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### **Is the Internet Enabling Pedophiles and Child Pornographers?**

Jessica Brock lives in New York City and works at a large public relations agency focusing on international accounts. She has a strong interest in the burgeoning development of globalisation and how the modern world is adapting to it. She is currently finishing her last semester of Master's courses for a degree in International Public Relations, and has 5 years of experience working in the field. She enjoys traveling, and has a strong interest in learning about the cultures of the world and their individual ideals. Growing up on a small farm in Kentucky and now living in one of the largest cities of the world has resulted in Jessica's strong interest of human cultural adaptation as well.

"I have neither given nor received unauthorized assistance while preparing this assignment and I have written the code myself."

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## **Introduction:**

Today's laws are gradually changing to reflect the recent globalization that has resulted from the introduction of new technologies. As new modes of communication develop, the rest of the world, including its laws, must develop with it. Laws, like technologies, evolve and improve throughout time. Sometimes there are glitches with law, as with the technologies, and laws are revised to accommodate for these oversights.

Laws are generally based on earlier-set precedents. When the first laws were written, they were based on earlier customs. English law was developed in the Eleventh and Twelfth centuries. Jurists and judges developed this law system to replace crude Anglo-Saxon customs. As the law system became common throughout England, they gradually became known simply as the common law. Common law was considered "discovered law" as judges claimed they were basing judgements on the customs of the country. Usually, the court was merely following previous judicial rulings rather than the custom of the people. When America was founded, it "borrowed" this system from the English. Common law is still quite evident today in both American and English law and court rulings. (Pember 2005)

Today, most court decisions are based on precedents. This is an aspect of common law that has been preserved. Judges study past rulings and try to follow suit. Seldom does the court find reason to overturn past rulings, and only courts higher than the original governing court can overturn a decision. Therefore, it is usually in the best interest of the court to try to follow the precedent rather than overruling it. So, history obviously plays a large part in today's law.

One recent challenge law has faced, however, deals with the Internet. Because it is a new medium, and anyone can use it, development of Internet laws has been quite arduous. The Internet obviously did not exist in the past; therefore, there are no clear precedents to support current decisions. One specific regulation that has been extensively debated deals with pornography on the Internet. The Internet, as a medium, offers extensive privacy to users. As a result, pornography sites are among the most frequented sites on the World Wide Web. Unfortunately, however, the anonymity of the Internet has also harbored child pornographers. Most countries have strict laws regarding child pornography, but it is hard to identify who posts material on the Internet. Additionally, different countries regulate the Internet in various manners. The variance between countries' Internet regulation reflects variances in past court rulings regarding different media as well as pornography. England and the United States, for instance, have different laws regulating Internet Service Providers as well as pornography. It is interesting to note the present day differences in these two judicial systems that essentially began from the same origin.

Additionally, legislation in both countries is currently undergoing a great deal of scrutiny. Although existing laws have not yet been changed, an increase in litigation regarding pornography has emerged within the last year. Both the United States and the United Kingdom have proposed new laws regarding pornography.

## **English History:**

Until recently, the law regarding pornographic material in England was the Obscene Publications Act of 1959. The following question was posed to determine if material met criteria to be considered obscenity: "Does the article have a tendency to deprave and corrupt the persons who are likely to read, see or hear it?" The publishers of D.H. Lawrence's often-banned book, *Lady Chatterley's Lover*, were the first to be tried and acquitted under the act. (Barley, 2004) Recently, however, this law was replaced by the Sexual Offences Act 2003. Since its

implementation, this law has been highly debated. Much of the English population fears this Act may be too broad and infringe on other rights. Complaints begin with the Act's definition of pornography, which seems over-simplified. The act defines pornography as "the making of an indecent image." The act makes no reference to payment, or planned distribution of the material. (Spencer, 2004)

