

THE QUIET CRISIS: UNCOVERING THE DOJ'S FAILURE TO TACKLE OBSCENITY

ABSTRACT



This article investigates a lack of effort on behalf of the Department of Justice to enforce obscenity laws and the dangers this poses to children online. Obscenity, often referred to as hardcore pornography, is illegal: Title 18 U.S.C. Chapter 71 § 1460-1470, prohibits distribution of hardcore pornography on the Internet, on cable/satellite TV, on hotel/motel TV, in retail shops, and by common carrier. In 1997, the Supreme Court of the United States ruled that “transmitting obscenity and child pornography, whether via the Internet or other means, is... illegal under federal law for both adults and juveniles.”ⁱ



The Supreme Court also recognized on multiple occasions that Congress has a “compelling government interest” to protect the physical and psychological well-being of minors, which includes shielding them from “indecent” content as well as content deemed “obscene” by adult standards.ⁱⁱ



Despite having this federal law in place, obscenity laws have not been enforced since President George W. Bush's administration. Through a synthesis of historical analysis, current trends in technology, and recommendations from advocacy groups, the study argues that the revival of enforcement efforts is vital for the protection of minors, the preservation of community standards, and the prevention of exploitation and harm. Drawing from recommendations provided by Enough Is Enough®, the article concludes by proposing actionable solutions to invigorate the enforcement of obscenity laws, including collaborations between governmental bodies, law enforcement agencies, and technology companies.

EXECUTIVE SUMMARY

This article delves into the puzzling and concerning lack of enforcement efforts by the Department of Justice (DOJ) regarding obscenity laws. Despite legal prohibitions on the distribution, transportation, sale, shipment, mailing, production with the intent to distribute or sell, and involvement in the business of selling or transferring obscene material, prosecutions under these laws have largely remained dormant since the administration of President George W. Bush.

Obscenity has no legal protection under the First Amendment. Yet, for decades, the multibillion-dollar pornography industry has been given a free pass to distribute obscene content online accessible to anyone, including children. Pornographers profit from the distribution of this illegal content, knowingly and blatantly breaking U.S. Federal obscenity laws that have gone virtually unenforced.

Through a comprehensive examination that incorporates historical analysis, an exploration of contemporary technological trends, and insights from advocacy groups, this study argues for the urgent revival of obscenity law enforcement. The key motivation behind this call for action is the safeguarding of minors from exposure to prosecutable obscene material, as it negatively impacts many aspects of the minor's mental, emotional and sexual development according to peer-reviewed science and studies. Children and teens have easy and free access to extreme hardcore content as pornographers have been allowed to operate with impunity. Furthermore, obscene material fuels a cycle of abuse of child exploitation, fuels demand for child sexual abuse material, sex trafficking, sexual predation and other forms of exploitation harming children in tangible and often irreversible ways.

To invigorate the enforcement of obscenity laws, this article proposes actionable solutions that hinge on collaboration among governmental bodies, law enforcement agencies and technology companies. These collaborative efforts will not only reinvigorate the enforcement of obscenity laws but also create a safer digital environment for all, aligning with the overarching goal of preserving societal values and protecting vulnerable populations.

The article draws extensively from recommendations presented by Enough Is Enough®, a prominent national advocacy organization. Since 1994, Enough Is Enough® has been dedicated to preventing the online sexual exploitation of children with a mission to make the internet safer for children and families.

PROBLEM

In 1997, the Supreme Court of the United States ruled that *“transmitting obscenity and child pornography, whether via the Internet or other means, is... illegal under federal law for both adults and juveniles.”* Since this landmark ruling nearly thirty years ago, with the exception of a season of time under General Ashcroft and General Gonzales in which federal obscenity laws were enforced, there has been a perceived lack of effort on behalf of the DOJ to enforce obscenity laws. This is largely a consequence of President Obama’s administration, in which Attorney General Eric Holder dissolved the Obscenity Prosecution Task Force in the criminal division of the Justice Department in the spring of 2011, which had prioritized prosecuting obscenity cases.

Over the past two decades, our world has gravitated more and more toward the use of a variety of digital devices including cell phones, tablets, and gaming devices. 43% of kids aged 8-12 own a smartphone (57% a tablet) and of kids aged 13-18, 88% own a smartphone (36% a tablet). In terms of new media technologies, about one in six tweens and teens now report having a virtual reality headset in the home. This explosion in the use of such devices, evolving social media and app platforms, and the expansion of the availability of public Wi-Fi has left adults, including law enforcement officials, ill-equipped and often overwhelmed as to how to best protect children and families from new and emerging online threats and hold offenders accountable.

