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Internet Use Policies Required in School Districts that Allow Pupils On-Line Access

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Code Sections Affected

Education Code § 51870.5 (new); § 48980 (amended).
AB 132 (Campbell); 1997 STAT. Ch. 86

I. INTRODUCTION

*“Computers give us a world where people are judged not by the color of their skin or their gender or their family’s income but by their minds—how well they can express themselves on those screens. If we can teach our children these values, they can learn to respect themselves and each other.”*¹

In 1995, the Communications Decency Act (CDA) was enacted by Congress to protect minors from indecent and offensive communications on the Internet.² Recently, the United States Supreme Court held the CDA unconstitutional, explaining that the Act violated First Amendment guarantees of free speech.³ Some Congress members knew that the CDA would not withstand Constitutional challenges, but supported the Act because it represented a symbolic stand in the fight against pornography available to children.⁴

Many citizens feel that the recent Supreme Court ruling appropriately places the responsibility for how children use the Internet on parents rather than on the government.⁵ Unfortunately, when a child accesses the Internet while at school, control by

1. President Bill Clinton, *Future of the Net* (visited Sep. 12, 1997) <<http://www.cnet.com/Content/Features/Dlife/Future/Visionaries/Interviews/int.clinton.html>>.

2. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 133, 47 U.S.C.A. §§ 223(a)-(c) (West Supp. 1997).

3. *Reno v. A.C.L.U.*, 65 U.S.L.W. 4715, 4716 (1997).

4. See Gary Chapman, *The Nettlesome Questions of Net Decency*, *NEWSDAY* (New York), June 29, 1997, at G34 (reporting that voting for the CDA was easy for most members of Congress because the CDA allegedly fought pornography).

5. Numerous newspaper and magazine articles quote individuals who feel that parents should be responsible for restricting their children’s access to Internet sites which are inappropriate for children. See, e.g., Beth Berselli, *Expert Says Supervision Best Way to Limit What Kids See on the ‘Net*, *IDAHO FALLS POST REGISTER*, July 26, 1995, at A5 (stating parents can best protect their children from indecent material on the Internet by supervising their on-line use); *Porn Filtering Software Seen as Hot Commodity*, *SACRAMENTO BEE*, June 27, 1997, at E1 [hereinafter *Porn Filtering Software*] (asserting that parents, teachers, and other care-givers are responsible for protecting children from on-line porn); Josette Shiner & Bonnie Erbe, *Internet Porn and Public Access*, *WASHINGTON TIMES*, Mar. 22, 1997, at C1 (proclaiming that parents, not the government, have the duty to ensure

a parent is not always possible or practical. In response to this dilemma, school districts across the country have adopted "Acceptable Use Policies" or "Responsible Use Policies" to guide and control children when using the Internet at school.⁶ In California, the Legislature enacted Chapter 86 to continue the trend of implementing Acceptable Use Policies in schools.⁷ Chapter 86 requires that school districts adopt a policy regarding pupil access to "harmful matter" if they allow students access to the Internet.⁸ Though clearly a step in the direction of protecting children from unwholesome or obscene on-line materials, Chapter 86 is not a guarantee that children will be kept from on-line venues that make such materials available.⁹

II. BACKGROUND

A. Constitutional Issues

As schools encourage use of the Internet for research and learning, the Internet will become increasingly accessible to greater numbers of children in the following years.¹⁰ At the same time that more children are being introduced to the Internet,¹¹ concerns about childrens' access to pornographic and obscene materials on-line are

that children do not access pornographic sites on the Internet).

6. See Gary Chapman, *Internet Content Up to Us; Court Decision Leaves Culture to Shape*, AUSTIN-AM. STATESMAN (Austin, Tx.), July 1, 1997, at A11 (commenting that many Texas schools are now adopting Acceptable Use Policies as part of the process of introducing the Internet to schools); see also Michelle V. Rafter, *The Cutting Edge/Back to School Special; Students Told to Abide by Rules of the Superhighway*, L.A. TIMES, Aug. 26, 1996, at D1 (detailing the Acceptable Use Policy implemented in the Los Angeles Unified School District); *Schools Will Have to Agree to Guidelines to Go On-line*, INDIANAPOLIS STAR, June 27, 1997, at E4 [hereinafter *School Guidelines*] (reporting that Indiana schools must incorporate specific guidelines into their Acceptable Use Policies in order to receive state funding to support Internet access).