Many fear the new act will make certain ordinary acts a crime. "When they talk about 'protecting vulnerable people,' they have just about everyone in mind as a potential victim," stated one article (This new law, 2004). The article gave an example of a common occurrence that had become illegal under the act, "Even the practice of teenagers fumbling with one another is now officially a sex crime." Until this act, however, sexual offences against children had been dealt with by many different statutes rather than one law (Spencer, 2004). Spencer feels this is one positive aspect of the new law. Spencer notes the pre-existing child pornography law, the Protection of Children Act 1978, will be preserved. However, the new Sexual Offences Act 2003 changes the official age of adulthood from 16 to 18. The new law now covers an extensive amount of sexual activity that was previously not mentioned in the prior law.

The new age listed may, however, be a result of recent concerns. Child pornography is one of the biggest concerns and challenges in relation to Internet law. New laws regarding its publication is largely, no doubt, due to the easily accessible abundance of such material online. United States' law has also reflected changes regarding pornography, although historically, American pornography law has been amended much more than the English equivalent.

### **American History:**

The first obscenity prosecution in the United States occurred in 1815. This case involved a painting by Jesse Sharpless, which depicted a man "in an imprudent posture with a woman." At this time, however, prosecutions were still under common law which did not comment on the display of erotic pictures, but rather prosecutions were filed under the pretense that a crime had been committed against God. A similar conviction resulted in 1821 when Peter Holmes published an erotic version of another well-known painting. (Baird & Rosenbaum, 1998) After these first obscenity cases, other obscenity cases became commonplace. As a result, the first federal obscenity statute was implemented. This statute outlawed the importation of obscene material, and was implemented in 1842. This first statute soon led to an act that remains in effect today.

Anthony Comstock, a young man in the late 19th century, is responsible for one of the most well known obscenity laws to date. As a result of the pressure Comstock placed on Congress, obscene books, pamphlets, pictures, and other such materials were no longer legally available in the United States. This law was passed in 1873 and is fittingly referred to as the Comstock Act. (Baird, et.al.,1998) As a result of the Comstock Act, the United States Postal Service became one of the largest censors of obscene materials to date. After the implementation of the Comstock Act, American courts needed to define obscenity if they hoped to regulate it. As in the past, America turned to British law for guidance when no precedents existed. At this point, they adopted a definition from the *Hicklin* rule, which defines obscenity as something that "has a tendency to deprave and corrupt those whose minds are open to such immoral influences and into whose hands it might fall." (Baird, et al., 1998)

The *Hicklin* rule remained the guideline for American obscenity until it was overturned in 1957. At this point, the Supreme Court determined the prior obscenity definition unconstitutional as it held both children and adults to the same standard. At this point, the *Roth-Memoirs* test was

adopted. (Baird, et al., 1998) This test, however, took nine years to develop. It greatly reduced the amount of material that could be considered obscene. The *Roth* Test also rolled back many of the Comstock laws (Baird et al., 1998). In contrast to the vague definition given in the *Hicklin* rule, the *Roth-Memoirs* test had three distinct criteria. First, the dominant theme had to appeal to a prurient interest in sex. Next, the court had to find it patently offensive in the sense that the material affronted contemporary community standards in regards to the description or representation of sex. Finally, the material must have no redeeming social value. (Baird et al., 1998)

During the time period when the *Roth-Memoirs* test was being developed, obscenity cases were exceedingly prevalent. Between 1957 and 1977, the Supreme Court heard 90 obscenity cases and ruled on nearly 40 (Pember, 2005). As a result, President Lyndon Johnson decided to appoint a commission to study the effects of pornography and obscenity. (Baird et al., 1998). The sudden growth in obscenity cases had caused Americans to fear pornography would lead to increases in child abuse and violent sex crimes. President Johnson appointed the Meece Commission in the late 1960's to determine whether this fear was warranted. The Meece Commission's study did reflect sexual activity increased as a result of viewing pornography, but did not report an increase in anti-social or delinquent behavior. Therefore, the commission did not recommend the legislature interfere with adults who wished to view porn. (Baird et al., 1998) These findings were rejected, however, when Johnson left office and Richard Nixon was elected president. Nixon appointed four new Supreme Court justices. The new makeup of the Court was much more conservative, and instead of censorship being revoked, obscenity in America was defined for a third time. (Baird et al., 1998)

