

IV. CONCLUSION: IMPLICATIONS THAT THE SUPREME COURT SHOULD CONSIDER

Although the Third Circuit Court of Appeals discussed the problems of distribution of sexually explicit material through an electronic medium, it stopped short of defining a new community standard to apply. Currently there is no case that deals with the electronic dissemination of indecent material in a situation where the dissemination cannot be controlled. The Supreme Court has dealt with circumstances where offensive material was distributed with no warning - such that adults and children were susceptible to involuntary exposure - and it held that the least restrictive means was for the individual to turn their attention elsewhere.⁶² While this is a simple solution that addresses the problem regardless of the medium, it fails to take into consideration the states' interests in protecting children. COPA attempts to address those interests by holding commercial Web businesses to a single geography-based standard that would be impossible to comply with.

The question for the Supreme Court to answer in *Reno v. ACLU*, now titled *Ashcroft v. ACLU*,⁶³ is whether a national community standard is really an appropriate mechanism through which to address societal concern over exposure of children to pornographic materials distributed by commercial interests on the World Wide Web.⁶⁴ One consideration is that regardless of whether the

establishing the requirements for such an action). The court of appeals also expressed confidence that "developing technology will soon render the 'community standards' challenge moot, thereby making Congressional regulation to protect minors from harmful material on the Web constitutionally practicable." *Id.*

62. See *Cohen v. California*, 403 U.S. 15, 21 (1971) (reversing the defendant's conviction for disturbing the peace and holding that persons offended by the defendant's jacket emblazoned with the phrase "Fuck the Draft: Stop the War" could turn away). *But see* *United States v. Playboy Entm't Group*, 529 U.S. 803 (2000) (holding that the bleeding of adult cable transmissions was constitutionally permissible, pending technology that may one day provide another solution); *F.C.C. v. Pacifica Found.*, 438 U.S. 726, 748-49 (1978) (stating that "[t]o say that one may avoid further offense but turning off the radio when he hears indecent language is like saying that the remedy for an assault is to run away after the first blow").

63. 532 U.S. 1037 (2001); see also *supra* note 3 and accompanying text.

64. See Linda Greenhouse, *Justices Revisit the Issue of Child Protection in the Age of Internet Pornography*, N.Y. TIMES, Nov. 29, 2001, at A28. Indeed, this was a main focus in oral arguments. Justice Breyer inquired why simply implementing a national standard would not solve the problem. *Id.* The Solicitor General replied that in fact Congress did not believe that there was much variation among average adults as to what constitutes material "harmful to minors." *Id.* Justice Ginsburg asked what the basis of this conclusion was, and the Solicitor General answered that legislation did not allude to where this conclusion came from. *Id.* Justice Scalia then followed up, asking, "Doesn't any jury necessarily apply the standards of its own community . . . [w]hat does a juror who has spent his whole life in North Carolina know about Las Vegas?" *Id.* Several justices alluded that adopting a national standard for indecent