The men who drafted the U.S. Constitution did not necessarily have children in mind, making it troublesome when attempting to apply constitutional standards to children. Safeguarding minor's welfare often collides with the protection of free expression, and the solution is not always clear. McCarthy said, "The values behind the First Amendment make the cost that accompany free expression worth bearing, but where children are concerned, the benefits are not as strong and the costs are greater" (McCarthy, 2005).

Often times there are opposing arguments offered to resolve the issues of Internet censorship. Either the material considered harmful to minors should be restricted for everyone, resulting in adults only having access to material suitable for children, or children should be treated as adult citizens. Both positions foster sensitive questions that pit significant ideals against each other, thus begins the controversy of censoring material on the Internet from minors. There are groups who advocate both sides.

The American Civil Liberties Union argues that if restricted Internet access dampens adult expression, then under the First Amendment it should be struck down. Advocates of this position believe that protecting children by restricting access has an impact too substantial on protected expression of adults (Br. Of Appellees, ACLU v. Reno, 1996). In contrast, there are activists who believe it should be difficult for anyone to access content harmful for minors, and therefore support government regulations. These advocates deem that child protection trumps adults' rights to the First Amendment. There are also extremist who feel society is corrupted by obscene material, therefore protecting Free Speech concerns is not as important as shielding the community from 'destructive influences' (Etzioni, 2004). The middle ground for the opposing

views is a careful balance between acknowledging adults' right to free expression, while recognizing Internet transmissions can be harmful to children.

Others assume adults voluntarily shield exposure of harmful content from minors and consequently believe that censorship should be a task left to adults without government intervention (Separate Statement of Commissioner Gloria Tristani, n.d.). These people feel like because there is such an easy access to filters that block obscene materials, like V-Chips and the rating system on television, movies, music and various programs, parents should be able to protect their own children from content that they deem inappropriate (Thornburgh, 2002). The Telecommunications Act of 1996 provided a guideline for the television program rating system, as well as required television monitors with screens 13 inches or larger manufactured after January 1, 2000 to include the V-chip technology. The V-Chip is a computer chip in a television receiver that decodes information in the rated program and blocks violent or sexually explicit content from the television based upon the rating selected by the user (FCC V-Chip, 2012). The rating system was established to rate material that contained violent, sexual or other content deemed inappropriate by parents. In 1998 the Federal Communications Commission accepted the rating system known as the "TV Parental Guidelines." The ratings are shown for fifteen seconds on the screen at the beginning of the program. In concurrence with the V-Chip, the rating system would permit parents to block programming with a certain rating (FCC V-Chip).

Historically, children and adults have received variant treatment on First Amendment rights. For example, in the court case of Ginsberg v. New York, the Supreme Court said the government had the right to constitutionally prohibit the access of specific types of sexually explicit content from children, even if the content wasn't prohibited from adults (Ginsberg v.

New York, 1968). The Court acknowledged legislative authority in aiding parents to guarantee the welfare of children (Pornography and the First Amendment, 2003).

In the case of New York v. Ferber (1982), the Supreme Court endorsed the statute that prohibited material of a sexual performance by minors under sixteen to be sold, produced, promoted, directed or exhibited. This court case also recognized that the Miller Test requirements do not have to be met in completion to establish if content is considered child pornography (Pornography and the First Amendment, 2003). In the Prince v. Massachusetts court case, the Supreme Court decided that the parents' interest for their children to sell religious materials and preach on public roads was superseded by the government's interest in guarding children (Prince v. Mass., 1944).

