically - over 500% since 1960! This increase directly parallels the increase in availability and the severe content of pornography. The National Victim Center now estimates that at least one woman is raped in the U.S. every 46 seconds.

Another study by Dr. Marshall of adult sex offenders found that 86% of convicted rapists said they were regular users of pornography, with 57% admitting direct imitation of pornographic scenes they enjoyed in the commission of their rapes. (W. Marshall, Use of Sexually Explicit Stimuli by Rapists, Child Molesters and Non-Offenders, 25 Journal of Sex Research 267, 1988.)

In Oklahoma City, as they eliminated over 150 pornography establishments, the rape rate declined over 26% in the five year period. During that same time, rape in the rest of the state continued to rise over 20%. (Uniform Crime Report, 1990)

A 1979 study in Phoenix, Arizona, found that neighborhoods with a pornography business experienced 40% more property crime and 500% more sexual offenses than similar neighborhoods without a pornography outlet. (U.S. Department of Justice, "Child Pornography, Obscenity and Organized Crime," February 1988.)

Pornography encourages and promotes rape and sexual violence through:

1. The Rape Myth: Simply put, a large amount of hard-core pornography conveys the message that when a woman says "no," she really means "yes." If a woman is just forced, she will soon grow to enjoy it and beg for more. Thousands of pornographic videos and magazines depict this myth. It has tragic results for American women.
2. Aggression: Hard-core pornography legitimizes aggression in the minds of many men who consume it. J.V.P. Check and T.H. Guloien did an experiment with 436 men and their attitudes toward rape. Part of the group were shown an hour and a half of violent pornography, part were shown an hour and a half of non-violent pornography, and part were shown non-pornographic material. A follow-up survey asked all three groups about their attitude toward rape. Twice as many men in both pornography groups - those who saw the violent pornography and those who saw the non-violent - said they were likely to commit rape.

In other words, just one hour and a half of pornography doubled the number of men who said they were likely to commit rape. (Check, J.V.P., and Guloien, T.H., "Reported Proclivity for Coercive Sex Following Repeated Exposure to Sexually Violent Pornography, Nonviolent Dehumanizing Pornography, and Erotica." In D. Zillmann and J. Bryant (eds) Pornography, Research Advances and Policy Considerations. New Jersey: Erlbaum.)

3. Attitudes: In studies involving repeated viewing of hard-core pornography, men begin to trivialize rape, the pain women incur and the seriousness of the offense. Many men admit a willingness to rape if they know they will not be caught. (Zillmann & Bryant, Pornography, Research Advances and Policy Considerations. New Jersey: Erlbaum.)

Our former Surgeon General, Dr. C. Everett Koop, summed up the relationship after examining the health and safety implications of pornography:

"I am certain that pornography that portrays sexual aggression as pleasurable for the victim is at the root of much of the rape that occurs today. Impressionable men, many of them still in adolescence, see this material and get the impression that women like to be hurt, humiliated and forced to do things they do not want to do. It is a false and vicious stereotype that leads to much

pain and even death for victimized women." (Koop, C.E. (1987). Report of the Surgeon General's Workshop on Pornography and Public Health. American Psychologist, 42(10),944-945.)

### **5.3 Pornography Addiction**

The third major area where one sees the harm of pornography is in its addictive nature for many men. Studies by Dr. Victor Cline and others show a step-by-step progression among many men who consume pornography.

First, they develop compulsive consumption patterns toward softer material - their fantasy life becomes consumed with the material.

Second, they become desensitized by the "softer" material and are no longer aroused or able to stimulate themselves with it.

Third, they escalate to harder and harder material, in order to achieve the same level of arousal. This is how many men end up enjoying bondage, sadomasochism, torture, violence, etc.

Lastly, for some men fantasy is no longer enough. They begin to act out their fantasies on live victims, who are usually women or children.

Gary Arthur Bishop in Utah sexually tortured and murdered five boys, ages 5-14. Ted Bundy murdered and sexually tortured women for two decades throughout the country. These men and many others have said that they were motivated to copy in real life what they had seen in violent pornography. They reached the fourth stage of acting out.

In fact, an FBI survey of serial killers found that 81% said that hard-core pornography was their "highest sexual interest." (R. Hazlewood, "The Men Who Murdered." FBI Law Enforcement Bulletin, August 1985.)

### **5.4 Sexually Transmitted Diseases**

Perhaps the most distasteful harm of pornography is seen in the way it encourages and facilitates sexually transmitted diseases (STDs). The U.S. Centers for Disease Control reports that many known STDs are at epidemic levels in the United States.

In almost all "adult" bookstores in America are what are called "peep show" booths. Many pornography outlets derive 75% of their revenue from these booths. The small booths are equipped with a seat and video screen. Men enter in order to masturbate or have anonymous sex as they put dollars into the video machine and it plays short clips of hard-core pornography. In law enforcement investigations done of many of these booths, body fluids are spread over all available surfaces. The health risk is staggering.

Many booths also have what are referred to in the pornography industry as "glory holes." These are holes sawed between adjoining booths so that patrons can perform anonymous sexual acts on one another from different booths as they fantasize to the videos. As Dr. Stephen Joseph, former Health Commissioner of New York City noted when he had one of the establishments raided and shut down, "The proprietors are essentially operating an AIDS breeding ground, with profit being the driving force." (New York Times, 1988)

### **5.5 Destructive Attitudes and Values**

The final and most serious area of harm to consider is the way pornography shows the attitudes and values of young people and other consumers.

Both national Commissions to study pornography agreed that among the largest consumer groups of pornography are 12-17 year old adolescent males. Pornography is teaching an entire generation of young men distorted values about their sexuality, healthy relationships with women and respect. This is both sobering and tragic.

The institution of the family is one of the central pillars in our society. Both families and children (except in child pornography) are nonexistent in the world of pornography. Marriage is continually attacked, with the assumption of unfaithfulness with multiple partners. Families are ridiculed, except as objects for sex.

Lastly, we have fought hard for the equality, worth and dignity of many groups in our society. What does it say about our values as a society when we silently tolerate an entire class of material whose purpose is the explicit degradation/abuse/humiliation of women? This is not a legitimate form of "entertainment" in a decent society which respects all its citizens. Clearly, pornography contributes to abusive attitudes toward women which encourage inequality, sexual harassment and violence. These effects are felt in both the workplace and home. Recent incidents, such as the Navy's Tailhook Convention scandal, illustrate this relationship.