As a result of an advertising mailing depicting sexually explicit material, the conservative Supreme Court was given the opportunity to re-write the meaning of obscenity. The new *Miller* test was established in 1974 and used three rules to define obscenity. First, an average person applying local community standards must find the work as a whole appeals to a prurient interest. Second, the work must depict sexual conduct, specifically defined by state laws, in a patently offensive way. Finally, the work must not have any serious literary, artistic, political or scientific value. (Baird et al., 1998)

Courts continue to define pornographic or obscene material based on the guidelines set forth by the *Miller* test. However, pornographic and obscene materials were constantly facing more and more censorship under conservative presidencies. President Reagan appointed another commission in the 1980's to study the effects of pornography on society. This commission linked pornographic and obscene material to other crimes. It also discovered that the original Meece commission had found causal links between sexual violence and violent pornography. At this time, there were many feminist movements to encourage the banning of pornography all together in the United States. Neither the feminists, nor Reagan, were successful, however, and the *Miller* case remains in effect. (Baird et al., 1998)

### **Current Application:**

The varying histories between pornography and obscenity rulings in England and the United States can be seen in court cases today. With the new development of the Internet, pornography has made a resurgence in a new form and neither country is sure how to regulate it efficiently. It is clear England has not experienced nearly as much controversy regarding pornographic materials by the lack of litigation history. The United States, on the other hand, seems to have a division between First Amendment supporters and those that wish to ban

pornographic materials. Because England does not have a law that guarantees freedom of the press, prior restraint by the state is legal. This allows England to enforce many laws regarding publication. The United States, on the other hand, may not exercise such restraint if it wishes to protect First Amendment rights.

Finding a balance between seemingly contradictory laws is not uncommon in the United States. Courts often have to draw guidelines regarding which instances might justify overriding privileges given by one of the amendments. For example, judges often exercise the right to issue restrictive orders to the press if they have reason to believe certain press coverage may result in a mistrial. This is a balance between the First Amendment, which demands freedom of the press, and the Sixth Amendment, which ensures a fair trial. Additionally, American and English courts have differentiated between how the Internet will be regulated. English courts have strict rules and many restraints regarding broadcast media, and its courts have regulated the Internet according to those laws. The United States, on the other hand, has traditionally regarded the Internet as a print medium. The difference between the two mediums in the United States is primarily defined based on availability. There is unlimited space on the Internet. Broadcast mediums have been regarded as such because publication space was traditionally limited, and therefore space in this medium was a privilege, not a right. Because it was considered a privilege, the courts could exercise more restraint. However, due to the unlimited nature of the Internet, courts ruled it qualified as a print medium. As a result, this American qualification gives significantly less power to the courts to regulate the material published on the World Wide Web.

Due to the differences in definitions regarding what is pornographic or obscene, it is also difficult to compare and contrast regulation of such material between the United States and England (Stephens, 2004). Namely because something may be considered pornographic in one country, but not in the other. The Internet, however, does not limit itself to the boundaries of any country. Therefore, regulation of Internet material has caused quite a dilemma. Even if a country adopts a law that prohibits certain material, it is unable to enforce this legislation in other countries.

The nature of the Internet in itself creates an additional dilemma that was previously nonexistent. No medium in the past has been as readily accessible and so hard to govern as the Internet. Broadcast signals could be blocked, and the importation of questionable print media could simply be banned. Web sites, however, are extremely hard to block without also blocking other legitimate sites. One major problem that has emerged, in regard to pornography and Internet laws, is child pornography. Child pornographers have been able to publish illegal material fearlessly, protected by the anonymity the Internet provides. The United States and England have dealt with this problem very differently as precedents regarding both pornography and the press greatly varies between these two judicial systems. The problem is yet to be resolved, although new rulings and regulations are slowly being developed to regulate the dissemination of child pornography on the Internet.