Additionally, internet technology giants often exacerbate the dangers to children by failing to enforce corporate acceptable use policies to comply with current law, and by the very real possibility of shifting their technology to “warrant-proof” end-to-end encryption on social media platforms or other forms of online communication. Other technologies such as TOR and Peer-to-Peer networks, and bad actors moving to the deep and dark web further complicate law enforcement’s efforts to interdict these heinous crimes and hold offenders accountable.

The sexual exploitation of children has witnessed a distressing surge, a trend exacerbated by the COVID-19 pandemic. Recent data and research highlight the unsettling trends in child sexual exploitation. Disturbing data revealed that children under the age of 10 now constitute a staggering 22% of online pornography consumers among those under 18. Simultaneously, those aged 10 to 14 make up an alarming 36% of minor consumers.

Common Sense Media in 2022 disclosed that an astonishing 75% of teenagers have encountered pornography by the age of 17, with the average age of first exposure being just 12 years old. Of grave concern is the substantial increase in reports of online enticement, including sextortion, which surged by an alarming 265% from 2018 to 2021. Sextortion involves the grooming of children for explicit imagery, face-to-face meetings, sexual conversations, or the commercialization of their explicit content.^{ix}

The COVID-19 pandemic has intensified the issue of online exploitation. In 2021, the National Center for Missing and Exploited Children (NCMEC) recorded a 35% increase in CyberTipline reports of suspected child sexual exploitation compared to the previous year.

In 2022, NCMEC received more than 32 million reports to the CyberTipline which included 88.3 million images, videos and other files related to child sexual exploitation, some as young as infants and toddlers. In 2021, there was a three-fold increase in imagery showing 7–10-year-olds who have been targeted and groomed by internet predators.^{xii}

The Internet Watch Foundation's report in April 2022 highlighted the fact that the United States harbors a staggering 30% of global child sexual abuse content online.^{xiii} Furthermore, the pandemic-induced lockdowns contributed to a 40% surge in sex trafficking crisis cases reported to the Trafficking Hotline. It's notable that traffickers have increasingly turned to online platforms, recruiting 55% of sex trafficking victims through various digital avenues such as social media platforms, web-based messaging apps, online chat rooms, dating apps, classified advertisements, and job boards.^{xv}

To make matters worse, statistics indicate that 40% of children in grades 4-8 have connected with strangers online, highlighting their susceptibility to online manipulation and grooming. Troubling attitudes are also noted among adolescents, with 1 in 5 girls and 1 in 10 boys aged 13-17 admitting to sharing explicit images of themselves. Shockingly, 40% of respondents considered this behavior normal.^{xvii}

The pandemic has brought to light an alarming escalation in child sexual exploitation, particularly through online channels. The data underscores the need for comprehensive and proactive strategies to safeguard the well-being of children. Effective interventions must target not only the protection of minors but also the promotion of digital literacy, responsible online behavior, and parental guidance. This multifaceted approach is crucial to curbing the distressing rise in child sexual exploitation and ensuring a safer online environment for all.

These crimes have irreparable consequences for the most vulnerable in our communities – namely our children. As in the example of the expansion of unrestricted public Wi-Fi in government, educational, commercial, and other facilities and spaces, this emerging threat has created unsafe public environments with the unintended consequences of freely available access by anyone to online obscenity, child sexual abuse material (CSAM), predation, and sex trafficking.

The public nature of these connection 'hotspots' makes it overly challenging for law enforcement to accurately track and interdict the offenders, opening the door for predators to fly under the radar of law enforcement on public Wi-Fi. As a result, youth are victimized while predators can view, download, or distribute child sex abuse images, groom children, and communicate with other predators and traffickers on the premises without recourse.

Any child with unrestricted Internet access is just a click away from viewing prosecutable obscenity like hard-core, extreme content depicting graphic sex acts, rape, strangulation, and violence, even material depicting the sexual abuse or rape of a child. The corroding influence of Internet pornography as a public health crisis is backed by peer-reviewed social and medical science. Its harmful impact upon the emotional, mental, and sexual health of young children, tweens, and teens continues to worsen.

As such, nearly 17 states have either passed or adopted public health crisis resolutions, recognizing the many levels of harmful effects upon individuals and society. Pornographers understand that the sexually exploitative pornography they produce and distribute is highly addictive. They're keenly aware that if they can get children hooked and desensitized at a young age, they will likely have a consumer for life unless the cycle of addiction is broken. Peer-reviewed research also supports unequivocal harm

to youth from exposure to Internet pornography. Research conducted on the brain revealed that as hours of pornography use increases, the gray matter in the brain decreases, and neurochemically alters the underdeveloped brain of a child or adolescent.

