



**Written Testimony of Elliot Minberg of People For the American Way Foundation  
For the Commission on Child Online Protection  
On “Policy Implications of Filtering, Labeling and Rating”  
July 21, 2000**

On behalf of the more than 300,000 members of People For the American Way Foundation (“People For”) across the country, I would like to thank the Commission for the invitation to testify on this important subject. When it comes to the Internet, tools and techniques like filtering and rating are neither inherently good nor inherently bad. Instead, the question is how are filtering and labeling used. In particular, how can they be used to promote what we regard as the key objective of empowering families and other internet users to decide for themselves what to see and do on the Internet? To People For and its members, that is the central question to answer concerning the policy implications of filtering, labeling, and rating on the Internet.

Founded in 1980 by a group of civic and religious leaders, People For is a national civil liberties and civil rights organization that is dedicated to promoting and defending fundamental American values and freedoms, including freedom of speech, public access to valuable information, educational opportunity, diversity, respect, and tolerance. We have been deeply involved with issues concerning the Internet, particularly as they relate to public libraries and families. With respect to litigation, People For served as co-counsel and co-plaintiff in the Reno v. ACLU lawsuit which resulted in the Supreme Court unanimously striking down the Communications Decency Act in its most significant respects. We are currently helping to represent a group of Internet companies such as PSINet, Inc., nonprofit organizations, and citizens in a challenge to a Virginia law restricting the Internet similar to

the prohibitory aspects of COPA, PSINet Inc. v. Chapman. We have participated as amicus curiae in significant Internet-related litigation. This has included the lawsuit in which the Third Circuit recently struck down the prohibitory aspects of COPA itself, and the California case of Kathleen R. v. City of Livermore, in which we have supported the city's position that public libraries cannot be held liable for material that the library does not publish but simply carries by providing Internet access to library patrons. Finally, we helped represent an outstanding civic organization called Mainstream Loudoun, as well as individual parents and residents of Loudoun County, Virginia, in challenging one of the most restrictive public library Internet policies in the nation in Mainstream Loudoun v. Board of Trustees of the Loudoun County Public Library. In that case, the federal court issued a thorough 46-page opinion granting summary judgment against Loudoun County's mandatory Internet filtering policy as unconstitutional under the First Amendment of the Constitution.

We have also been significantly involved in developing policies and practices concerning the Internet. We have worked with industry representatives and many others in helping develop and promote GetNetWise, the Internet site and strategy that helps inform parents and all Internet users about filtering and many other methods to help users more effectively control their use of the Internet. We have worked with parents, citizens groups, libraries, and others in communities across the country to help deal with Internet access issues. I serve on the boards of the Internet Education Foundation and the Center for Democracy and Technology. We participated in several White House Internet summits that focused in large part on the issues of kids on-line as well as parental and user empowerment. We have also testified on such issues before the National Commission on Libraries and Information Science, the U.S. Senate Committee on Commerce, Science, and Transportation,

and the National Research Council. A copy of my Senate testimony, which is particularly relevant to the issue being considered today, is enclosed with this testimony.

### **The Promise of the Internet and the Use of Filtering and Rating**

As an overall perspective, the promise of the Internet particularly for young people and future generations is tremendous. The Internet is the communications medium of the 21<sup>st</sup> century and provides unprecedented opportunities for education, personal growth, and career development for current and future generations of Americans. Indeed, being computer and Internet literate has become an essential skill for children growing up today. There is no question that among the vast materials available on the Internet is some false, misleading, sexually explicit, and hateful content. However, as the Supreme Court found in striking down the Communications Decency Act, there are significant differences between the Internet and broadcast media, including the fact that users affirmatively decide what information to see on the Internet. The issue that this Commission faces is how to handle the existence of such information on the Internet within a legal and policy framework that maximizes the benefits of the Internet, and respects the rights of families and other Internet users to decide what to read and do on the Internet consistent with individual and family values and circumstances.

Tools like filtering can play an important role in helping resolve such questions. Unlike prohibitory legislation like CDA or COPA, filtering allows decisions on Internet use to be made at the user end. That means that parents can limit or control what their own children see and do on the Internet without restricting everyone on the Internet to only what is fit for children. With a wide variety of filtering and other products, categories, and levels, families can adapt filtering or other techniques to their own interests and needs. Unlike

legislation like CDA, which cannot affect content overseas, filtering can control access to all Internet content, whatever its source.