Because England courts reserve the right of prior restraint, they have much more freedom to censor material on the Internet. In response to the burgeoning number of child pornography sites on the Internet, England has amended many of its laws to hold Internet Service Providers responsible for the material consumers are able to access while using its web browsers. This is similar to a cable or network station being held accountable for the subject matter or language in a program it broadcasts.

Currently, less than one percent of the world's Internet child abuse images originate in England (Stephens, 2004). This can most likely be attributed to the heavy prosecution and

consequences of those that violate child pornography laws. Additionally, because Internet Service Providers are held accountable for the images accessed through their services, filters exist that prevent the posting of such sites even if someone attempted to post it. In addition to filters, England also has an Internet Watch Foundation that regulates web sites in the United Kingdom. The service searches the web for illegal pornography sites. When such a site is located, it is referred to the police, the company is prosecuted and the site is removed. The Internet Watch Foundation has been quite successful in its efforts. It has reduced the amount of pornographic sites originating in the United Kingdom from eighteen percent of the world's illegal pornographic material to the current level of less than one percent. (Stephens, 2004).

In addition to the Internet Watch Foundation, England has passed additional laws that facilitate the prosecution of child pornographers on the Internet. London's Internet Exchange, the world's largest Internet exchange point, has recently shown support for such new legislation proposed by the English government. (LINX welcomes new law, 2003). In the past, Internet Service Providers were not permitted to remove illegal pornography sites upon discovery, even though they were held accountable for the material. In order to remove such a site, the Internet Service Provider would have to make a copy of the photograph, which would violate the Protection of Children Act. Instead, the service provider was expected to contact the police and give the location of the pornographic site. Using this process also extended the amount of time the pornographic site was available online. New legislation, which is part of the Sexual Offences bill, allows Internet Service Providers to remove illegal pornographic materials themselves, providing they submit a copy of the evidence to the police. (LINX welcomes new law, 2003).

Although the percentage of child pornography sites originating in England has been greatly reduced, English officials are hoping to persuade other countries to follow their lead. John Carr, a children's charity Internet expert, estimates only thirty countries have "the right laws, equipment and training" to effectively reduce internet crimes involving children and pornography (British Internet experts, 2004). Peter Robbins supported the stance that illegal pornography originating outside of the United Kingdom continued to be a problem, regardless of recent UK success. "We have no power to regulate adult material outside the UK as every country has different obscenity laws," said Robbins. (Stephens, 2004)

In the summer of 2004, Britain cracked down on many people who illegally gained access to child pornography sites that originated in the United States. The effort was coordinated with the United States' FBI (Britain extends crackdown, 2004). This shows the United States is making efforts to reduce child pornography, as well. Unfortunately, however, some of the recent laws limit how much the American government can do to regulate such activity.

While the English government seems to be creating more laws to eliminate the distribution of Internet child pornography, the American government is revoking it. The Communications Decency Act of 1996, as well as the Child Online Protection Act of 1998, was designed to aid in the regulation of illegal pornography on the Internet. The Communications Decency Act was the first attempt to regulate the Internet in the United States. The proceeding Child Online Protection Act was designed to hold pornographic web site owners legally responsible for confirming the age of visitors to their sites. (Neary & Abramson, 2004). Violators of the law would have faced fines of up to \$50,000 for placing material "harmful to minors" easily within the reach of children (Buncombe, 2004).