7. See CAL. EDUC. CODE § 51870.5 (enacted by Chapter 86) (requiring school districts that provide Internet access to adopt a policy regarding on-line access by pupils); see also *id.* § 48980 (amended by Chapter 86) (providing that parents or guardians of pupils shall be notified of a school district's on-line access policy).

8. See CAL. PENAL CODE § 313(a) (West 1988 & Supp. 1997) (defining "harmful matter" as "matter, taken as a whole, which to the average person, applying contemporary statewide standards, appeals to the prurient interest, and is matter, which, taken as a whole, depicts or describes in a patently offensive way sexual conduct and which, taken as a whole, lacks serious literary, artistic, political, or scientific value for minors"); *id.* § 313(b) (providing a definition of "matter").

9. See *infra* notes 31-44 and accompanying text (discussing the various ways in which children may be exposed to deleterious materials on the Internet).

10. See *Porn Filtering Software*, *supra* note 5, at E1 (reporting that by the year 2000, about 95% of all public schools in the U.S. are expected to have Internet access); see also Lisa Frederick, *Looking for Net Results, Officials Keeping Watchful Eyes on What Students Find Surfing the Internet*, ATLANTA J. CONST., Oct. 5, 1995, at R1 (remarking that teachers at a Georgia school are using the Internet to expose students to new research and reference sources); Lou Michel, *Safeguards Proposed for Internet Access*, BUFFALO NEWS, Dec. 22, 1995, at B5 (quoting New York school officials who feel access to the Internet provides a "new and powerful (educational) tool" for students); *Schools Guidelines*, *supra* note 6, at E4 (quoting Governor Bayh of Indiana as saying "access to the Internet is a valuable educational tool").

11. See Clint Swett, *Teaching Teachers the Internet*, SACRAMENTO BEE, July 7, 1997, at B10 (revealing that the proportion of schools with Internet access increased to 70% in 1996-97 from 32% in 1995-96).

being raised.¹² In fact, illustratively, *Time Magazine* reported that “83.5 percent of the pictures were pornographic” in the portion of the Internet known as Usenet.¹³ Although the statistics reported by *Time Magazine* are faulty,¹⁴ parents and educators remain concerned that children will tap into adult Internet sites.¹⁵

Against this background, Congress passed the CDA, making it a crime to put “obscene,” “indecent” or “patently offensive” words or pictures on-line where they could be found by children.¹⁶ Subsequently, the United States Supreme Court, in *Reno v. A.C.L.U.*,¹⁷ held that the CDA violated the First Amendment right of freedom of speech.¹⁸

The Supreme Court was aware that a major part of the issue precipitating passage of the CDA was the recurring problem of how to keep pornography away from children.¹⁹ However, the Court ultimately held that “[t]he interest in encouraging freedom of expression in a democratic society outweighs any theoretical but unproven benefit of censorship.”²⁰ In its analysis, the Court pointed out that the CDA proscribed material which is “indecent” or “patently offensive” as well as that which is “obscene.”²¹ While obscenity is not protected by the First Amendment, adults do have a constitutional right to obtain speech which is indecent or patently offensive.²²

12. See *Porn Filtering Software*, *supra* note 5, at E1 (concluding that pornography sites on the Internet proliferate because they are so profitable, and there is therefore an enormous amount of material from which children should be shielded).

13. Philip Elmer-DeWitt, *Cyberporn—On a Screen Near You*, *TIME*, July 3, 1995, at 38.

14. See David Kline, *Time Magazine's Bogus Cyberporn Cover, and Censorship*, *S.F. EXAMINER*, July 21, 1995, at A21 (revealing that, in fact, only about 3% of all traffic on Usenet consists of pornographic images, and Usenet represents only about 11.5% of all traffic on the Internet). Extrapolated, this shows that only about one half of one percent of Internet communications are devoted to pornography.

