

WHAT EXON SAID TO THE SENATE

The Time to Act is Now

LET ME SAY that the Exon-Coats amendment does not destroy, does not retard, does not chill accepted information, pictures or speech. To the contrary, we are trying to make the Internet system safer, better, and to make it more frequently used.

I do not know the authenticity of the statement that I am about to make. But I have read that it has been estimated that up to 75 percent of present computer owners have refused to join the Internet system with their home computer, precisely because they know and they fear—and evidently they have seen or been advised as to what I have here in the blue book.

Once again, before anyone votes against the Exon-Coats amendment, if they are interested, I am willing to share this information with them. It has pictures in it that were taken directly off the Internet system last week. So I simply say we are not trying to destroy, we are not trying to retard and we are certainly not trying to chill the great system that is the Internet. Anyone who believes that is very badly misinformed.

I simply say that those who know what is going on with the Internet today—those who have seen it firsthand, those who are concerned about making the Internet the greatest thing that has ever happened as far as communications exchange is concerned—are the ones that are supporting the Exon-Coats amendment. We want to make it even bigger, and we want to make it even better, but not for raunchy pornography that would turn most people off.

And to the 25,000 people who want to call this Senator a barbarian, I simply say that, evidently, they are



Sen. James Exon

so selfish—at least their actions are so selfish, that they simply say: We do not want to give up anything. We want to be able to see what we want to see, where we want to see it, any time we want to see it.

Not only are children being exposed to the most perverted pornography and inappropriate communications, but adults are also being electronically stalked and harassed.

I have had the opportunity to share with several members of the Senate, on both sides of the aisle, what I refer to as the "blue book." When I have shown this to members on both sides of the aisle, there has been shock registered, obviously, on the faces of my colleagues, shock because few understand what is going on today with regard to the pollution of the Internet... I hope that all of my colleagues, if they are interested, will come by my desk and take a look at this disgusting material, pictures of which were copied off the free Internet only last week, to give you an idea of the depravity on our children, possibly our society, that is being practiced on the Internet today. This is what the Coats-Exon amendment is trying to correct... If nothing is done now, the pornographers may become the primary beneficiary of the information revolution.

This modification represents a carefully balanced response to growing concerns about inappropriate use of telecommunications technologies... This legislation attempts to make the information superhighway a little bit safer for families and children to travel. The time to act is now.

SEN. JAMES EXON (D-NEBRASKA)

*From the Congressional Record of June 12, 1995.**Continued from previous page*

well, among them Apple, Silicon Graphics, Intel, Netscape and Hewlett-Packard.

During the anti-pornography onslaught that followed the Senate's opening prayer, however, Feingold and his more computer-savvy colleagues failed to turn back the tide. They asked Decency Act supporters who would determine if someone was being insulted or harassed. They wondered if it really made sense to prosecute an online service provider because someone posted a news article that contained a four-letter word that was later downloaded by a teenager. They pointed out that there are already very strict laws on the books against child pornography and abuse, torture and bestiality.

They even talked about the damaging effect the legislation will have on the computer industry if networking companies are forced to shift their focus from getting everyone online to policing those already there. And in the end, they lost big, with California's two senators, Boxer and Feinstein, coming down squarely on the side of the cybercensors.

Despite the potential damaging impact of the Decency Act on the burgeoning and vital local networking industry, both Feinstein and Boxer declined this newspaper's requests for interviews on the subject. After some prodding, Boxer's released the following statement: "While I

fully support efforts to understand and capitalize on the enormous capabilities of computer communications, we must ensure that our children are protected from obscenity. This amendment," Boxer's prepared statement reads, "holds adults responsible for their actions if they choose to use the Internet to prey on children."

Wisconsin's Feingold, however, was eager to share his thoughts. "I'm terribly alarmed by this legislation," Feingold explained in a telephone interview from his Washington, D.C., office late last week. "I'm very concerned that those who use the Internet are going to be treated differently from others." Feingold says, for instance, that a library may legally contain a copy of the steamy classic, *Lady Chatterley's Lover*, but that same book, if posted on a computer network, "could very well land someone in jail."

The legislation now moves to the Senate/House conference committee where it will be reconciled with a bill passed in May by the House Commerce Committee, which did not contain the Communications Decency Act. Feingold says he hopes the measure will die in that committee.