## **6.0 The Internet**

Over the last few weeks we have come to realize that local Internet Service Providers (ISPs) are making available illegal pornography and child pornography to their subscribers from their LOCAL computers. We believe they are in violation of existing obscenity laws and that most are also in violation of the existing harmful to minors laws. These local ISPs are trafficking in illegal and child pornography in almost exactly the same manner as Anthony Davis, and Oklahoma BBS operator who was successfully prosecuted in 1994 for these, and other, violations.

*[OCAF Note: See State v. Anthony Davis, prosecuted by the office of the District Attorney for Oklahoma County. See also the federal BBS computer obscenity conviction under 18 U.S.C. Sec. 1465 in U.S. v. Robert Thomas, (W.D. Tenn. 1994), (6th Cir No. 94-6648). It is also a federal crime to use a computer to import, send, or receive obscenity by means of a common carrier (including a phone modem-computer system) under 18 U.S.C. Sec. 1462. It is also a federal crime to import, send, or receive child pornography by computer under 18 U.S.C. Sec. 2252, as in U.S. v. Terry Kimbrough (N.D. Texas, 1994), affirmed (5th Cir. 1995, No. 94-10088).]*

While there are several ways a subscriber can access illegal pornography and child pornography on the Internet, the violations of obscenity and harmful to minors laws are occurring through the ISPs storing and distribution of certain newsgroups. For those unfamiliar with how the Internet operates, the following should be useful.

### **6.1 Internet Functions**

While there are a great many functions associated with the Internet, there are three major functions that almost all ISPs provide to their subscribers. These three functions, which are also the three most widely used functions of the Internet are: File Transfer Protocol (FTP), World Wide Web (WWW) access, and newsgroups (primarily USENET groups).

#### **6.1.1 File Transfer Protocol (FTP)**

FTP is currently the most widely used Internet function. ISPs provide their subscribers with special programs that allow subscribers to connect their personal computers with other computers on the net and transfer files back and forth. Thus, if an individual learns of an interesting file or program that is available for download from the public access files at, say, the University of Wisconsin, the FTP program provided by the ISP allows the subscriber to log on to the University's computer using an "anonymous logon" and retrieve that file or program. Also, of course, an individual can learn of a site that distributes illegal and child pornography, log on, and retrieve those files as well.

However, when an ISP provides FTP services, the ISP is clearly operating as a common carrier. The ISP merely accepts the connection from the subscriber and allows the subscriber to connect to the remote computer. In this instance, we do not believe the ISP is in violation of existing obscenity and harmful to minors laws.

#### **6.1.2 World Wide Web**

The World Wide Web is really just a graphical user interface (GUI) for the existing Internet sites that allow public access to their files. The ISP provides the subscriber with a special Web Browser software package or the subscriber uses one of his own. This Web Browser allows the subscriber to enter special Universal Resource Locator (URL) commands that tell the ISP's computer which remote computer to "connect" to. Actually, there is no permanent connection between computers. The Web Browser is simply sending an instruction to download a special file that can be read by the Web Browser and displayed on the subscribers monitor. After the file is downloaded, the connection is terminated. The subscriber then "browses" that file (or "page") and then either clicks on an imbedded command in that page which downloads another page or enters another URL to access another site's Web Pages.

The World Wide Web is now being utilized by commercial enterprises to advertise their companies, products and services. Currently, about 3000 new businesses are being added to the Web on a WEEKLY basis.

Once again, however, the ISP is operating as a common carrier with respect to WWW functions. The ISP is simply allowing the subscriber to connect and is transmitting that subscriber's commands to some other computer somewhere in the country. In this instance, we do not believe the ISP is in violation of existing obscenity and harmful to minors laws.

*[OCAF Note: Of course, that other computer "somewhere in the country" might be in violation of the obscenity laws in that state, and the local prosecutors in that state should take action.]*

### **6.1.3 Newsgroups**

The third most widely used Internet function is newsgroups. (Actually, the World Wide Web only recently surpassed news groups as the #2 function.) And newsgroups operate in a completely different manner from FTP and WWW functions. Because of the sheer volume of newsgroup material that transfers daily across the Internet, most news group traffic is kept on separate computers. It has been estimated that a full "news feed" will be approximately 500MB on a daily basis. And the largest hunk of that 500MB is in the "binaries" newsgroups. These "binaries" are merely graphic images and programs that have been converted from their binary codes to ASCII codes so they can be transferred across the net. And most are graphic images rather than programs. And most of the graphic images are pornographic.

Because the ISP must decide which newsgroups to carry, it is in this area that we believe the ISP stops being a common carrier and becomes a publisher and/or distributor.

### **6.1.4 Confusion Concerning Newsgroups**

There appears to be a great deal of well-founded confusion concerning newsgroups, their nature, and how they operate. Consider this example taken from Appendix A - Two Excerpts from a News Reader FAQ.

"Internet news, (or "USENET news"), is distributed using a completely different protocol to either electronic mail or normal W3 "HTTP" servers. The Network News Transfer Protocol "NNTP" has the effect of broadcasting every message to (basically) every site, in contrast to email protocols which send messages to specific sites, and HTTP, which only transfers the information on demand by the reader."

From this text one would assume that newsgroups operated like some gigantic junk email system, with every article going to every ISP. It is not until later in the article that the actual nature of newsgroups is explained: EACH ISP MUST DECIDE WHICH NEWSGROUPS TO CARRY AND WHICH NOT TO CARRY. Instead of imagining an article posted to a news group as having an address which sends it everywhere, it is more useful to imagine that article as having no address at all and that it is simply sitting at a distribution site waiting to be retrieved and distributed.

Please refer to 11.0 Appendix C - ISP Flow Chart for a visual representation of the differences between and ISPs FTP/Web traffic and newsgroup traffic.

## **6.2 News Servers**

As mentioned earlier, most newsgroup traffic is maintained on separate computers. The ISP designates one of his computers to receive the daily news feed. This computer is referred to as a "news server". (In smaller ISPs this may actually be separate large hard drives rather than separate computers.) The ISP distributes to customers a "News Reader" program. This program allows the customer to pick which news groups he wants to view. If he wants to view a particular newsgroup on a regular basis, he "subscribes" to that group. Actually, however, this is just a mechanism within the news reader that automatically downloads "articles" from these selected groups. A "subscription" to a newsgroup is NOT a command to tell a remote computer to regularly send to the "subscriber" the daily posts for that group.

We believe that at this point the ISP is NOT a common carrier. The subscriber logs on to the local ISP and then the news reader program begins to display the "articles" available to be read. The "reading" is actually a downloading of the "article" from the ISP's news server to the subscribers computer. No connection is made to a remote computer. It is all downloaded from the LOCAL computer the ISP has designated as his news server.