15. See *infra* notes 31-43 and accompanying text (articulating the concerns of adults about child access to on-line pornography and some methods to reduce such accessibility).

16. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 133, 47 U.S.C.A. §§ 223(a)-(c) (West Supp. 1997).

17. 65 U.S.L.W. 4715 (1997).

18. *Id.* at 4716.

19. See *id.* at 4724 (reiterating that the United States Supreme Court recognizes “the governmental interest in protecting children from harmful materials”); see also David G. Savage, *Supreme Court Debates Internet Indecency Law*, *L.A. TIMES*, Mar. 20, 1997, at A21 (reflecting the concerns of the Supreme Court Justices expressed during the March 19, 1997, arguments before the Supreme Court in *Reno v. A.C.L.U.*, that children be protected from on-line porn).

20. *Reno*, 65 U.S.L.W. at 4727.

21. *Id.* at 4719; see 47 U.S.C.A. § 223(a) (West Supp. 1997) (prohibiting the knowing transmission of communication which is obscene or indecent to recipients under the age of 18); *id.* § 223(d) (West Supp. 1997) (prohibiting the knowing sending or displaying of patently offensive messages in a manner that is available to a person under the age of 18).

22. See *Sable Communications of Cal. Inc. v. FCC*, 492 U.S. 115, 126 (1988) (stating that sexual expression, which is indecent but not obscene, is protected by the First Amendment); *Carey v. Population Servs. Int'l.*, 431 U.S. 678, 701(1976) (stating that when obscenity is not involved, the fact that “protected speech may be offensive to some does not justify its suppression”).

The test to determine what constitutes obscenity was defined by the United States Supreme Court in *Miller v. California*²³ as “(a) whether the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.”²⁴ According to the Court in *Reno*, the CDA is vague and “lacks the precision that the First Amendment requires when a statute regulates the content of speech.”²⁵ The Court explained that the CDA only attempts to proscribe material in the second prong of the *Miller* test, and omits the requirement in the second prong that the material be “specifically defined by the applicable state law.”²⁶

Thus, proponents of the CDA lost their argument that the CDA was not unconstitutionally vague, and the Court held that the CDA impinges on the freedom of adults to receive such speech.²⁷ The Court acknowledged there is a “governmental interest in protecting children from harmful materials.”²⁸ In fact, it is already illegal under federal law to transmit obscenity or child pornography via the Internet or otherwise.²⁹ However, indecent or patently offensive materials are different than obscene materials, and are not illegal to transmit.³⁰ Because Congress’ attempt to regulate the transmission of indecent and patently offensive materials through the CDA has failed, society must explore other methods of keeping these materials away from children who are using the Internet.

B. Is There Any Protection For Children Who “Surf the ‘Net’”?

In the aftermath of *Reno*, many are saying that the responsibility for shielding children from on-line pornography rests with parents.³¹ Parents are trying to accept

23. 413 U.S. 15 (1972).

24. *Id.* at 24.

25. *Reno*, 65 U.S.L.W. at 4723.

26. *Id.* (stating that the requirement of a definition under an appropriate state law reduces the inherent vagueness of the term “patently offensive”).

27. *See id.* at 4723 (stating the “CDA effectively suppresses a large amount of speech that adults have a constitutional right to receive”).

28. *Id.* at 4724.

29. *See* 18 U.S.C.A. §§ 1464-1465 (West Supp. 1997) (criminalizing obscenity); *id.* § 2251 (West Supp. 1997) (criminalizing child pornography).

30. *See supra* note 22 and accompanying text (citing cases that distinguish obscene material, which is not protected by the First Amendment, from indecent and offensive materials, which may be protected by the First Amendment).