Further, the content offers unrealistic and unhealthy attitudes towards sex, teaching sex without love, and that women are to be viewed as sexual objects. It can also have an impact on the development of harmful sexual behaviors. The average age of first perpetration of sexual violence is 15-16 and is associated with exposure to pornography. Viewing this content may also lead to sexually aggressive behaviors.^{xx}

Sexual predators use this content to groom and sexualize a child into developing CSAM, fueling a vicious cycle of abuse including child sex abuse, sex crimes, sexual exploitation, violence against women, sex trafficking, and sexual predation.^{xxi} In cases of sex trafficking, pornography fuels the demand for women and children to be sold commercially, which can lead to further abuse as sex crimes are turned into pictures and videos that are distributed, sold, and shared.

Existing federal laws to prevent the internet-enabled exploitation of children have not been adequately enforced or funded and new public policies at both the federal and state levels are not being enacted and implemented to keep ahead of both existing and emerging threats. This has led to increased harm to minors from obscenity, CSAM, predation, sex trafficking, sextortion, and cyberbullying. To complicate matters, Section 230 of the Communications Decency Act often provides immunity for website platforms and can serve as a roadblock to successful investigations and prosecutions. As a result, the burden to protect children from online sexual exploitation is falling on adults, who are not always adequately educated or equipped to protect children from all forms of exploitation in today's rapidly evolving digital world.

HISTORY OF OBSCENITY LAW

Obscenity laws in the United States have a long and complex history, with various legal challenges and shifts in societal attitudes influencing their development. Throughout the years, the interpretation and enforcement of obscenity laws has been subject to numerous court cases and legal precedents, shaping the modern landscape of freedom of expression and obscenity standards in the country.

According to the United States Department of Justice, Title 18 U.S.C. Chapter 71 § 1460-1470, it is prohibited to distribute, transport, sell, ship, mail, produce with the intent to distribute or sell, or be involved in the business of selling or transferring obscene material.^{xxii} Those found guilty of these offenses may be subject to fines and imprisonment. While private possession of obscene material is generally not a criminal offense, downloading or receiving such material could potentially violate federal laws that forbid using the postal service, common carriers, or interactive computer services for transportation purposes.^{xxiii} The landscape of U.S. obscenity laws has been shaped by significant legal milestones that reflect the dynamic interplay between societal norms, freedom of expression, and the government's role in maintaining public morality. One of the foundational pieces of legislation in this domain was the Comstock Act of 1873. Named after its primary advocate, Anthony Comstock, this federal statute marked a pivotal moment in the United States' approach to addressing obscenity.

The Comstock Act represented a milestone as the first substantial federal legislation designed to combat obscenity. Its primary objective was to curtail the distribution of materials deemed obscene, encompassing a wide array of content including books, pamphlets, pictures, and materials related to contraception or abortion. Framed as a means to safeguard public morality and protect citizens from potentially offensive materials, the Act triggered debates about the delicate balance between such intentions and the preservation of constitutional rights such as freedom of speech.

However, as with any legislation seeking to define and regulate obscenity, the Comstock Act faced its share of challenges. Concerns arose regarding its potential to infringe upon individuals' right to express themselves freely, leading to discussions about censorship and the scope of government authority over matters of personal expression. Subsequent legal developments further refined the criteria for classifying materials as obscene, with the landmark case of *Miller v. California* (1973) playing a pivotal role.^{xxv} This case introduced the "Miller test," which remains a cornerstone in the assessment of obscenity cases. The Miller test expanded upon the earlier Roth test by introducing a requirement that the material, when considered as a whole, lacks serious literary, artistic, political, or scientific value and exceeds the threshold of "hardcore sexual conduct." This test granted states greater flexibility in establishing their own standards for obscenity, acknowledging the diversity of cultural perspectives within the country.

As the digital age dawned, a new medium for communication emerged in the form of the Internet. The U.S. Congress responded by enacting the Communications Decency Act (CDA) in 1996, seeking to regulate obscene and indecent content online.^{xxvi} This legislative endeavor aimed to apply traditional standards to the digital realm, reflecting the evolving nature of societal interactions. However, certain provisions of the CDA faced legal challenges that ultimately culminated in *Reno v. ACLU* (1997), a landmark Supreme Court case.^{xxvii} In this case, the Court held that certain aspects of the CDA infringed upon the First Amendment's protections of online speech, underscoring the need to strike a balance between regulating online content and preserving the fundamental right to free expression. The trajectory of U.S. obscenity laws showcases an intricate narrative of legal evolution, driven by a delicate interplay between moral imperatives, the protection of constitutional rights, and the evolving landscape of communication mediums. From the Comstock Act's foundational stance to the nuanced tests outlined in subsequent cases, and even into the digital era with the CDA, these legal milestones continue to shape the nation's ongoing discourse on obscenity and freedom of speech.