The Federal Communications Commission (FCC) does not allow indecent speech broadcasted during times when adult supervision is unlikely (FCC v. Pacifica Found, 1978). In addition, key tobacco companies settled on an agreement that included limitations on advertisements that attract children. These tobacco businesses would not use cartoon characters, team sports or sponsoring events that have an extensive adolescence audience (National Associate of Attorneys General, 1998). When applying constitutional defenses, there are bodies of law that treat children in school differently from adults. In Tinker v. Des Moines, the Supreme Court acknowledged that, in public schools, students have expression rights. The Court recognized that, in terms of First Amendment rights, school is a unique environment (Tinker v. Des Moines, 1969). In various cases that followed, the Court established that school was an environment that was not equivalent with adult settings, and thus children's rights of expression was different that than of adults. For example, in 1986 the Court decided that even though adults

enjoy Free Speech protection of expression, vulgar and rude expression from students does not receive the same protection. School personnel would be able to censor the expressions and determine if they were appropriate or not (Hazelwood Sch. District, 1988, Bethel Sch. District v. Fraser, 1986).

Action has been taken in censoring content and protecting children. However, the Internet presents challenges that have not yet been resolved. The Internet is boundary-free; its distribution cannot be limited to communities. It is difficult to distinguish children from adults for restricting content. Cyberspace continues to grow at an unrelenting speed, making it extremely difficult for shields to be placed protecting children from harmful content. As soon as software is created to harbor the access to one site, another harmful site is generated. In cases like Ashcroft v. ACLU (2004), the Supreme Court opposed yet another effort by Congress to prevent harmful materials on the Internet to be accessible to minors.

Todd Nist has noted four primary ways children view inappropriate content on the Internet. First, “commercial actors may send materials to children through cyberspace.” Second, “child predators either send visual materials or talk with children in ways considered harmful.” Third, minors intentionally locate illicit sites. And fourth, minors find such sites accidentally (2004, p. 451, 485-86). One solution proposed by Amitai Etzioni (2004) to contain access to harmful content is that children and adults have separate computers. He realized that libraries already separate adult content from the children’s section, and offer precedent to his theory. However, this strategy does not address the access a minor would have on computers where voluntary adult restriction would be required.

U.S. Department of Justice (1996) said, “Never before in the history of telecommunications media in the United States has so much indecent (and obscene) material been so easily accessible by so many minors in so many American homes with so few restrictions.” In a study conducted by the Kaiser Family Foundation it was discovered that among all online adolescence between the ages of fifteen and seventeen, 70% say they have accidentally accessed a pornographic site, and 9% says this happens often (Kaiser Family Foundation, 2001). In 2004 *The Washington Post* published a Congress-commissioned report that discovered 11 million of the 70 million individuals who visit pornographic Web sites each week are younger than eighteen (Protecting Kids Online, 2004). Sabina, Wolak and Finkelhor (2008) reported from an online survey given in 2008 to college students that: 62% of girls and 93% of boys were exposed to pornography before eighteen. 9% of girls and 14% of boys were exposed to pornography before thirteen. 9% of girls and 15% of boys have seen child pornography (Sabina, Wolak, & Finkelhor, 2008). Of all the teens interviewed in the Journal of Adolescent Health survey in 2009, 96% of them said they had access to the Internet, and 55% reported that they had visited a sexually explicit website (Courville & Rojas, 2009). The Symantec study, using homes with Norton Family, analyzed 3.5 million online searches done between February 2008 and July 2009. They discovered “sex” was the fourth most searched word, with “porn” coming in at the sixth (BBC News, 2009). In 2010, the Youth Internet Safety Survey published their findings: 15% of ten- to twelve-year-olds, 23% of thirteen- to fifteen-year-olds, and 28% of sixteen- to seventeen-year-olds were unwillingly exposed to nudity online Jones, Mitchell & Finkelhor, 2012). In the 2011 Parent-Teen Internet Safety Report (2011), 42% of teens surveyed said after using the Internet they cleared their browsing history; 31% of teen boys admitted to

visiting adult websites, and 13% said they did so “often.” According to the 2014 Teen Internet Safety Survey, 44% of teens said they have seen something online that their parents would not approve of, 81% said this happened at home, 48% saying it happened while their parents were home (Cox Communications, 2014).