31. *See supra* note 5 and accompanying text (noting the public opinion that parents are responsible to keep their children away from on-line smut).

the idea of limits on children while acknowledging that the premise behind the Internet is openness and the free exchange of ideas.³²

Depending on who you talk to, access to pornography sites on the Internet may be easy or difficult.³³ For example, when a group of high school students in Los Angeles was interviewed about whether regulation of the Internet is possible,³⁴ one interviewee stated that “any kid with an IQ of 20 could download a pornography picture.”³⁵ In contrast, a Georgia high school student felt that someone had to actively search for objectionable material in order to find it.³⁶

Perhaps the relative ease of obtaining deleterious material from the Internet is a function of the sophistication of the child who is on-line. But even unsophisticated children who are not seeking objectionable material may be exposed to it through chat rooms.³⁷ One way to limit childrens’ access to harmful materials is through a shield provided by a subscriber’s on-line service.³⁸ Controls include restricting a child’s access to childrens’ areas, and chat room “police” who monitor chat rooms for inappropriate conversations.³⁹

Concerned adults may also buy “Web Babysitters” which are blocking software programs designed to restrict access to sites determined to be bad by the software developers.⁴⁰ These various products are helpful in protecting children from encountering objectionable materials on-line⁴¹ but they are no guarantee that children will not see something their parents don’t want them to see.⁴² Critics of such software

32. See Rebecca Huntington, *Porn on the Internet; Freedom of Expression or Lewd Conduct?*, LEWISTON MORNING TRIB. (Lewiston, ID), Mar. 24, 1996, at A1 (noting that parents have a responsibility to keep track of what their children are doing on the Internet, while conceding that the “Internet is meant to be open and accessible”).

33. *Compare Reno*, 65 U.S.L.W. at 4718 (finding that while sexually explicit material is widely available on the Internet, the “odds are slim” that a user would accidentally access a sexually-explicit site) with *Children Online. Is Your Kid Caught Up in the Web?*, CONSUMER REPORTS, Vol. 62, No. 5, at 27 (1997) [hereinafter *Children Online*] (stating that researchers found offensive materials with just a few clicks of the mouse).

34. *Southern California Voices/ A Forum Community Issues: Youth Opinion’; On-Line Smut Laws: ‘A Wrench in the Gears’*, L.A. TIMES, July 15, 1995, at B7 (relaying the opinions of Los Angeles-area students regarding whether regulation of Internet use by students is feasible).

35. *Id.*

36. See Frederick, *supra* note 10, at R1 (reporting one student’s observation that a student would have to “really, really be looking for that kind of stuff” in order to find it).

37. See Kline, *supra* note 14, at E1 (relating the experience of the author’s son, who was “approached” by a pedophile the first time he logged on to America Online); see also *Children Online*, *supra* note 33, at 27 (reporting that children may be targeted on-line by people with “ulterior motives”).

38. See *Children Online*, *supra* note 33, at 27 (describing the shields provided by the major on-line services).

39. See Lynn Walford, *Guardian Angels Take on the Internet Amid Censorship Concerns*, L.A. TIMES, Feb. 7, 1996, at D1 (reporting that the Cyber Angels, an offshoot of the vigilante Guardian Angels, police cyberspace for pedophiles in chat rooms).

40. *Children Online*, *supra* note 33, at 27.

41. See *id.* at 27 (stating that no tested software was totally effective in blocking adult sites, the standards of the software developer may be more or less stringent than consumer criterion, software may not be compatible with a user’s on-line service, and the software may disable the user’s computer).

42. *Id.*

argue that these products may censor too much.⁴³ An alternative approach to blocking software that is being explored is web site labeling technology.⁴⁴ Though such labeling will probably be voluntary, it will tell parents and teachers the content of a web site and for what age groups the site would be appropriate.⁴⁵

III. CHAPTER 86

Chapter 86 mandates that school districts which provide children access to the Internet develop pupil access policies.⁴⁶ Furthermore, the school district must notify parents or legal guardians of the policy that they have put in place.⁴⁷ The legislation is necessary to ensure that schools are aware of, and inform parents about, the potential for children to access harmful materials on-line.⁴⁸