If the "article" is actually a "binary" graphic image, then that file must be passed through a decoder to turn it into an image that can be readily displayed by graphic viewers. This decoding process takes milliseconds and is actually being built into some Web Browsers. However, this "article" is still an electronic form of a graphic image. (Technically, it is a ".uue" file that, when decoded, become either a ".gif" file or a ".jpg" file.

In our opinion, the number of times the actual file must be passed through a decoder does not change the nature of the file. (Actually, a graphic viewer that displays a ".gif" file is just a decoder that takes the file and translates the codes into a screen image.)

### 6.3 Additional Considerations

1.) One of the most abused defenses offered by ISPs is that it is impossible to control what other people post to these newsgroups. Clearly, this is true. An enterprising pornographer could easily post his porn to an unsuspecting newsgroup such as "alt.recipies.southern". Furthermore, as soon as one newsgroup is shut down, a new one equally illegal could be created.

*[OCAF Note: The following comment has been added by Bruce A. Taylor, Chief Legal Counsel, National Law Center for Children and Families.]*

"Equally clear, however, is that when the ISP decides to carry the newsgroup "alt.binaries.pictures.erotica.teens.f\*\*k", he knows exactly what he has downloaded for re-distribution and what will be posted there for his own customers to re-download from him. Such an ISP has brought it "in house" onto his own local server for re-sending to his own subscribers. The ISP's customers don't take it from the newsgroup directly or from the person who uploaded it onto the newsgroup. The ISP's customers take the newsgroup's contents directly from the ISP. In this respect, an ISP or access provider who supplies USENET groups must pre-select and "download" those groups and files, like a wholesaler does with retail goods. This USENET business is NOT like a local post office mails a customer's order to a mail-order pornography supplier in California, but, instead, is like a warehouse which stockpiles porn to sell to "adult" bookstores or a retail store which buys a selection of both Hollywood movies from legitimate suppliers and some selected hard-core porn films from the porn industry, puts both types of films on its own shelves, and then offers it over the counter to its own retail customers. Criminal liability is clearly appropriate for this intentional conduct in distributing illegal obscenity and child pornography. It may be reasonable to exempt ISPs and access providers for providing "mere access" to the Internet and Web sites, but certainly not for their deliberate and direct porn distribution with USENET pornography."

2.) The fact that new newsgroups can be so easily created will be a frustration for law enforcement, like the phony corporations and organized crime tactics by the hard-core pornography syndicates and the sneaky tactics attempted by pedophiles. At the same time, however, this will lend support to public cries to shut down or block nearly ALL newsgroups or to abandon the newsgroups entirely, if the Internet community refuses, for a variety of reasons or excuses, to filter out or police itself to eliminate the illegal pornography and child pornography. The USENET will pay its own price for letting its streams become so polluted that the public is sick of getting sick from its dangerous and offensive pornography.

Reread Appendix A - Two Excerpts from an ISP FAQ. That is exactly what is expected by some. With all the software piracy, copyright violations, illegal pornography and child pornography being distributed through newsgroups, this might be the best idea.

To be sure, there are ENORMOUS benefits from the legitimate newsgroups. But there are other, albeit less efficient and more expensive, ways to maintain these dialogues. But cost efficiency is NOT an acceptable trade off for illegal pornography and child pornography.

3.) The fact that many ISPs have restricted access to these newsgroups, or refused to download and carry the porn-filled newsgroups, does indicate that they, too, realize they have ceased to act like common carriers with respect to USENET.

## **6.4 Is the Internet Safe?**

Billions of dollars are being spend by huge conglomerates who want to be major players in the Internet revolution that is coming. Thousands of businesses are creating Internet presence each WEEK. And yet, as is noted time after time in news articles, one group is still missing - the consumer. Millions of additional "cybernavts" will have to join the game before those billions of dollars can be recouped.

Why are people staying away from the Internet? We submit that a significant factor is fear. Immediately after news reports that tout the incredible value of the Internet seem to come the news reports of the children being stalked on the Internet by pedophiles. And reports of easily available pornography. Why would any sane family expose their children to such things? Clearly, they wouldn't and they don't.

American business needs to get a message, too. That unless they aid in the fight against illegal pornography and child pornography on the Internet, their investments will NOT pay off. The Internet is NOT now safe for families. And that means it is NOT now safe for consumers.

## **7.0 The Case Against the ISP**

Much of the case against the local ISP is being made by the ISPs themselves. Read the Appendices in section 9. These excerpts are from documents taken directly from the Internet. Read these excerpts first. It will shock you to see how openly these ISPs discuss their illegal activities. Then read each part of this section 7.

### **7.1 The ISP Is Not a Common Carrier (With Respect to Newsgroups)**

Most ISPs will want to say they are common carriers and are thus not responsible for the material on their systems, illegal or not. However, some ISPs have already come to the conclusion that they are not common carriers:

From 9.1 Appendix A - A Conversation Among ISPs:

"Not even close to true as soon as you make ANY content decision..."

Because of the heavy volume of traffic in newsgroups, the ISP must first decide just how much and how many newsgroups to carry on his system. In Oklahoma County, one ISP advertises that he carries 6,000. Another ISP advertises that he carries the full newsgroup count of over 14,000.

It is here that the ISP makes his first "content" decision. Appendix 9.5 Excerpts from InterNetNews (INN) FAQs describes the process an ISP goes through to select the newsgroups he will carry:

"The file /inn/db/active lists the newsgroups that the local site receives. Each newsgroup should be listed only once."

The next "content" decision comes then the ISP decides how long to keep specific newsgroups on his news server. Since most normal newsgroups are text only, and take up little room, the ISP usually allows these posts to exist for a week or two. With the binaries, however, because of the enormous disk space consumed, most ISP will "expire" these groups in few days, or less.

### **7.2 The ISP Decides What Illegal Pornography To Put On His News Server**

When the ISP makes his first "content" decision concerning which newsgroups to carry, he could decide not to carry the pornographic newsgroups. The ISP is essentially deciding which pornographic newsgroups to carry.

When the ISP makes his next "content" decision concerning how long to keep specific newsgroups on his news server, he is essentially deciding "how much" pornography to carry.

From 9.2 Appendix A - Two Excerpts from an ISP FAQ:

"Your USENET site is still your computer. No one can make you receive, store, or propagate files that you don't want."

"If your intention is to ban pornography from your site,..."