Congress has endeavored multiple times to increase limitations and restrictions on the accessibility children have to obscene material online, but the Communications Decency Act (CDA) of 1996 was the first real attempt to regulate and censor pornographic or obscene material. The CDA’s purpose was to criminalize the “knowing transmission of obscene or indecent messages or images through telecommunications to recipients under the age of eighteen” (McCarthy, 2005). As Title V of the Telecommunications Act of 1996, James Exon and Slade Gorton introduced the CDA to the Senate Committee on Commerce, Science, and Transportation. The stipulations included in the law would be imposed on both the creators and transmitters of indecent material, making any institution criminally liable if it allowed electronic access of harmful material to children. Therefore any school and or library could be subject to liability. The law also stipulated that the ‘indecent content’ would be judged by applying community standards. However, in 1997 the Supreme Court reasoned the Act’s obscure provisions to “indecent transmissions and patently offensive displays,” (McCarthy, 2005, p. 84), limited free speech and confined some justifiable speech for adults. In addition, because the Court knew there were less restrictive resources of shielding inappropriate content from minors readily available, the Act did not specifically tailor a significant governmental interest.

The Child Online Protection Act (COPA), enacted in 1998, was Congress’ attempt at narrowing the scope, as opposed to the constitutional defects in the CDA. COPA prohibits

commercial distribution of harmful contents to minors under seventeen (47 U.S.C., 2004). The law for commercial limitation is defined as individuals "engaged in the business of making such communications" as persons who devote "time, attention, or labor to such activities" as part of their business or trade (McCarthy, 2005, p. 86). Civil and criminal penalties are imposed on materials knowingly made available in foreign and/or interstate commerce, as well as affirmative defenses for those who offer restrictive access to materials by measures like requiring an adult identification number, credit card information or digital age verification (47 U.S.C., 2004). COPA defines content harmful to minors when: (1) taken in respect to minors (2) applying contemporary community standards, (3) if designed to appeal to sexual interest, (4) depicts a sexual act or contact in a patently offensive manner, (5) as a whole, lacks serious artistic, scientific, literary or political value (Miller v. California, 1973). This standard evolved from the Supreme Court case in 1973, which is still used today to determine whether or not content is considered obscene and therefore not protected by the First Amendment (Miller v. California, 1973). COPA is still under scrutiny from the courts. Justice Anthony Kennedy said, "There is a very real likelihood that the Child Online Protection Act…is overbroad and cannot survive."

Congress uses the term "minor" in COPA "in a literal sense to an infant, a five-year-old, or a person just shy of age seventeen" (McCarthy, 2005). However, when using COPA as a defense, a "minor" is referred to as an older adolescent capable of having lustful interest (McCarthy, 2005). The deliberation is then whether or not there should be classifications of minors, with younger children receiving more protection. Etzioni (2004) suggests that children between the ages of thirteen and seventeen should receive less protection than children twelve and under. Dawn Nunziato (2004) supports this theory, and suggests that an "age and content-

based system" would protect younger minors from specific content, while shielding teenagers from easy access to Internet speech.

Congress pursued yet another attempt to shield children from indecent material. In 2000 the Children's Internet Protection Act (CIPA) was signed into law. The CIPA requires Internet safety policies for all school districts and public libraries that accept federal technology funds. This safety policy must take measures that include protecting access to harmful images from children. As opposed to the CDA focusing on recipients, the CIPA focuses on the senders of transmissions. This law also stipulated that each local community decides which content is deemed inappropriate for minors (Reno v. ACLU, 1997). With the United States v. American Library Association (2003) court case, the Supreme Court ruled in June 2003 that the CIPA was unconstitutional.