It is ironic that Chapter 86 may be cited as the Children's Internet Protection Act of 1997,⁴⁹ because in its enacted version, it appears to be less about protecting children and more about protecting school districts.⁵⁰ In its original version the bill required school districts to install and maintain software in order to control the access of pupils to the Internet.⁵¹ Further, the initial version of the bill required school districts to prohibit pupil access to sites containing specified types of harmful matter.⁵² Drafters of Chapter 86 explain that the revisions resulted from their discomfort with mandating what policies local districts must implement.⁵³ The unintended consequences imposed by well-meaning legislators would have been the

43. See Chapman, *supra* note 4, at G4 (commenting that blocking software often censors sites of value at the same time that they block smut, such as sites that offer information about AIDS education and prevention).

44. See *id.* at G4 (describing Platform for Internet Content Selection, or PICS, as a self-labeling system which tells a viewer what they will see at that site).

45. See *id.* at G4 (remarking that a draw back to this system is that many people will not label their web sites and valuable sites might become blocked by people who will refuse to visit unlabeled sites).

46. CAL. EDUC. CODE § 51870.5 (added by Chapter 86).

47. *Id.* § 48980 (amended by Chapter 86).

48. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS of AB 132, at 2 (May 12, 1997).

49. 1997 Cal. Stat. ch. 86, sec. 1, at 436 (enacting CAL. EDUC. CODE § 51870.5).

50. Compare Campbell, ASSEMBLY BILL 132, Jan. 15, 1997 version, at 2 (copy on file with *McGeorge Law Review*) (mandating affirmative steps to be taken by school districts to control Internet access by students), with ASSEMBLY BILL 132, July 3, 1997 version, at 3 (requiring that schools must merely adopt a policy about student access to on-line sites that contain harmful matter).

51. See Campbell, ASSEMBLY BILL 132, Jan. 15, 1997 version, at 2 (on file with *McGeorge Law Review*) (proposing to add § 51870.5 to the California Education Code requiring or thereby requiring a school district "purchase, install and maintain a software program to control the access of pupils to Internet and on-line sites"). This requirement was deleted from the February 24, 1997 version of the legislation.

52. See *id.* at 2 (proposing that schools would be required to prohibit access by minors to sites that contain or make reference to harmful matter (as defined in subdivision (a) of § 313 of the Penal Code section), sexual acts, drugs or the drug culture, gambling, illegal activity or alcoholic beverages or tobacco). This section of the bill was deleted in the February 24, 1997 version.

53. See Telephone Interview with Bob Decker, Legislative Consultant to Assemblymember Bill Campbell on AB 132 (Aug. 11, 1997) [hereinafter Decker interview] (notes on file with *McGeorge Law Review*) (stating legislators decided to allow local school districts to set policies based on the needs and desires of parents and guardians whose children attend those schools).

preclusion of legitimate research by older students because it would have mandated the same controls for all students, regardless of their age.⁵⁴ For example, if access to any site which made reference to alcoholic beverages was proscribed as earlier versions of the bill required, older students would be disallowed from researching a topic such as alcohol use or abuse.⁵⁵ The overriding concern that influenced the final version of the legislation is that parents and teachers be aware of the Internet and the problems associated with it.⁵⁶

IV. CHAPTER 86 AND THE CONSTITUTION

The evolution of Chapter 86 demonstrates a dilemma faced by legislators: opponents feel the enacted version is overbroad, yet the specificity of previous versions may have resulted in constitutional challenges to the law.⁵⁷ These constitutional issues are discussed below.⁵⁸

A. *Overbreadth*

A statute is constitutionally overbroad if, in addition to proscribing activities which may be constitutionally forbidden, it also sweeps within its coverage speech which is protected by the First Amendment.⁵⁹ Opponents of Chapter 86 contend that it is overbroad because it does not provide any guidance to schools for drafting Internet use policies.⁶⁰ Consequently, school districts have the power to adopt policies which restrict constitutionally protected speech by drafting local use policies that are too broad.⁶¹ Although opponents of Chapter 86 assume use policies will be unduly restrictive, until such policies are promulgated and reviewed, there is no way to confirm that the First Amendment rights of school children have been impinged upon.