From 9.3 Appendix A - Excerpts from an ISP FAQ:

"In the case of alt.binaries.pictures.erotica, after all, we make a decision to carry it as part of our newsgroup, and we certainly have a reasonable idea of what it contains."

### **7.3 The ISP Knows That What Is On His News Server Is Illegal**

An issue in the successful prosecution of an ISP may be the amount of knowledge the ISP has about the newsgroups he is carrying. While this may have to be determined on a case by case basis, we believe that there is a significant body of literature to add to each individual case that would prove to a jury of reasonable men and women that ANY ISP knows, or should have known, exactly what is going on. And that he knows before he acquires his first customer!

From 9.3 Appendix A - Excerpts from an ISP FAQ:

"For one thing, the transmission of obscene material across state lines is illegal in the US, and much of USENET and FTP site material and WWW sites qualifies easily as that."

"In the case of alt.binaries.pictures.erotica, after all, we make a decision to carry it as part of our newsgroup, and we certainly have a reasonable idea of what it contains."

### **7.4 The ISP Sells Access To This Illegal Material**

Most ISPs offer "full" Internet services. That is, they offer access to FTP, WWW access, and newsgroups (among other things). Therefore, the subscription fee they charge covers access to the illegal pornography and child pornography on the USENET newsgroups. In this respect, the ISPs are operating very much like the BBS systems in the US which have been successfully prosecuted.

From 9.3 Appendix A - Excerpts from an ISP FAQ:

"In the case of alt.binaries.pictures.erotica, after all, we make a decision to carry it as part of our newsgroup, and we certainly have a reasonable idea of what it contains. I certainly know perfectly well that I am carrying this material on my system, and that it is of an adult nature. I especially know that people sign on to my system for the purpose of reading it!"

### **7.5 Summary**

We believe that ISPs are currently operating as the primary distributors of illegal pornography and child pornography on the Internet today. The ISP pays for his news feed which is made available to subscribers. The ISP decides which pornographic newsgroups to carry. The ISP decides how much pornography to carry. Subscribers access this illegal pornography and child pornography from the ISP's local computer.

While the details of running an ISP are complex, we believe they can be made understandable to a jury and that successful prosecutions would result. Furthermore, we are now faced with the prospect of more-or-less respectable people entering into the pornography business. (Make no mistake about it, profit drives the ISPs to include these pornographic news groups.)

THE LOCAL PROSECUTION OF LOCAL ISPs IS A NECESSARY STEP IN CONTROLLING PORNOGRAPHY ON A NATIONAL LEVEL.

## **8.0 An Action Proposal**

### **8.1 Contact Local Law Enforcement**

Take this document to your local police and District Attorney (or County Attorney). We believe that once they understand how ISPs operate, they can quickly take action against them. As we hope we have made clear in other sections of this document, illegal pornography is illegal. Period. And most ISPs know exactly what they are doing when they distribute it. And most know exactly how much money they make when they do so.

### **8.2 Contact Local Media**

Make this document available to your local news media. They need to understand how local ISPs are distributing illegal pornography and child pornography. Since cyber-porn is talked about nationally so often, local news media should jump at the chance to turn it into a local story. Also, of course, the public needs to understand that illegal pornography and child pornography is a local problem, too.

### **8.3 Contact Local Elected Officials**

Make this document available to your local elected officials. From city councilpersons to US Senators. Email it to them. Put it on a disc and mail it to them. DEMAND that action be taken at all levels. DEMAND that existing laws be enforced. DEMAND that laws be strengthened if need be.

### **8.4 Contact Local Businesses on the Internet**

Contact local businesses that have a presence on the Internet. REQUEST that they remove their electronic storefronts, Web pages and/or home pages from the systems of ISPs that are distributing illegal pornography and child pornography. Let them know you will boycott their products if they do not. Explain this situation to your non-computer literate friends and ask that they contact those businesses too. As you can read in 9.3 Appendix A - Excerpts from an ISP FAQ, this is all about money. So let's also hit them where it hurts - their pocketbooks.

### **8.5 Contact Your Local Places of Worship**

Take this document to your local church, temple or synagogue. This battle needs prayer. And it needs to be joined by men and women of all faiths.

### **8.6 Contact National Online Services**

Contact any national online services to which you subscribe, such as CompuServe, Prodigy and America Online. DEMAND that they remove the newsgroups that feature illegal pornography and child pornography. They know which ones are involved. Give them a little time to measure the impact of this document, but cancel your subscription if they refuse. If you live in a county in which a national online service operates a news server, contact the police and DA's office and DEMAND that they prosecute, just like in 8.1.

### **8.7 Contact Major Internet Businesses**

Contact the businesses listed in 10.0 Appendix B and let them know that you believe that the existence of illegal pornography and child pornography on the Internet is inhibiting its commercial viability. Let them know that you and your friends are reluctant to fully utilize the Internet because of the lurking dangers to women, children and families. If you can think of any other businesses that need to get that message, write to them too. You can find a sample letter at the end of 10.0 Appendix B.

### **8.8 Contact Major Internet Businesses Again**

If the above eight steps have not removed illegal pornography and child pornography from the newsgroups, then write, email and fax the organizations listed in 10.0 Appendix B AGAIN and DEMAND that ALL newsgroups be eliminated.

## 8.9 Contact OCAF for More Information

Arm yourself with more information. OCAF offers a wide variety of action-oriented materials to aid you in fighting illegal pornography and child pornography in your own community. And, frankly, we could use your financial help as well. 13.0 Appendix F is an order form for some of our materials.

## 9.0 Appendix A - Excerpts from Internet Documents

### 9.1 A CONVERSATION AMONG ISPs

*[OCAF Note: The following was taken from a recent posting to a mailing list subscribed to by ISPs. "Spam", "spamming", "Velveeta", and "clonebots" are ISP jargon words for different ways their customers inappropriately use their Internet access accounts. These FAQ's are provided to give prosecutors information on how the Internet operates and what ISP's are saying. These are not OCAF positions.]*

ISP #1:

"The basic concept is that if you exercise editorial control based on content, then you are viewed as a publisher, and hence bear responsibility for the content you allow.

But, if you make no distinctions based on content, then you are more in the realm of a common carrier (like a telephone company), and the originator of the material is the publisher."

ISP #2's Response:

"Not even close to true as soon as you make ANY content decision or any user-based decision.

A decision to change expiration dates, or remove groups based on volume, is a \*CONTENT\* decision. A decision to punish spammers is a content decision.