EFFORTS BY THE DEPARTMENT OF JUSTICE

The Child Exploitation and Obscenity Section (CEOS) is a division within the United States Department of Justice (DOJ) that is supposed to play a vital role in combatting crimes related to child exploitation and obscenity. Established in 1987, CEOS focuses on investigating and prosecuting offenses involving the sexual exploitation of minors, including CSAM and obscenity violations that involve minors. The section's responsibilities are of paramount importance to protecting the most vulnerable members of society and upholding the law in the digital age.^{xxviii}

This, however, neglects that the DOJ has not enforced laws to prevent the online exploitation of children, including federal obscenity laws, since Attorney General Ashcroft, under the Bush administration.

In the spring of 2005, alongside Assistant Attorney General Christopher Wray, Attorney General John Ashcroft established an Obscenity Task Force during his tenure. This task force was dedicated to addressing issues related to obscenity, specifically in the realm of pornography.^{xxix} It aimed to enforce federal laws regarding obscenity, often focusing on hardcore pornography that met certain criteria, such as being prurient, patently offensive, and lacking serious artistic or social value. The task force cooperated with various law enforcement agencies and U.S. Attorney's Offices across the country to prosecute individuals and entities involved in the production, distribution, and sale of obscene materials. Their efforts led to numerous convictions, significant fines, asset forfeitures, and played a role in deterring criminal conduct within the pornography industry.

There is a history of successful federal obscenity prosecutions involving hard-core pornography, focusing on the period from the 1970s to the early 1990s. These prosecutions typically targeted materials that depicted explicit sexual acts in a prurient and offensive manner, often featuring themes of incest, child sex, violence, sadomasochism, or other extreme content.

In the 1970s, convictions were obtained against individuals involved in producing and distributing "Deep Throat" in Tennessee, including members of the La Cosa Nostra (LCN). In the 1980s, a major federal effort called "MIPORN" involved undercover FBI operations against 55 major pornography syndicate producers and distributors, resulting in numerous convictions, including those of significant figures in the industry.

The DOJ established the National Obscenity Enforcement Unit (NOEU) in 1987, later becoming the Child Exploitation and Obscenity Section (CEOS). From 1987 to 1994, the DOJ, in cooperation with various U.S. Attorneys' Offices, obtained over 130 indictments and at least 126 convictions, resulting in substantial fines, forfeitures, and realty assets.

During this period, there were other operations and convictions related to obscenity, including Project Postporn, which targeted national mail-order obscenity distributors, leading to convictions in multiple federal districts.

In the 1980s and early 1990s, the FBI also conducted operations against the Sturman obscenity empire, resulting in convictions for various crimes, including tax evasion, extortion, and obstruction. These convictions also led to fines, asset forfeitures, and prison sentences for those involved.

Overall, this highlights the effectiveness of federal law enforcement in prosecuting obscenity-related crimes, including racketeering, tax evasion, and obstruction, resulting in significant penalties and asset forfeitures. It argues that the DOJ played a crucial role in deterring criminal conduct in the pornography industry through consistent enforcement of existing laws. If the DOJ did its job and would prosecute obscenity, it could yet again bring offenders to justice.

Obscenity in the United States is on the rise due to perceived lax enforcement of obscenity laws by the DOJ. This lack of enforcement has allowed the proliferation of explicit and hardcore pornography, contributing to a worsening situation and putting children and families online in danger of being sucked into the cycle of abuse.^{xxx} The DOJ's failure to vigorously pursue obscenity prosecutions, as it did in the past, has emboldened producers and distributors of explicit adult content. This has resulted in an increase in content featuring extreme and potentially harmful themes, such as violence, incest, child exploitation, and other deviant acts. The absence of strong enforcement has led to a lack of deterrents, allowing the industry to push boundaries further.

UNFILLED GAPS

Unfortunately, despite an entire division devoted to CEOS, the DOJ and CEOS are not effectively enforcing obscenity laws. The DOJ and CEOS may face challenges in effectively enforcing obscenity laws due to several reasons. Enough Is Enough® argues that these reasons include, but are not limited to, insufficient resource allocation, legal challenges, technological advancements, free speech concerns, jurisdictional issues, and limited reporting.

The DOJ and CEOS have limited resources and face competing priorities. This resource allocation could lead to even fewer investigations and prosecutions in the obscenity domain. Families are tired of the DOJ and CEOS prioritizing other competing issues when the country's children are in danger within their homes. There are no issues that can compete with protecting children. Additionally, defining and prosecuting obscenity cases can be legally complex and controversial. As a result, some cases may face legal challenges, leading to uncertainty and potential difficulties in securing convictions. The DOJ must define clear lines and do its job.