54. Decker interview, *supra* note 53; see Cynthia Barnett, *Internet Decency Act Falls 7-2*, RALEIGH NEWS & OBSERVER (Raleigh, NC) June 27, 1997, at A1 (furnishing the example that blocking software restricting access to sites using the word "sex" might shut out a student researching the poet Anne Sexton).

55. See ASSEMBLY BILL 132, § 2, Jan. 15, 1997 version, at 2 (copy on file with *McGeorge Law Review*) (mandating that schools that provide pupils with access to the Internet shall install and maintain blocking software that restricts access to alcoholic beverages, among other things).

56. See Decker interview, *supra* note 53 (stating that the drafters of Chapter 86 preferred to allow the school districts and parents to become aware of the risks of the Internet and to be proactive in constructing an Acceptable Use Policy to fit their local needs).

57. See *supra* notes 49-56 and accompanying text (documenting the changes Chapter 86 underwent prior to enactment).

58. See *infra* notes 59-66 and accompanying text (discussing constitutional issues relating to Chapter 86).

59. *Thornhill v. Alabama*, 310 U.S. 88, 97 (1939).

60. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 132, at 2 (May 12, 1997).

61. *Id.*

B. Specificity

Earlier versions of Chapter 86 specified prohibited materials, and those versions would have encountered a constitutional challenge because they attempted to proscribe material which is not obscene.⁶² While indecent speech may be limited, it is possible that such speech content is presented in such a way that it has political or scientific value to a high school student conducting research.⁶³ Therefore, such across the board prescription would violate the First Amendment rights of students.

Speech that is protected outside of school need not be tolerated in school if such speech conflicts with the basic educational purpose of the school.⁶⁴ Therefore, school boards may impose restrictions on the speech of students as well as others in the school community.⁶⁵ Although school districts have the power to restrict speech, they must take care that in doing so they do not inadvertently restrict the rights of students.⁶⁶ Consequently, school boards will do well to review Acceptable Use Policies that have been implemented elsewhere for guidance in preparing their own policies.⁶⁷

V. ACCEPTABLE USE POLICIES

School districts around the nation have incorporated diverse elements in their Acceptable Use Policies (AUPs).⁶⁸ For example, some AUPs are characterized as “legal contracts, written by attorneys and they often convey the primary aim of absolving the school of any liability.”⁶⁹ Another approach involves an agreement between students, parents, guardians, and teachers that outlines the responsibilities

62. See ASSEMBLY BILL 132, § 2, Jan. 15, 1997 version, at 2 (copy on file with *McGeorge Law Review*) (proposing restriction of student access to Internet sites that contain, or make reference to, gambling, illegal activity, alcoholic beverages, and tobacco, among others); CAL. PENAL CODE § 311 (West 1988) (defining “obscene matter” as “matter that, taken as a whole, that to the average person, applying contemporary statewide standards, appeals to the prurient interest, that, taken as a whole, depicts or describes sexual conduct in a patently offensive way, and that, taken as a whole, lacks serious literary, artistic, political, or scientific value”).

63. See *supra* note 54 and accompanying text (providing an example of how blocked Internet sites could be of value to a student researching the poet Anne Sexton).

64. See *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 266 (1987) (providing that speech on a public school campus may be restricted when it will “substantially interfere with the work of the school or impinge upon the rights of other students”).

65. See *id.* at 267 (reflecting that, unless a school has been opened for indiscriminate use by the public, it is not a forum for public expression).

66. See *id.* at 266 (stating that public school students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate”).

67. See *infra* notes 68-74 and accompanying text (describing Acceptable Use Policies that have been implemented around the country).

68. See Chapman, *supra* note 4, at G04 (stating that schools across the country are developing Acceptable Use Policies as one solution to the problems of student access to the Internet while at school).