On the other hand, filtering and labeling also have limitations and potential dangers. Decisions about how to filter or label Internet content are generally made by people like software engineers or content providers, not judges and juries. That means that we can never rely on filtering to magically block content that meets legal criteria like “harmful to minors.” As we found in the Loudoun county case, even the best blocking or filtering software will block some sites that it should not block and fail to block sites that it arguably should. For example, the filtering software in that case blocked substantial amounts of valuable and clearly non-pornographic information, including websites for the Quaker Society of Friends, the American Association of University Women, the Heritage Foundation, and a site for beanie babies as well as many sex education and gay and lesbian sites. The library staff’s own testing of the software from the perspective of a library patron found that more than 65% of blocked sites should not even have been blocked under the Library Board’s own policy. Even at the same time that valuable material was blocked, the software did not block substantial amounts of sexually explicit material that arguably should have been blocked under the Library Board’s own policy. In addition, there are special challenges with respect to the use of filtering and rating for chat rooms, news groups, and other aspects of the Internet.

### **Specific Policy Prescriptions on Internet Filtering and Rating**

In light of this background, when considering the use of filtering, labeling, and rating on the Internet, five policy principles are particularly important:

First, it is critical that filtering, rating, and labeling systems and software be fully transparent and accessible to the user. Such systems are inherently subjective and variable. To accomplish the most important objective of putting real power in the hands of the Internet user, the user must know precisely what the system does and does not do. That means that systems should fully disclose their criteria and methods for rating or blocking. Filtering or blocking systems with lists of blocked sites should disclose those lists to users. Products should provide maximum user control. For example, individual families should be able to adjust the use of such systems to account for the varying maturity level of minors and to reflect their own values. It will be largely up to the Internet industry to accomplish these objectives. We think there is clearly a role for “Consumer Reports”-type organizations to inform and assist consumers in this area by, for example, grading or rating different filtering and rating systems according to how transparent and user-friendly they are.

Second, government should not mandate the use of filtering, rating or blocking, whether by content providers or by individual families or in institutions like public libraries. The fundamental problem with the Loudoun County policy struck down by the court was that it mandated a “one size fits all” situation, with blocking software required on all computers at all times for all patrons, even adults. Our clients in that case supported an optional filtering policy in which adults and parents would decide for themselves and their children whether to use blocking software, taking into account their own values and needs as well as the flaws and limitations of the software. After the lawsuit, the Loudoun County library adopted just such an optional policy, and all reports indicate that it has been very successful. Other libraries and schools, including a number of Catholic schools, have adopted “acceptable use” policies instead of mandatory blocking and filtering. In addition to the First Amendment

problems identified by the court in Mainstream Loudoun, government-mandated use of filtering or blocking frustrates the goal of empowering families and other users to decide for themselves what to do and see on the Internet.

Third, industry should make transparent filtering and ratings systems available, but should not coerce their use. This issue has been raised, for example, with respect to the RSAC/ICRA rating system which, as of January, included self-ratings for some 100,000 Internet sites. Many would oppose systems at the ISP level that would, for example, automatically block any site that did not have an RSAC/ICRA rating. If widely used, such systems would coerce self-rating, even though for many speakers on the Internet, such self-rating remains burdensome, unwieldy, costly, and inappropriate. Examples include the many sites that provide news and art over the Internet.

Fourth, government can play a valuable role in helping encourage and fund ways to improve filtering and other user empowerment techniques, make them more transparent, and make them more widely available and understood. The government's encouragement of what has become the "GetNetWise" project is a good example. In this regard, it is important to keep in mind that there are other user empowerment techniques besides filtering and rating that should be further developed and promoted. These include, for example, technology that allows parents to monitor which web sites their children visit, "contracts" on acceptable Internet use, and methods to guide kids towards Internet "green spaces" with suggested kid-friendly content.

Finally, promoting the effective use of user empowerment techniques is much more effective than attempts at mandatory government control of Internet content such as CDA and COPA. When government seeks to criminalize or regulate speech content on the Internet

beyond categories like child pornography, which are illegal for everyone, the First Amendment inevitably gets in the way. So far, every federal or state law like CDA or COPA has been struck down by the courts, by conservative as well as by moderate judges. As discussed above, moreover, promoting control over the Internet at the user end will also be more effective in the long run. While there are challenging policy issues in this area, we encourage the Commission to continue to explore those issues and to seek to find effective ways that will encourage the use of filtering and other techniques so that parents and other Internet users can make the decisions about what to see and do on the Internet.

Thank you very much for the opportunity to testify today.