These laws lasted between five to six years before being challenged by civil liberties groups. These groups contended the laws infringed upon free speech rights. Although the Supreme Court did not make an actual ruling on either case, it did state the civil liberties groups

would most likely win an injunction should they challenge the rulings. The court felt the laws were overly broad, and while it may help prosecute child pornographers, it also limited a large amount of freedoms associated with the First Amendment. Courts stated the law blocked access to over 1.1 million web sites that did not depict child pornography, and therefore limited more free speech than the illegal activity it was designed to prevent (Duffy, 2004).

Due to the lack of legislation passed that effectively regulates child pornography within the United States, efforts to stop such illegal activity has been less than successful. Fifty-five percent of child pornography Internet sites originate in the United States. This is nearly twice as much as the world's second provider, Russia, which contributes only twenty-three percent of Internet-based child pornography (Stephens, 2004).

The American government can only play a miniscule role in child pornography regulation as a result of such limited successful legislation. Currently, the only measure employed involves FBI agents who disguise themselves as children on the Internet and try to lure child pornographers into approaching them to pose for such illegal uses (Gearty, 2003). This approach is also limited, however. Courts have ruled that simply logging on to a child pornography site no longer violates any American law. FBI agents caught Harvey Perez downloading illegal child pornography photographs from a notorious illegal site, and prepared affidavits for his arrest. A federal judge, however, ruled this was an invasion of privacy, and an individual could not be prosecuted for visiting an illegal pornographic site (Gearty, 2003).

With little authority to prosecute child pornography law offenders, Americans must self-censor Internet sites with the use of filters. Many Internet users are skeptical of filters, however, as they were very archaic when first introduced. Originally, filters did nothing more than block words. Filters have made many developments in the last ten years since their introduction, but even filter-software companies can not attest to their reliability to block pornography sites well enough to prevent children from accessing the sites (Neary et al., 2004).

Because legislation allowing Internet Service Providers to censor child pornography sites has failed, other forms of legislation have been passed that help to reduce incidental viewing of pornography. In January 2004, the FCC passed the Controlling the Assault of Non-Solicited Pornography and Marketing Act, otherwise known as the CAN-SPAM act. This law was implemented to stop the use of pop-ups and other non-solicited pornographic messages from appearing while viewing sites on the Internet (FCC adopts rules, 2004). Before its implementation, pornographic solicitations would often appear in the form of a pop-up window while Internet users were visiting non-pornographic sites. These pop-ups often exposed children to pornographic images while innocently using the Internet.

The American government is slowly making efforts to reduce the amount of pornography children will be exposed to while surfing the net. However, without legislation outlawing the dissemination and viewing of child pornography, it is doubtful the amount of child pornography originating in the United States will decline. Although this activity is technically illegal, the privacy and anonymity of the Internet prevent the government from prosecuting most of the offenders. Prosecution was made even more difficult by the Perez case, in which downloading child pornography no longer constituted a crime (Gearty, 2003). How can Americans hope to reduce the amount of Internet child pornography if there are no repercussions to violating the few laws that exist?

### **Recent Litigation and Proposed Laws:**

A rash of legal battles regarding child pornography has taken place recently in both the United States and the United Kingdom. In what seems a response to this burgeoning problem, a number of people seem to be reacting to the growing problem. The results, however, have been vastly different in the two countries, true to form to the previous discussion regarding the issue. The results do not seem to indicate the gap between the percentage of child pornography originating in each country will be reduced, but surprisingly, it seems it may widen.

In the last few years, a number of different pornography cases have been tried around the United States. Depending on location, the rulings have varied significantly in accordance with the “local standards” aspect of the law. In many cases, however, federal courts have overturned state court decisions finding them to be unconstitutional. Additionally, solutions have been suggested at a federal level, but no final decision has been made as of yet.