Likewise, the rise of the internet and digital technologies has made it easier for explicit content to be disseminated online. This has created a challenge for law enforcement in identifying and prosecuting offenders, and despite operating across jurisdictions or using encryption and anonymization techniques. Enforcing obscenity laws historically have often involved complex legal arguments about what constitutes protected expression versus obscene content. The DOJ and CEOS must navigate this balance while pursuing criminal charges, but protecting children and families should always take priority.

The global nature of the Internet means that explicit content can be hosted on servers located in different countries. This creates jurisdictional challenges for enforcement efforts, as laws may vary from one country to another. In conjunction, not all instances of obscenity violations are reported to law enforcement. Victims or witnesses may be hesitant to come forward due to shame, fear, or concerns about the potential legal repercussions. If the DOJ was committed to prosecuting obscenity, victims may be more likely to come forward and there would be less gaps to fill.

SOLUTION

Enforcing obscenity laws requires a multi-faceted approach that addresses the challenges of the digital age while respecting constitutional rights. To improve the enforcement of obscenity laws, law enforcement agencies, including the DOJ and the CEOS, need enhanced resources and training to combat these crimes effectively. Allocating sufficient funding and manpower to investigate and prosecute obscenity cases is crucial. Additionally, collaboration and information-sharing between national and international law enforcement agencies are vital to address the transnational nature of explicit content distribution.

Emphasizing the use of technology and digital forensics can aid in the identification and tracking of offenders. Encouraging public awareness campaigns to educate individuals, especially parents and guardians, about the risks of obscenity and how to report potential violations can lead to increased reporting of such crimes. Striking a balance between preserving freedom of speech and protecting minors requires ongoing legal refinement and staying current with societal norms and technological advancements. Overall, a comprehensive strategy that combines adequate resources, technological expertise, international cooperation, and public engagement can enhance the enforcement of obscenity laws effectively.

Congress has shown a consistent interest in addressing issues related to obscenity and has utilized report language to convey its expectations to the DOJ. Report language is a means through which congressional committees express their intentions, concerns, or recommendations when accompanying legislation.

In the past, congressional committees have employed report language to call on the DOJ to prioritize the prosecution of obscenity cases. These reports often highlight concerns about the proliferation of explicit and hardcore pornography, especially content featuring extreme and potentially harmful themes. Such report language serves as a formal communication from Congress to the DOJ, urging the department to take concrete actions in enforcing obscenity laws. Recent report language calling on the DOJ to prosecute obscenity include:

Rept. 117-97 - COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES
APPROPRIATIONS BILL, 2022 Monday, July 19, 2021.

P. 63: Federal obscenity prosecution. —The Committee supports the work of DOJ in investigating and prosecuting major producers and distributors of hardcore adult pornography that meets the Supreme Court test for obscenity. Such enforcement is necessary to protect the welfare of families and children as traffickers in illegal adult obscenity seek to extend their influence through advances in technology. The Committee directs DOJ to increase its efforts in enforcing Federal obscenity laws.

While this report language has been ignored by the DOJ, The Supreme Court of the United States has recognized that obscenity and child pornography laws are still in effect, both for physical transfers and electronic transfers, noting in *Reno v. ACLU*, 521 U.S. 844, 878 n. 44, 117 S.Ct. 2329, 2347 n. 44 (1997), that “Transmitting obscenity and child pornography, whether via the Internet or other means, is already illegal under federal law for both adults and juveniles.”

The solution to the issue of the proliferation of explicit and hardcore obscenity that meets the Supreme Court’s test for obscenity involves a strategic and proactive approach by law enforcement agencies, including the DOJ investigating and prosecuting major producers and distributors of such materials. By focusing on major producers and distributors, law enforcement can have a more significant impact on curbing the spread of obscene content.

OPPOSITION

The argument against enforcing obscenity laws revolves around concerns related to freedom of speech, individual rights, and the potential for selective or arbitrary enforcement. Critics argue that obscenity laws may infringe upon constitutionally protected First Amendment rights, limiting freedom of expression and artistic creativity. They assert that the government's role should not involve policing or censoring individuals' private consensual behavior, even if it involves explicit or sexually oriented material. Opponents argue that enforcing obscenity laws diverts limited law enforcement resources away from addressing other harmful crimes, such as violence, human trafficking, and drug offenses. They contend that prioritizing obscenity cases over other offenses may result in a misallocation of resources and undermine efforts to combat other harmful activities. This neglects that obscenity that continues to go unprosecuted leads to a cycle of abuse that enables violence, trafficking, and substance abuse.