Politician David Cameron said the Internet's growth as an unregulated space presents two major challenges when endeavoring to shield children, one challenge being criminal and the other cultural. The criminal challenge presents itself as the reproduction and convenience of child abuse pictures on the Internet. The cultural challenge is the accessibility children have to pornographic material, and the nature of that material is so tremendous that it twists children's understanding of sex and relationships. His argument is that with the rise of laptops, game consoles, smartphones and tablet computers, access to harmful material has grown exponentially. He believes there should be government regulation involved to assist parents in protecting their children from exposure to explicit material. Not only does the government need to be involved in the fight against easy accessibility, but the parent must also be aware what their child is being exposed to and stay apprised of the various resources available to assist them (Cameron, 2013).

John Locke (1980) and John Stuart Mill (1973) believed that children were an exception to the "all men by nature are equal" rule. Locke said at birth the human mind is "a white paper, void of all characters, without any ideas" (p. 31). Hence, children do not have the capabilities needed to reason with. Overtime with experience children will develop this reasoning, but until they do parents should aid in their decision making process (Locke, 1980). Bruce Ackerman suggests, "children are born radically incomplete," while Amy Gutmann more simply states, "it would be absurd to apply the principle of equal freedom to children" (Ackerman, 1980; Gutmann, 1980), thus making children unfitting to be rights holders.

There have been two rights particularly pertinent to children: welfare rights and statutory rights. The welfare rights are those rights to shelter, food, education nutrition and such. The statutory rights give older minors the right to a driver's license, marry and seek employment. This recognition of various rights for children present a discrepancy to the general statement that children cannot suitably be considered as rights holders (Teitelbaum, 1999). The United National Declaration of the Rights of the Child expects a commitment on the part of parents and/or the state to allocate the essential things necessary for children to survive (GAOR, 1959). Salmond (1957) and Hohfeld (1923) believe that the welfare and statutory rights given to children are a duty imposed on adults; this theory has been acknowledged by Supreme Court decisions. Teitelbaum (1999) claims that a child's welfare right is based on the principle that the needs of the children supersede their preferences or choices. Adults have a choice to accept Medicaid, get a job, seek higher education; however, children must receive an education, and has a direct right to live in a healthy environment.

The statutory law given to older minors allows them rights that are not based on the welfare interest. These rights are normally banned for minors and acceptable for adults. In some places minors are allowed to legally drive at fourteen. At the age of sixteen many options for employment are available, this also the legal age for eligibility of the death sentence and marriage. Fourteen to sixteen is generally the age when the 'maturity' level is reached to make a decision whether or not to terminate a pregnancy (Legal Rights of Children, 1994; Thompson v. Oklahoma, 1988; Planned Parenthood v. Danforth, 1976; Meyer & Brown, 1992). Teitelbaum (1999, p. 807) suggest that these variations imply that legal theory assumes that direct rights necessitate different capabilities; rather than prove an "all-or-nothing propositions" that traditional theory presumes.

When dealing with free speech, First Amendment rights and the protection of children, there will always be disagreements. It is an overall general theory that children need protection; the debate is really about how much. Congress, the Supreme Court, parents and many other groups and organizations have argued over whether a child should have equal rights offered to them as adults do. The matter of child rights and censorship boils down to two main opposing views: governmental responsibilities to guarantee the welfare of minors and the First Amendment rights of expressing opinions and obtaining information. These two significant interests have been the foundations to many legal battles. Opinions have been stated and suggestions have been given. Court decisions have been made and laws have been enacted. This debate is a balancing game. Both interests have competing values, as well as numerous legislative and judicial powers producing efforts to balance them. Print media, television, and radio have all had restrictions placed on them to reduce exposure of harmful material to children.

The Internet has produced an entirely different beast that creates yet another reason to discuss, debate, and disagree over. Even with the multiple court cases and judicial decisions that have been made, the issue still seems to be left unresolved. With the overwhelming progression of cyberspace, this issue will have to continuously be dealt with. However much the government decides to get involved with Internet regulation, additional moral dilemmas and legal controversies will surface. The solution remains elusive.

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