If it doesn't, he expects President Clinton, who opposes the idea, will veto it. He also predicts the Decency Act will be ruled unconstitutional if it ever does get signed because the Supreme Court has already ruled that the government is only entitled to

use "the least-restrictive forms" of censorship available when it attempts to control pornography. And since software is already available to protect young minds, Feingold contends that a blanket restriction on the entire Internet would not be deemed the least restrictive available enforcement option.

"Should we make cars illegal because you can make a car bomb with one?" asks Eric Hughes, president of Open Financial Networks, a Berkeley-based start-up that produces software for secure financial transactions over the Internet. Hughes, a former hacker and frequent critic of federal attempts at regulating cyberspace, says the only certain result of heavy-handed federal regulations will be to push Internet-related businesses offshore. "It's a big world," he says, "and if you want to use the Internet outside the U.S. and don't want to follow U.S. laws, there is nothing that can stop you," he notes.

Meanwhile, House Speaker Newt Gingrich, who frequently cites best-selling authors Alvin and Heidi Toffler as his technology gurus, is said to be leaning against federal Internet content restrictions. In their influential book, *The Third Wave*, the Tofflers argue that society is in the middle of a transformation from the Second Wave, the industrial age, to the Third Wave, the information age, with online computer services a key component of that change.

THE EXON-COATS BILL

Summary of Key Provisions

Criminal penalties. Act imposes criminal penalties of \$100,000 fines or up to two years in prison on anyone who "knowingly... makes or makes available any indecent communications... to any person under 18 years of age." Indecency (a legal term which includes the "seven dirty words" as well as any sexually explicit material) amounts to a total ban on all "indecent" information in public areas of the Internet, since users of the Internet know that public areas are accessible to minors.

Removal of First Amendment protections for online speech. The Exon/Coats amendment discriminates between the First Amendment rights of those who use interactive media as opposed to those who communicate through print. Speech that is fully protected in books, magazines and newspapers could be subject to criminal sanction if made available over the Internet.

Criminalization of "annoying messages." Annoying someone using harsh (but not obscene) language over interactive media would become a crime, also punishable by \$100,000 fines and two-year jail terms.

Federal Communications Commission jurisdiction over Internet technical and content standards. Enforcement of the Exon/Coats bill will require extensive and ongoing FCC proceedings to determine what exactly constitutes "indecent" in various interactive media, giving the FCC a role in guiding the development of all current and future Internet standards for services such as the World Wide Web, electronic mail and Usenet newsgroups.

Liability for online service providers. Internet access providers will be at risk of criminal liability for providing access to Usenet newsgroups and other public information services.

Potential for encouraging invasions of privacy by online service providers. The Act protects online service providers from contractual liability that may arise from efforts to restrict minors' access to indecent material. Because of the vagaries of the Electronic Communications Privacy Act regarding service provider access to subscriber email for "system maintenance purposes," this provision may immunize online service providers who read private messages of their users in circumstances where the provider is acting within the bounds of the Exon/Coats bill.

Protection against state laws applies only to commercial services but not users and other institutions. If enacted, the legislation would protect commercial service providers from additional regulation by state legislatures, but leave all non-commercial users, including libraries, schools, community groups and individuals, subject to censorship and restriction by states.

Source: Center for Democracy and Technology, a nonprofit public advocacy organization. For further information, send email to info@cdt.org or visit their web site (<http://www.cdt.org>).

Over lunch several months ago, the Tofflers assured a handful of business reporters that Gingrich understands the Internet and would eventually come to be seen as one of the open systems' biggest champions. "He definitely gets it," Heidi Toffler said with certainty at the time, pointing out that the speaker has so far been able to resist the purists in his own party over similarly contentious moral hot-button issues like abortion and school prayer. "I'm sure of it," Toffler predicted. "Newt," she says, "is a Third-Wave politician."

Others are not as optimistic. "This country is in the throes of a mindless retreat from our constitution and from the Bill of Rights," Sen. Feingold says. "It's time we began forming the coalitions needed to protect the Internet."

For starters, an anonymous contributor to the Net's alt.privacy newsgroup suggests the time may have come for Internet users to offer up a prayer of their own: "Almighty God, Creator of the Universe," the proposed cyberspace reads, "we ask for your protection from those who say they are trying to protect us." ⤴