A recent case tried in Tennessee revoked a portion of the state’s child pornography law deeming it unconstitutional. It was the first appellate ruling based on child pornography generated on the Internet. The section of the law in question regarded the ability for jurors to “infer” whether the subject of pornography was indeed a minor or not. The presiding judge argued the law “comes too close to permitting a conviction based on the material in which an actual minor is not involved” (Kenner, 2005). This particular ruling seems to be a regression of legal decisions. Previously, the law had required the image of a child must be proven to be a real person rather than a computer-generated image. The only way prosecutors and law officials could do this was generally by tracking down the child photographed (Stephens, 2004). The law was later changed to allow child pornographers to be prosecuted for animated or computer altered depictions of child pornography. The recent decision by the Tennessee court, however, would again demand the child in question be located and asked about the incident. Finding the photographed child is obviously difficult, and will hinder future prosecutions of child pornographers in Tennessee.

Adding to the confusion, each state has a different law regarding child pornography. Therefore, what may be illegal in one state may not be a legitimate case in another, even states rather close in proximity and with comparable “local standards”.

Recent litigation reflects a need for states to more clearly word and possibly amend existing pornography laws. Two similar cases in Maryland and New York reflect this difference. Former Newsday publisher, Robert Johnson, is being prosecuted for receiving child pornography. If convicted, Johnson could face a mandatory sentence of at least five years according to New York law. The conviction resulted after his employer, Bowne & Co. seized his computer and found depictions of minors engaging in sexual acts (Kessler & Madore, 2005). A Maryland case, however, resulted in a very interesting ruling. In Maryland, it is illegal to “use a computer to depict or describe a minor” engaging in sexual activity. As a result of this wording, a recent case failed in court against a man who had stored child pornography on his personal computer. Law officials raided the home of Jonathan Moore in 2003 where he voluntarily helped law officials examine his personal computer. As a result, a number of depictions of girls under the age of 18 engaging in sexual activity were found. The court found the wording of the law did not outlaw the possession of child pornography, however. Because the law refers to the “depiction or description” of these acts, it actually only applies to those creating and disseminating the pornography. There is no ground to prosecute individuals who download or possess child pornography if they are not personally creating the depiction or sharing it with others. (Stuckey, 2005) Obviously, prosecuting child pornographers has now become extremely

difficult in Maryland. Had the defendant been tried in New York, the state law dictates the same action would hold at least a five-year prison sentence.

Other states seem to be more progressive against child pornography and are attempting to implement laws similar to those in the United Kingdom where Internet Service Providers are asked to assist in the battle against child pornography. Federal courts have ruled laws unconstitutional requiring Internet Service Providers to be responsible for material available via their service. Utah, however, passed a law earlier this year requiring Internet providers to “truthfully identify material that is harmful to minors.” The law may have a chance of withstanding scrutiny at a federal level, however, as it “doesn’t restrict anyone’s access to the Internet unless they request it.” Therefore, these sites are only identified upon the request of the consumer. Internet Service providers, bookstores, local artists, and the American Civil Liberties Union of Utah are currently challenging the law. Similar laws have been revoked, but this law may succeed based on the optional basis of the filter. Internet Service Providers, however, will be required to offer the filter to whoever requests it. (Leonard, 2005)

A case in Pennsylvania requiring Internet Service Providers to block access to only 400 child pornography web sites actually resulted in the blocking of a million unrelated sites. Due to the lack of successful technology, federal courts have revoked such legislation arguing it blocks more sites than necessary, and thus the resulting law is much too broad. However, the prosecution is arguing Yahoo! knew the forum “Candyman” was formed to distribute child pornography and did not shut down the site immediately upon receiving this information in order to continue to gain the revenue from advertisements the site generated. (Piper, 2005)