A decision to \*remove\* spam, Velveeta, etc. is a content decision. A decision to remove an account due to inappropriate use is (90% of the time) a content decision. Removing a user for actively pirating software (i.e.: you see someone "sz"ing the latest Pagemaker disk images, named for what they really are) is a content decision. Removing a user for using clonebots to take over an IRC channel, or sending "Swastikas" to the Jewish channels on IRC is a content decision.

We all make 'em. In fact, most ISPs user policies have terms which go far beyond "pay your bill and don't do illegal things". Its part of being in the business if you don't have those kinds of restrictions in your user agreement, you will quickly find that no other network will talk to yours.

Yet to be a true "common carrier", the only rule you can have is "pay your bill"; the "don't do illegal things" is implied, of course, but that's it. You cannot refuse service to anyone willing and able to pay nor can you make arbitrary decisions about content or use of any kind. Not to mention that common carriers often have to file tariffs and/or other documents containing their policies and business practices with government agencies!

Deal with reality rather than fantasies of invulnerability. It is your butt that is hanging out there on the line."

### 9.2 TWO EXCERPTS FROM A NEWSGROUP FAQ

*[OCAF Note: the following two sections were taken from a university FAQ (Frequently Asked Questions) about newsgroups which describes how to set up a USENET site. These FAQ's are provided to give prosecutors information on how the Internet operates and what ISP's are saying. These are not OCAF positions.]*

From the FAQ:

"WHICH NEWSGROUPS SHOULD I CARRY?"

"Your USENET site is still your computer. No one can make you receive, store, or propagate files that you don't want. Take only those newsgroups you think are useful. As mentioned above, a commercial site probably doesn't want its employees wasting too much time on non-work related activities. In that case, you might for example consider dropping the talk.\* hierarchy. But if you're at a university, why not carry as many groups as resources allow?

"If you carry any groups from a hierarchy, you should carry the answers group of that hierarchy. The .answers group contains the Frequently Asked Questions Lists (FAQs) for that hierarchy. Other groups you should definitely get are news.announce.newusers, which contains the documents that any new USENET user should read, and news.announce.important, for urgent items that all USENET readers should know. Neither of these are high volume groups, so they will not consume many system resources.

"There are other groups that are not part of the Big-Seven USENET hierarchy, but are propagated along with them. The alt.\* groups are the biggest example. Some of them are useful, but many are worthless, since there are

essentially no rules restricting their creation. (See "So You Want to Create an Alt Newsgroup" in news.answers.) If you intend to carry alt groups on your site, you should probably read the newsgroup alt.config.

"The most controversial newsgroups are without a doubt alt.binaries.pictures.erotica.\* - the newsgroups for posting of erotic / pornographic pictures. The controversy involves two issues: (1) There are many people who intensely dislike pornography, and wish it weren't available. Indeed, pornography is illegal in many places, (2) A large fraction of the images carried in a.b.p.e.\* are in violation of a copyright. If your intention is to ban pornography from your site, you should also take a look at the group alt.sex.stories to see if you find it acceptable. Some other groups in the alt.sex.\* hierarchy, for example alt.sex.movies, contain discussions \_about\_ pornography. You have to decide what in alt.sex.\* you want to allow - you'll know it when you see it.

"If you expect your site to be frequented by children, you should be especially careful about what groups they have access to. You should always read any newsgroup carefully, especially in the alt hierarchy, before you give young children access to it. (There is a k12.\* hierarchy explicitly intended for schoolchildren.

"It is probably impossible to be sure that your site is free from copyright violations at all times, any more than the owner of a bookstore can be sure that every book for sale is okay. You can't read every article coming in. On the other hand, some groups are worse than others. Like the erotica newsgroups, much of the stuff in alt.binaries.sounds.\* is questionable. Before you decide which groups to carry, be sure that you've read "What are the legal issues?" below.

"An additional consideration about the alt.binaries.\* groups is that they take up a large amount of bandwidth and disk space that might be better devoted to other information. To make room for them on your disk, you may find that you need to shorten the expiration times of other groups that are of more benefit to your users. Conserving bandwidth and disk space may wind up being a reason for not carrying alt.binaries.\* groups."

From the FAQ:

#### "WHAT ARE THE LEGAL ISSUES?"

"First of all, since USENET is international, it is not possible to give a real answer to this question. Moreover, to discuss the legal status of USENET in even one country would require a much longer document than this one.

"There is one overarching question: who is legally responsible for the articles on a site? If some freshman at Boondocks University posts the lyrics of a copyrighted Michael Jackson song, can every single USENET site be sued for propagating the copies? Can the posting site be sued?

"To my knowledge (and I am not a lawyer), in the US at least these questions haven't been entirely resolved. There are definitely cases in which bulletin board owners have gotten into trouble for copyright violations on their machines. If your site is sued, the decision in court may hinge in part on whether or not the site administrator knew that the machine contained illegal posts. Everyone is \_hoping\_ that the poster is held liable, but if the courts decide otherwise we might finally see the proverbial "film at 11" in which the end of USENET comes to pass.

"Different countries' courts may ultimately resolve these questions differently, and that could mean that USENET exists in some countries and not in others.

"Before you panic however, consider that the courts may hold that a USENET site is like a bookstore. If every bookstore were liable for the contents of every book on its shelves, no one could sell books.

## 9.3 EXCERPTS FROM AN ISP FAQ

*[OCAF Note: the following sections were taken from a widely read FAQ (Frequently Asked Questions) which describes how to run an ISP business. These FAQ's are provided to give prosecutors information on how the Internet operates and what ISP's are saying. These are not OCAF positions.]*

From the ISP FAQ:

#### "WANTON WOMEN AND STRAIGHTLACED CRUSADERS: PORNOGRAPHY ON THE NET"

#### "INTRODUCTION: WHERE PORNOGRAPHY AND THE NET COLLIDE"

"On the television every night, people watch other people shooting at yet other people and those people fall down and ooze blood and often never get up again. A couple making slow gentle love by candlelight is an X-rated movie, condemned by all and sundry, and yet we see more and more people being killed and wounded and hurt on the TV with little moral condemnation.

"Our world is messed up, and Internet providers are affected, oh yes we are. And it all begins with one disturbing fact: People get on the Internet because they want to take a peek at the dirty pictures, because they want to read about Tammy, the 14 year old horny teenage slut, because they want to express their sexual fantasies and read those of others.

"So we start with a big gain: All those great Internet services, all the access we make available to museums and research facilities, all that great hobby information and social chatting and Kibology and what-not is subsidized by the legions of people who do nothing more enlightening or inspirational than downloading dirty pictures.