Another aspect of the argument against enforcing obscenity laws is the potential for selective enforcement, which may disproportionately target certain individuals or groups based on their artistic expression, political views, or social standing. Critics fear that obscenity laws could be used as tools of censorship, suppressing dissent or marginalized voices that challenge prevailing societal norms. In the digital age, the Internet and social media have significantly expanded the reach and accessibility of content, making it challenging to enforce obscenity laws consistently across various platforms and jurisdictions. Critics also contend that the definition of obscenity remains subjective and varies across communities, making it difficult to establish consistent and objective criteria for determining what is considered obscene. This subjectivity opens the door to potential abuses, as different communities may have differing standards and interpretations. However, consistent and objective criteria can only be set if the DOJ is prosecuting obscenity, which they are not, so there is no substance to that argument.

Opponents of enforcing obscenity laws argue that societal norms and individual preferences should guide decisions regarding what constitutes acceptable material rather than government-imposed restrictions. They advocate for a greater emphasis on personal responsibility, parental guidance, and the use of content filters and age verification systems to protect minors from explicit material without resorting to broad legal restrictions. If parents are not protecting their children from this material, then they are left fully exposed and in danger. The DOJ must do its job to protect all children, including those who are not protected at home.

Those who oppose enforcing obscenity laws are failing to recognize that these laws serve essential purposes in protecting the most vulnerable members of society, especially minors, and upholding community standards.

Obscenity laws play a crucial role in safeguarding minors from exposure to harmful and sexually explicit material. Children and teenagers are more susceptible to the negative effects of explicit content, which have adverse impacts on their mental and emotional development. Enforcing these laws helps create a safer environment for young individuals, shielding them from potential exploitation and harm.

By enforcing these laws, we uphold the collective beliefs and norms that guide a community's sense of decency and appropriateness. This ensures that public spaces, both physical and digital, maintain a certain level of respect and dignity for all individuals.

Enforcing these laws acts as a deterrent to those who might exploit vulnerable individuals for profit or personal gratification. While freedom of speech is a fundamental right, it is not without limits. Obscenity laws strike a balance between protecting free expression and preventing harmful content. This balance respects the principles of free speech while addressing the potential harm caused by certain explicit materials.

By enforcing obscenity laws, the DOJ can promote equal treatment under the law. Failing to prosecute pornographers who violate US Federal obscenity law gives this multibillion-dollar criminal enterprise a free pass to continue to ignore the rule of law and prey on innocent children, sexually exploit those portrayed in pornography, and trap consumers in a cycle of addiction that can destroy their lives.

These laws apply to all individuals and entities, regardless of their social status, political beliefs, or artistic inclinations. A fair and consistent enforcement mechanism ensures that no one is above the law. Enforcing obscenity laws is in the public interest, as it helps maintain social order and protect individuals from exploitation and harm.

Upholding these laws demonstrates a commitment to the well-being and safety of citizens, particularly the most vulnerable. Those who oppose enforcing obscenity laws overlook the essential role these laws play in protecting minors, upholding community standards, and preventing exploitation and harm. The effective enforcement of these laws contributes to the well-being of society as a whole and reaffirms society's commitment to decency and the protection of the at-risk members of communities across the country.

CONCLUSION

The landscape of obscenity laws in the United States is a complex tapestry woven by legal precedents, societal norms, and technological advancements. As we navigate the intricate interplay between freedom of speech, protection of minors, and the evolving digital realm, it becomes evident that effective enforcement of obscenity laws is a vital component of maintaining a just and responsible society.

The 1997 Supreme Court ruling established a clear stance on the illegality of transmitting obscenity and CSAM via the Internet or other means, underscoring the need for enforcement in both physical and virtual spaces. Yet, the perceived gap in enforcement, especially within the digital realm, reveals challenges that must be addressed.

The surge in digital device usage among children and teenagers, combined with the proliferation of new media technologies and the availability of public Wi-Fi, has created an environment ripe for exploitation. The dark corners of the Internet harbor dangers exacerbated by technology giants' lack of adherence to corporate policies and the emergence of encryption methods. The result is a distressing escalation in online child exploitation, leading to a multitude of troubling statistics, from minors' consumption of explicit content to the alarming rise in online enticement cases and sextortion incidents.

The COVID-19 pandemic intensified this already concerning issue, as online platforms became even more prevalent avenues for exploitation. The surge in CyberTipline reports, the significant portion of global child sexual abuse content hosted in the United States, and the distressing increase in sex trafficking crisis cases all point to a digital realm that demands immediate and comprehensive attention.

Young individuals are increasingly at risk, with vulnerabilities ranging from online manipulation and grooming to the normalization of explicit image sharing. The pandemic-induced surge in child sexual exploitation and the digital terrain's complexities necessitate comprehensive strategies that transcend borders and sectors.