The exponential growth and concern regarding Internet pornography has also generated interest at a federal level. Perhaps as a result of the recent surge in cases regarding pornography, or in response to pressure from other countries throughout the world who are involved in a battle against children exposed to pornography, United States lawmakers have proposed a change in pornography law at a federal level. A group of Democrats argue that the number of pornographic web sites has grown 3,000 percent since 1998. As a result, a group of politicians is recommending an age-verification filter on pornographic sites in addition to a 25 percent tax on these sites. Senate Democrats pushing the law also argue that a large majority of identity theft is linked to such sites. These politicians reason that investigations and prosecutions against child pornographers cost money, and a tax would help alleviate the financial burden that results from such enforcement. Democrats are basing the law on think tank findings and additional research conducted by the group Third Way. The group’s research found that 12-to-17 year-olds are the top consumers of Internet pornography. As a result, Senators feel legislation should be developed to reduce the number of minors exposed to such sites. (Hammer, 2005) If this legislation passes, it would have significantly change the pornography situation within the United States. Additionally, a federal law would surpass individual states’ current laws regarding access to such pornography.

The result of these different rulings in regard to Internet Service providers, in addition to individuals found to be in possession of child pornography, shows a wide disconnect among states’ laws. As discussed earlier, many countries are experiencing difficulties with the successful regulation of Internet pornography, as a result of sites originating outside of their country and jurisdiction. Due to the design of the United States legal system, it is now becoming a difficulty to uniformly reduce child pornography based on the different state laws and wording of each. Problems reducing child pornography sites and consumers is being hindered even within the United States as each state law differs, in addition to the battle against sites originating in

other nations. A law at a federal level may significantly change the face of child pornography within the country.

The United Kingdom, on the other hand, has taken a very aggressive stance on pornography. A new law has been proposed that would ban not only downloading violent pornographic images, but also the viewing of such material. There has been a significant opposition to the new legislation. Those opposed to the law argue that the new law represents excessive censorship. Additionally, the law is being disputed based on research that did not find a significant link between violent images and violent behavior. The government claims it does not intend to prosecute individuals that accidentally stumble across such material, but making a distinction may be hard indeed. (Lawless, 2005) Skeptics of the law are also concerned about its enforcement. Enforcing such a law will be difficult at best, unless law enforcers are granted additional rights to investigate Internet users in such a way that could constitute an invasion of privacy. Ministers argue the law would be enforced through collaboration with Internet Service Providers, based on experience with policing child abuse images. (Oakeshott, 2005) If the law were eventually accepted by the British Parliament, it would definitely open the doors for further aggressive policing and legislation regarding other forms of pornography as well. The variance between United States and British law is particularly evident in this situation. Passing such a law in the United States would be extremely difficult, at best, in accordance with protecting privacy and First Amendment rights. The British government's lack of this legislation allows much more aggressive policing of pornographic material. The concern, however, in both countries seem to be the amount of privacy and freedoms adults currently hold that could possibly be revoked as a result of a too broadly written law.

### **Other Solutions:**

Other countries that do not wish to implement strict laws are turning to other alternatives. Norway, for example, has developed a new filter that specifically blocks child pornography sites but does not block access to other legal pornographic sites. The new filter was introduced by Telenor and KRIPOS, the Norwegian National Criminal Investigation Service, and began operating in October of 2004. "Child Pornography on the Internet is a serious problem, and we want to make a contribution to the fight against it," said Berit Kjoll, Director of the Consumer Market at Telenor. The new filter is offered to Norwegian customers for free, and the government has said it would be happy to share this technology with other Internet providers. (Telenor and KRIPOS, 2004). Perhaps this is a solution the American court would accept given it would ban illegal pornography without infringing the rights of legal pornographers. Additionally, countries throughout the world seem to be trying to build alliances that will help reduce the amount of child pornography circulating on the Internet. Although those prosecuted will be held accountable to the laws of the country in which they reside, intelligence agencies within varying nations are beginning to communicate more to increase the prosecution of child pornographers. For example, United States Immigration and Customs Enforcement has begun Operation Predator which targets child pornographers within other countries. Via attach offices throughout the world, United States officials have helped different governments locate and prosecute child pornographers. For example, the operation resulted in search warrants and prosecution of 96 individuals in Austria who were believed to be child pornographers (Austria, United States, 2005). It appears the collaboration of governments in addition to shared technology knowledge may be the most plausible solutions offered at this time, until a suitable law regarding Internet regulation can be accepted in each country.