"The same forces that make the Net useful for getting sexual materials are the same ones that make people fear the net. Normally, you'll get sex stuff by visiting your local porno shop, a place filled with high prices and rather dubious looking people. You wouldn't want your best friend to catch you there, would you? With alt.binaries.pictures.erotica and similar groups, you can see those same pictures in the comfort of your own home, without paying a frightful lot of money, and without much chance of embarrassment. In this way, pornography is destigmatized in a way that dramatically increases its consumption.

"So people flock to their Internet provider because it provides the fun stuff they want, in the most uncensored way. They're having their fun, and we're taking their money, and you'd think it was just another example of good ol' American ingenuity at work, eh? Perhaps not. For one thing, the transmission of obscene material across state lines is illegal in the US, and much of USENET and FTP site material and WWW sites qualifies easily as that. There have been some truly ugly cases. For example, a California BBS operator was sentenced to jail for accepting a subscription for his adult BBS from a Southern state, and thereby allowing the subscriber to download an adult image judged illegal in that state.

"The situation of alt.binaries.pictures.erotica and other USENET newsgroups dealing with porn is rather different and very unusual. The California BBS operator's system was dedicated exclusively to the distribution of adult images. An Internet provider offers so much material that the intent is much less clear. The provider can use what is called the Common Carrier defense - meaning that he just distributes stuff without looking at it, and so he is not responsible for the material.

"The common carrier defense is used by the phone company and post office; they say that, since they don't listen in to your phone conversations or read your mail, they cannot be responsible for any material you send via phone or mail, even if they're making money off it. (900 numbers are a primary example of this). This could be logically extended to USENET news; nobody has enough time to monitor every news article written or every e-mail message sent.

"In the case of the net, though, there have been no court tests of this argument. It might come to pass that we're not responsible, or it might not. In the case of alt.binaries.pictures.erotica, after all, we make a decision to carry it as part of our newsfeed, and we certainly have a reasonable idea of what it contains. I certainly know perfectly well that I am carrying this material on my system, and that it is of an adult nature. I especially know that people sign on to my system for the purpose of reading it!

"[name deleted] was kind enough to dig up at least one precedent that appears to be in our favour. I'm collecting a bit more information on this, and I will issue a revised report soon.

"Some people have considered all this and put forth the argument that the safest course of action is not to carry the adult material at all. Remove all alt.sex.\*; remove all alt.binaries.pictures.\*; read through the active file and eliminate anything even vaguely resembling sex.

"Others note that this violates the classic big company principle of denying responsibility. If you remove alt.sex and its friends from your feed, you are effectively accepting responsibility for what remains; you are saying that you are not a common carrier who just distributes everything received regardless of content. This could be a very dangerous thing to do, because lawsuits will seek the easiest targets, those systems for which this does not apply. So if you remove alt.sex but don't remove news.answers, and if an obscene message (such as the alt.sex FAQ!) appears on the latter, you might get in trouble for it.

"The worst thing to do is to remove the sex stuff and announce that you have a "child proof" system. Inventive children are rather frightfully good at finding ways around it, especially when USENET is on their side, not yours. (There is a document called "The Reading Banned Newsgroups FAQ", which explicitly lists the ways this can be done).

"Most people who run USENET sites are very much against censorship of ANY material, whether adult or not. We aren't going to remove alt.binaries.pictures.erotica unless we're forced to do so. It has to be said that this is a fight about money, as well as principle; a large number of our subscribers would quit if they didn't have the binaries and the sex.stories to play around with. For once, principle and making money stand together, on the same side.

"The Christian Right, unfortunately, are rather unhappy at this state of affairs. Certainly it's a very tough problem from their point of view. They believe sexual material to be abnormal, perverted and just plain wrong. Just as many of us believe in free speech as an absolute, they believe in respect for God and his anti-porn will. And, thanks to the Republican takeover of Congress (which I otherwise support), they have a good chance of winning some kind of tough penalties for the distribution of pornography on the Internet.

From the ISP FAQ:

#### "PORN AND YOU: THE BOTTOM LINE"

"I think you can tell that this is an amazingly controversial issue, with opinions literally all over the map. Some people think your safest course is to give everyone complete access to everything; others think a good faith effort to prevent minors from accessing porn is needed, and still others think porn is horribly immoral and should be removed from the net entirely. I think most Internet providers believe in their heart of hearts that "information should be free"; most of them would also rather not have their equipment seized by a rapacious Federal government.

"I suspect the bottom line is something like this:

"- Someone's going to become a test case on this. Unless you're a big system, worthy of an expensive lawsuit, it probably won't be you. Once the test case has been fought and won (or lost), everyone will no doubt change their system (or not change it) to conform to the result.

"- The safest and most probable course is probably to do whatever other providers in your area are doing. In my experience, most of them offer a full newsgroup, including the sexual stuff, and require potential users to sign a paper saying they're of legal age or have permission of their parent or guardian to sign on. If you do the same, it's pretty unlikely you'll become a test case. There are juicier targets.

"- Watch out if you promote your service heavily as having these pictures or stories. People who want them will ask or root around the system until they find them. If you promote your system or make it clear that the binaries groups are a major reason for its existence, I'd anticipate a legal problem, on either the obscenity or the copyright issue (see below for more on that). As another example, you probably want to make UUDECODER available in your libraries, and make sure people know how to get to the FAQ, but it's not recommended to do the decoding for the customer; that would give you a higher level of responsibility for the images. (As long as you offer UUDECODER and carry image groups other than the sexual ones, you can say with reasonable legitimacy that this is a service to help people decode all pictures, not just pornographic ones).

"- Stories are safer than pictures; verbal representations of things don't seem to scare off the morality police in the way pictures do. There seems to be a legal presumption that favors printed text as protected speech, even if the text is about things that would be distinctly illegal if done and photographed. So kiddie porn stories are OK (which is good, since alt.sex.stories is filled with them), but kiddie porn photographs are most definitely NOT OK at all.

"More information on this would be appreciated from the legal folks on the list and elsewhere.

From the ISP FAQ:

"CAN MINORS BE ALLOWED TO USE UNRESTRICTED ACCOUNTS?"

"With all the spicy stuff on TV, in movies and in books, all of which can be easily accessed by minors, it rather surprises me that there's so much fuss about a few pictures. But there is.

"The answer appears to be, 'Only if they have a note from their parents.' But I'd like to hear all views on this issue. Note that this is not confined to picture files; newsgroups like alt.sex and alt.sex.stories also contain questionable material. Even such a tame sounding group as news.answers is a time bomb; eventually that alt.sex.bondage FAQ is going to find its way in there.