69. *Id.* at G4; see Anne Davis, *Students Cruise Web With Licenses*, MILWAUKEE J. SENTINEL, Dec. 2, 1996, at 1 (remarking that some school districts have parents sign a release form that states parents have the ultimate responsibility for their children’s actions while on-line).

of each party.⁷⁰ The dual purpose of this type of AUP “insures parents that they can trust teachers to monitor student use of technology,” yet also hold teachers and their students “accountable in case of an accident.”⁷¹ However, AUPs such as these, which are essentially disclaimers of liability,⁷² do not teach children how to use the Internet responsibly.⁷³

Responsible use can arguably be taught by incorporating some Internet training requirements into the AUP.⁷⁴ However, the long term solution to keeping on-line smut away from children may have less to do with rules and regulations governing Internet use and more to do with correcting perceived ills of contemporary society.⁷⁵ If this is correct, even AUPs that require Internet training may have little effect in stopping children from exploring Internet sites from which they should stay away.⁷⁶

VI. CONCLUSION

The number of students with access to the Internet at school is growing at a rapid pace.⁷⁷ With this growth comes justifiable concern that students will be exposed to obscene and inappropriate materials.⁷⁸ California has enacted Chapter 86 to ensure that educators, parents, and students are apprised of the risks that accompany Internet use.⁷⁹ Chapter 86 requires schools districts to implement Internet Acceptable Use Policies,⁸⁰ the details of which will be determined at the local level, to meet the needs of the local community.⁸¹ Local school districts must take

70. See Anthony Georger, *Schools Can Overdo Censorship of the Internet*, IDAHO STATESMAN, Apr. 28, 1997, at V8 (noting that the four page AUP lists possible computer violations and their penalties).

71. *Id.*

72. See Chapman, *supra* note 4, at G4 (characterizing AUPs which must be signed by parents as having the principal aim of absolving schools of liability when children encounter harmful matter while on the Internet at school).

73. See *id.* at G4 (proposing that we should teach children the risks and benefits of using the Internet).

74. See *id.* at G4 (arguing that we need to teach children how to properly use the Internet, including developing peer based norms for Internet use); Davis, *supra* note 69, at 1 (proposing an Internet Driver's License that includes mandatory training course, and which is revocable upon violation of unauthorized Internet use); Rafter, *supra* note 6, at D1 (reporting that at one school students must study the school's Internet Use guidelines, take a quiz and have their parents sign a permission slip prior to using the Internet at school).

75. See Chapman, *supra* note 4, at G4 (framing the problem as how to make “young people be a part of the adult world” and the solution as reducing the “friction and disrespect between adults and teenagers”); Georger, *supra* note 70, at V8 (stating that the focus on censoring the Internet is misplaced, and that we should be focusing on “eradicating the vulgarities on our Internet by setting an example”).

76. See Rafter, *supra* note 6, at D1 (expressing the opinion that AUPs probably don't stop kids from sneaking a peek at sites they shouldn't see, much like young boys who sneak a peek at *Playboy* magazine); see also *id.* (providing, however, that AUPs may “teach students discretionary skills they'll need on the job”).

77. See *supra* notes 10-11 and accompanying text (documenting the rapid pace at which student access to the Internet is accelerating).

78. See *supra* notes 31-45 and accompanying text (illuminating the troubles associated with student access to the Internet).

79. See *supra* notes 46-56 and accompanying text (discussing the provisions of Chapter 86).

80. *Supra* note 46 and accompanying text.

81. *Supra* note 53 and accompanying text.

care in crafting their policies so that they do not inappropriately restrict speech.⁸² Though Acceptable Use Policies will make the risks of using the Internet manifest, they will not act as an absolute barrier to children receiving on-line smut while at school.⁸³ Ultimately, the solution to keeping children out of inappropriate areas of the Internet implicates actions beyond the scope of Acceptable Use Policies.⁸⁴

82. See *supra* notes 59-67 and accompanying text (highlighting the constitutional concerns raised by the enactment of Chapter 86).

83. See *supra* notes 31-37 and accompanying text (pointing to some of the ways children may access inappropriate sites on the Internet).

84. See *supra* notes 74-76 and accompanying text (suggesting techniques and products which will be more effective in preventing children from accessing smut on-line).