The solution lies in multifaceted approaches that merge technological innovation, enhanced resources, international collaboration, legal refinement, and education. Allocating adequate resources and training law enforcement agencies, including the DOJ and CEOS, can address the enforcement challenges posed by the digital age. Collaboration between agencies, both nationally and internationally, is imperative to tackle the transnational nature of online exploitation. Technological expertise and digital forensics play a pivotal role in identifying, tracking, and holding offenders accountable.

Public awareness campaigns are essential to educate individuals about online risks and reporting mechanisms. Simultaneously, a delicate balance must be struck between freedom of speech and the protection of minors, requiring ongoing legal adjustments and societal engagement. Parents and guardians must be empowered to guide responsible online behavior, and a comprehensive strategy can only emerge from collective efforts.

In conclusion, the challenges of enforcing obscenity laws in the digital age underscore the need for proactive measures that transcend legal boundaries and technological barriers. Protecting the most vulnerable members of society and preserving community standards requires a concerted effort that involves law enforcement, technological innovation, public awareness, and international collaboration. By addressing these challenges head-on, society can pave the way for a safer, more responsible, and respectful digital environment for all, ultimately upholding the values that underpin our communities.

RECOMMENDATION

As an organization dedicated to making the internet safer for children and families, we recognize the urgent need to enforce obscenity laws and protect vulnerable individuals from the harms of explicit content. Enough Is Enough's mission hinges on safeguarding innocence, promoting responsible digital behavior, and creating a secure online environment. In light of the complex challenges posed by the digital age and evolving technological landscape, we present the following recommendations to enhance the enforcement of obscenity laws and ensure the well-being of our communities:

1. Advocate for increased funding and manpower for law enforcement agencies, including the DOJ and specialized divisions like CEOS. Adequate resources are crucial to effectively investigate and prosecute obscenity-related offenses, especially in the context of emerging digital threats.
2. Collaborate with law enforcement agencies, academic institutions, and technology experts to develop specialized training programs. These programs should equip law enforcement personnel with the knowledge and skills required to navigate the complexities of online exploitation, including identifying digital evidence and adapting to evolving technology. More specifically, Enough Is Enough® suggests reinstating the Federal Obscenity Training Symposium initiated under AG Ashcroft. This symposium invited federal prosecutors, DOJ officials, US attorneys, and assistant US attorneys to learn how to successfully prosecute obscenity cases.
3. Facilitate partnerships and information-sharing between national and international law enforcement agencies. The transnational nature of online crimes demands cross-border cooperation to track and dismantle criminal networks, ensuring that offenders are held accountable regardless of jurisdiction.
4. Advocate for the integration of advanced technology, digital forensics, and data analytics to aid law enforcement in identifying and tracking offenders. Explore partnerships with tech companies to develop tools that streamline the investigation process and enhance the effectiveness of enforcement efforts.
5. Launch comprehensive and targeted public awareness campaigns to educate parents, guardians, educators, and children about the risks of explicit content and online exploitation. These campaigns should emphasize the importance of open communication, responsible online behavior, and reporting mechanisms.
6. Collaborate with educational institutions to integrate digital literacy programs into curricula. Empower students with the skills to navigate the digital landscape safely, identify potential threats, and make informed decisions about their online interactions.
7. Provide resources and support for parents and guardians to enable them to guide their children's online activities effectively. Offer tools such as content filters, parental controls, and age-appropriate media recommendations to create a safer digital environment at home.
8. Advocate for legislative changes that address the challenges posed by the digital age, including the enforcement of obscenity laws in online spaces. Collaborate with policymakers to ensure that existing laws remain relevant and effective in the digital era. Including but not limited to EARN IT Act, Project Safe Childhood, REPORT Act, Stop CSAM Act, and KOSA.
9. Work with technology companies and platforms to develop user-friendly reporting mechanisms for explicit content and online exploitation. Streamline the reporting process to ensure that individuals can quickly report harmful content and receive timely assistance.

10. Partner with academic institutions and research organizations to gather data on the prevalence and impact of online exploitation. This research can inform evidence-based strategies, highlight emerging trends, and support policy recommendations.
11. Foster a sense of collective responsibility by engaging community leaders, organizations, and influencers in the effort to enforce obscenity laws and protect children and families online. Leverage their reach and influence to promote responsible digital behavior and advocate for safer online environments.
12. Support legal efforts to strike a balance between freedom of speech and the protection of minors. Collaborate with legal experts to ensure that obscenity laws remain relevant and effective in addressing emerging digital challenges.