From the ISP FAQ:

"HOW CAN I PREVENT MINORS FROM SEEING THE SEX STUFF?"

"You can certainly restrict a lot of it, but I doubt that you'll get it all. In particular, news.answers contains some sexual material. It would be possible to put together an automated kill-file mechanism that would put any group with the name 'sex' in its title, and hide messages with the name 'sex' in their subject lines.

"My BBS-like software has an interface that gives another possible answer to this question. With my system, you can effectively lock people in to a specific list of newsgroups selected by the operator. Since there's no shell account, there's no way to fool with the active file or read the groups from the news spool.

"A normal newsreader has so many security holes that it's not going to prevent the determined 13-year old from getting the access s/he wants. I am very much afraid that protecting minors from sexual material on the net is just as hard as protecting them from sexual material in real life. That is to say, impossible. Even with my BBS-like software, they could still telnet to a site that has those groups. It is a great pity this opens up so many potential legal problems."

## 9.4 TWO EXCERPTS FROM A NEWS SERVER FAQ

*[OCAF Note: the following two sections were taken from a widely read FAQ (Frequently Asked Questions) which describes how to run a news server. These FAQ's are provided to give prosecutors information on how the Internet operates and what ISP's are saying. These are not OCAF positions.]*

From the News Server FAQ:

"HOW NEWS IS DISTRIBUTED"

"Internet news, (or 'USENET news'), is distributed using a completely different protocol to either electronic mail or normal W3 'HTTP' servers. The Network News Transfer Protocol 'NNTP' has the effect of broadcasting every message to (basically) every site, in contrast to email protocols which send messages to specific sites, and HTTP, which only transfers the information on demand by the reader.

"An NNTP server is set up by its system manager to know about some (at least one) nearby servers. With these servers, there is an arrangement that they will pass news to each other. Sometimes this arrangement is limited to certain news groups. Articles can be passed in both directions, and the servers compare article message-id headers to see whether they have any new news for each other.

"(There are other protocols for communicating between servers, over dial-up lines for example, when there is no Internet connectivity. That is why there are many people who have no access to Internet can read and post news.)"

From the News Server FAQ:

#### "RUNNING AN NNTP SERVER"

"An NNTP server manager decides which parts of the news group hierarchy he will take, and finds another server administrator who is willing to feed news to him: his "news feed". Many administrators for example exclude the "alt.\*" groups. The decision to take NNTP news involves allocating a lot of disk space to keep all the articles until they expire (typically in a few weeks). Some organizations feel it is an inappropriate use of their machines to store articles on strange topics. This is why, even if you do have a news server, you may not have access to some groups.

"Sometimes there are conditions attached to the news feed, which forbid for example commercial use being made of the data, or it being passed on by any other way than NNTP.

"NNTP is much more efficient than HTTP for the case of articles which are going to be very widely read, because an article is only transferred once onto each site. Then, someone reads it, the WWW client only has to retrieve it from the local server, and not from the server where it started. NNTP servers will only allow local clients to access them directly, as to allow everyone in the world to access the same NNTP server would destroy this efficiency, and could lead to disastrous loads on the net and on that server. This is why you can't use just anyone's NNTP server. We get a lot of queries asking whether people can use ours. Sorry, you can't.

"It may be that on your site there is already an NNTP server. Smart sites just give it an alias "news". If anyone on your site is reading Internet news then you could find how they have configured their news reader.

"If you don't have an NNTP server on site, then someone is going to have to install it and arrange for a news feed from somewhere close."

## 9.5 Excerpts from InterNetNews (INN) FAQs

*[OCAF Note: the following section was taken from a widely read FAQ (Frequently Asked Questions) which describes how to run a the InterNetNews software. These FAQ's are provided to give prosecutors information on how the Internet operates and what ISP's are saying. These are not OCAF positions.]*

From the INN FAQ:

#### "ACTIVE FILE FORMATS"

"NAME active, active.times - list of active Usenet newsgroups

#### "DESCRIPTION"

"The file /inn/db/active lists the newsgroups that the local site receives. Each newsgroup should be listed only once. Each line specifies one group; their order in the file does not matter. Within each newsgroup, articles are assigned unique names, which are monotonically increasing numbers.

"If an article is posted to newsgroups not mentioned in this file, those newsgroups are ignored. If no valid newsgroups are specified, the article is rejected.

"Each line consists of four fields specified by a space:

```
name himark lomark flags
```

The first field is the name of the newsgroup. Newsgroups that start with the three characters ``to." are treated specially; see innd(8). The second field is the highest article number that has been used in that newsgroup. The third field is the lowest article number in the group; this number is not guaranteed to be accurate, and should only be taken to be a hint. Note that because of article cancellations, there may be gaps in the numbering sequence. If the lowest article number is greater than the highest article number, then there are no articles in the newsgroup. In order to make it possible to update an entry in-place without rewriting the entire file, the second and third fields are padded out with leading zeros to make them a fixed width.

"The fourth field can contain one of the following flags:

y	Local postings are allowed
n	No local postings are allowed, only remote ones
m	The group is moderated and all postings must be approved
j	Articles in this group are not kept, but only passed on
x	Articles cannot be posted to this newsgroup
=foo.bar	Articles are locally filed into the ``foo.bar" group

"If a newsgroup has the ``j" flag, then no articles will be filed into that newsgroup and local postings to that group should not be generated. If an article for such a newsgroup is received from a remote site, it will be filed into the "junk" newsgroup if it is not cross-posted. This is different from not having a newsgroup listed in the file because sites can subscribe to ``j" newsgroups and the article will be propagated to them.

"If the fourth field of a newsgroup starts with an equal sign, then the newsgroup is an alias. Articles can be posted to the group, but will be treated as if they were posted to the group named after the equal sign. The second and third fields are ignored. Note that the Newsgroup header is not modified (Alias groups are typically used during a transition, and are typically created with `ctlinnd(8)`). An alias newsgroup should not point to another alias.

"The file `/inn/db/active.times` provides a chronological record of when newsgroups are created. This file is normally updated by `innnd(8)` whenever a `ctlinnd ``newsgroup`" command is done. Each line consist of three fields:

name time creator

The first field is the name of the newsgroup. The second field is the time it was created, expressed as the number of seconds since the epoch - i.e., a `time_t`; see `gettimeofday(2)`. The third field is the electronic mail address of the person who created the group."