## **Conclusion:**

Regardless, the difference between the English and American laws in regard to Internet pornography is immense. Because the English regard the Internet as a broadcasting medium it is easier for them to regulate it without violating any individual's freedom. Another obvious difference is that in England, freedom of the press is not guaranteed. So, either way the government has more power to censor pornographic material. American courts, on the other hand, have traditionally addressed the Internet as a print medium, and therefore have few grounds for adequate regulation. Additionally, even if something is proven illegal for print, the American government may still experience difficulty prosecuting due to strict laws regarding privacy rights which are also practically non-existent in England.

This comparison is similar to the familiar children's rhyme about Jack Spratt. It seems that while English citizens are worried about one problem, American citizens are worried about quite the opposite in regard to newly evolving Internet pornography rulings.

The English government has recently implemented the Sexual Offences Act 2003 which seems to outlaw sexual experiences well beyond the realm of those that need to be defined within the law. As a result, the English are afraid the blanket law covers entirely too many aspects and may actually rob individuals of their freedoms. According to Spencer (2003), "It renders theoretically punishable with severe penalties a range of behavior for which it is inconceivable that anyone will in practice be prosecuted – and for which it would be scandalous if they were." The English government holds Internet Service Providers responsible for the material available on their web browsers, and also has an agency that polices the Internet for sexual offenders. As a result, less than one percent of the world's child pornography originates in England. Recent push to pass a law into action that would further limit even viewing violent pornography as well as downloading it, may result in increasingly stricter and more invasive policing of pornography in England. With the ability of prior constraint, and no clear right to privacy laws, it will be interesting to see how British law evolves in the upcoming year.

The American government, on the other hand, has virtually no law in place that allows for the prosecution of sex offenders on the Internet. Instead, it has taken the opposite route of the English and actually revoked recent rulings that attempted to limit child pornography on the grounds that these laws violated First Amendment rights. In some cases, individuals can not be prosecuted for downloading child pornography, as the steps involved in proving they downloaded the material would be considered an invasion of privacy. Due to the lack of legislation, Americans must self-censor their computers for children, and others, by buying or downloading free filters. But, even software manufacturers agree this is not a reliable way to prevent access to child pornography. As a result of the lack of regulations, 55 percent of the world's child pornography originates in the United States. Recent rulings in varying states throughout the U.S. seem to almost contradict one another. Federal decisions on appeals regarding these cases may result in American laws that become more similar to British law, or may increase the divide. The new appointment of different Supreme Court justices may also affect the matter. That remains to be seen. Additionally, a new law imposing a tax and age verification of Internet pornography viewers may not only reduce or further regulate current underage viewing of pornography, but also pave the way for more restrictive legislation in the future. Decisions by current senators and legislators could greatly change the policing policies regarding Internet pornography in the United States in the upcoming years.

It is interesting to note that the English do, undeniably, produce almost no child pornography in relation to the huge amount being originated in the United States. As a result,

however, the English have to sacrifice some individual freedoms and rights in exchange for the censorship. So, it seems the essence of the difference may simply be priority. Americans have traditionally protected and placed high priority on their freedom of speech and the press. It is interesting to see how the different countries structure these priorities. Additionally, the fact that both laws were essentially derived from the same origin, but have evolved to be almost polar opposites attests for the fact that nurture often affects outcomes as much as nature. At this point in time, however, one similarity is evident. Whatever the priority of the country may be, the laws regulating illegal Internet pornography are believed to be inadequate in both nations. Revision and change is burgeoning in both legislative bodies in an attempt to adapt to the rapid introduction of the new medium. Landmark decisions within the next year will be revealing about the future of Internet pornography, and those operating legally therein.

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