## 10.0 Appendix B - Major Businesses Involved in the Internet

America Online, Inc.  
8619 Westwood Center Dr.  
Vienna, VA 22182-2285  
Phone: 703-448-8700  
Fax: 703-883-1532  
Email: [postmaster@aol.com](mailto:postmaster@aol.com)

Apex Global Information Services, Inc. (AGIS)  
22015 West Outer Drive  
Dearborn, MI 48124  
Phone: 313-730-1130  
Fax: 313-563-6119  
Email: [web@agis.net](mailto:web@agis.net)

AT&T Corporation  
32 Avenue of the Americas  
New York, NY 10013-2412  
Phone: 212-387-5400  
Fax: 212-841-4715  
Email through web site: <http://www.att.com/comment.html>

BankAmerica Corporation  
Bank of America Center  
San Francisco, CA 94104  
Phone: 415-622-3530  
Fax: 415-622-7915  
Email through web site: [http://www.bofa.com/contact/bank\\_notes.html](http://www.bofa.com/contact/bank_notes.html)

CompuServe Incorporated (a subsidiary of H & R Block)  
5000 Arlington Center Blvd.  
Columbus, OH 43220  
Phone: 614-457-8600  
Fax: 614-457-0348  
Email: [service@interserv.com](mailto:service@interserv.com)

MCI Communications Corporation  
1801 Pennsylvania Ave, NW  
Washington, D.C. 20006  
Phone: 202-872-1600  
Fax: 202-887-3140  
Email through web site: <http://www.mci.com/banner/feedback.shtml>

MFS Communications Company, Inc.  
3555 Farnam Street, Suite 200  
Omaha, NE 68131  
Phone: 402-271-2980  
Fax: 402-271-2971  
Email: [info@mfsdatanet.com](mailto:info@mfsdatanet.com)

Microsoft Corporation  
One Microsoft Way  
Redmond, WA 98052-6399  
Phone: 206-882-8080  
Fax: 206-883-8101  
Email: [www@microsoft.com](mailto:www@microsoft.com)

NETCOM On-Line Communication Services, Inc.  
3031 Tisch Way  
San Jose, CA 95128  
Phone: 408-983-5950, 800-353-6600  
Fax: 408-241-9145

Email: [personal@netcom.com](mailto:personal@netcom.com)

Netscape Communications Corporation  
501 E. Middlefield Road  
Mountain View, CA 94043  
Phone: 415-254-1900  
Fax: 415-528-4125  
Email through web site: <http://home.mcom.com/feedback/feedback.html>

Prodigy Services Company  
445 Hamilton Avenue  
White Plains, NY 10601  
Phone: 914-448-8000  
Fax: 914-684-0278  
Email: [webmaster@prodigy.com](mailto:webmaster@prodigy.com)

Performance Systems International, Inc. (PSI)  
510 Huntmar Park Dr.  
Herndon, VA 22070  
Phone: 703-904-4100  
Fax: 703-904-4200  
Email: [info@psi.com](mailto:info@psi.com)

Sprint Corporation  
2330 Shawnee Mission Pkwy.  
Westwood, KS 66205  
Phone: 913-624-3000  
Fax: 913-624-3281  
Email through web site: <http://WWW.sprint.com/support/webmaster.html>

Time Warner, Inc.  
75 Rockefeller Plaza  
New York, NY 10019  
Phone: 212-484-8000  
Fax: 212-484-8734  
Email: [pathfinder-webmaster@pathfinder.com](mailto:pathfinder-webmaster@pathfinder.com)

Turner Broadcasting System, Inc.  
One CNN Center  
Atlanta, GA 30303  
Phone: 404-827-1700  
Fax: 404-827-2437  
Email: [cnn.feedback@cnn.com](mailto:cnn.feedback@cnn.com)

UUNET Technologies, Inc.  
3060 Williams Drive  
Fairfax, Virginia 22031-4648 USA  
Phone: 800-488-6383, 703-206-5600  
Fax: 703-206-5601  
Email: [info@uu.net](mailto:info@uu.net)

WorldCom, Inc. (Formerly LDDS & WilTel)  
515 E. Amite Street  
Jackson, MS 39201-2702  
Phone: 601-360-8600  
Fax: 601-360-8616  
Email: [webmaster@wiltel.com](mailto:webmaster@wiltel.com)

Sample Letter:

Gentlemen:

As a concerned citizen I am worried about the effects of illegal pornography and child pornography on the health and safety of our nation. I am aware that this illegal pornography and child pornography exists on the Internet and my family and I are reluctant to fully utilize Internet services because it does exist.

I am aware that your company's future success is tied to a commercially successful Internet, and I want you to know that I do not believe such success can come as long as this illegal pornography and child pornography remains on the Internet.

I urge you to use your influence to help rid the Internet of illegal pornography and child pornography.

Respectfully,



*[OCAF Note: The following Oklahoma law is presented as an example of an existing obscenity law.]*

SECTION 1024.1. DEFINITIONS

As used in Sections 1021 through 1024.4 of this title:

1. "Obscene material" means and includes any photographic product depicting actual human models or actors, whether in the form of still photographs, undeveloped photographs, motion pictures, undeveloped film, videotape, or a purely photographic product or a reproduction of such product in any book, pamphlet, magazine, or other publication, if said items contain the elements of paragraph 2 of this section.
2. "Performance" means and includes any live or cinematic show of whatever nature over any broadcast media, if the performance contains the following:
  - a. The obscene material or performance has as one of its participants or portrayed observers a child under the age of eighteen (18) or who appears as prepubescent; or
  - b. The obscene material or performance contains depictions or descriptions of sexual conduct which are patently offensive; and
  - c. The obscene material or performance taken as a whole has as the dominant theme an appeal to prurient Interest, as found by the average person applying contemporary community standards; and
  - d. The obscene material or performance taken as a whole lacks serious literary, artistic, educational, political, or scientific purposes or value.
3. "Sexual conduct" means and includes any of the following:
  - a. Acts of sexual intercourse including any intercourse which is normal or perverted, actual or simulated,
  - b. Acts of deviate sexual conduct, including oral and anal sodomy,
  - c. Acts of masturbation,
  - d. Acts of sadomasochistic abuse including but not limited to:
    - (1) flagellation or torture by or upon any person who is nude or clad in undergarments or in a costume which is of a revealing nature,  
or
    - (2) the condition of being fettered, bound, or otherwise physically restrained on the part of the one who is nude or so clothed,
  - e. Acts of excretion in a sexual context, or
  - f. Acts of exhibiting human genitals or pubic areas.

The types of sexual conduct described in paragraph 3 of this section are intended to include situations when, if appropriate to the type of conduct, the conduct is performed alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.