In conclusion, our organization's commitment to making the internet safer for children and families highlights the importance of enforcing obscenity laws in the digital age. By implementing these recommendations, we can create a comprehensive and collaborative approach that addresses the unique challenges posed by the digital realm. Through enhanced enforcement, technological innovation, public education, and international cooperation, we can achieve our mission of fostering a secure and responsible online environment for all.

Enough Is Enough® is a national non-partisan, non-profit organization who has led the fight to make the Internet safer for children and families since 1994. EIE's efforts are focused on combating internet pornography, child sexual abuse material, sexual predation, sex trafficking and cyberbullying by incorporating a four pronged prevention strategy with shared responsibilities between the public, corporate America, government and faith communities.

Visit us online at enough.org and internetsafety101.org or email info@enough.org.

- i. Reno v. ACLU, 521 U.S. 844, 878 n. 44, 117 S.Ct. 2329, 2347 n. 44 (1997).
- ii. Shielding Children's Retinas from Egregious Exposure on the Net Act, 117th Cong. (2022). <https://www.lee.senate.gov/services/files/13C602F8-4CA3-4B5E-91DB-7B00393004E7>.
- iii. Reno v. ACLU, 521 U.S. 844, 878 n. 44, 117 S.Ct. 2329, 2347 n. 44 (1997).
- iv. Gerstein, Josh. "Holder Accused of Neglecting Porn." POLITICO, 2011. www.politico.com/story/2011/04/holder-accused-of-neglecting-porn-053314.
- v. Rideout, V., Peebles, A., Mann, S., & Robb, M. B. (2022). Common Sense census: Media use by tweens and teens, 2021. San Francisco, CA: Common Sense. [8-18-census-integrated-report-final-web-0.pdf](https://www.common-sense-media.org/wp-content/uploads/2022/04/8-18-census-integrated-report-final-web-0.pdf) ([common-sense-media.org](https://www.common-sense-media.org)).
- vi. Rideout, V., Peebles, A., Mann, S., & Robb, M. B. (2022). Common Sense census: Media use by tweens and teens, 2021. San Francisco, CA: Common Sense. [8-18-census-integrated-report-final-web-0.pdf](https://www.common-sense-media.org/wp-content/uploads/2022/04/8-18-census-integrated-report-final-web-0.pdf) ([common-sense-media.org](https://www.common-sense-media.org)).
- vii. Răzvan Muresan. (2016). One in 10 visitors of porn sites is under 10 years old. Bitfender. <https://www.bitdefender.com/blog/hotforsecurity/one-in-10-visitors-of-porn-sites-is-under-10-years-old/>
- viii. Rideout, V., Peebles, A., Mann, S., & Robb, M. B. (2022). Common Sense census: Media use by tweens and teens, 2021. San Francisco, CA: Common Sense. [8-18-census-integrated-report-final-web-0.pdf](https://www.common-sense-media.org/wp-content/uploads/2022/04/8-18-census-integrated-report-final-web-0.pdf) ([common-sense-media.org](https://www.common-sense-media.org)).
- ix. Davis, P. (2022, February 17). Sextortion: The Hidden Pandemic. missingkids.org. August 22, 2023, <https://www.missingkids.org/blog/2022/sex-tortion-the-hidden-pandemic>
- x. Clark, J. F. (2022, January 31). EARN IT Act of 2022. missingkids.org. National Center for Missing and Exploited Children. Retrieved August 22, 2023, from <https://www.missingkids.org/blog/2022/earn-it-act-2022>.
- xi. CyberTipline Data. National Center for Missing & Exploited Children. (n.d.). <https://www.missingkids.org/cybertiplinedata>
- xii. Three-fold increase of abuse imagery of 7-10-year-olds as IWF detects more child sexual abuse material online than ever before. Eliminating Child Sexual Abuse Online – Internet Watch Foundation. (n.d.). <https://www.iwf.org.uk/news-media/news/three-fold-increase-of-abuse-imagery-of-7-10-year-olds-as-iwf-detects-more-child-sexual-abuse-material-online-than-ever-before/>
- xiii. Williams, R. (2022, April 26). The US now hosts more child sexual abuse material online than any other country. Eliminating Child Sexual Abuse Online – Internet Watch Foundation. <https://www.iwf.org.uk/news-media/iwf-in-the-news/the-us-now-hosts-more-child-sexual-abuse-material-online-than-any-other-country/>
- xiv. Williams, R. (2022, April 26). The US now hosts more child sexual abuse material online than any other country. Eliminating Child Sexual Abuse Online – Internet Watch Foundation. <https://www.iwf.org.uk/news-media/iwf-in-the-news/the-us-now-hosts-more-child-sexual-abuse-material-online-than-any-other-country/>
- xv. Federal Human Trafficking Report. (2022) Human Trafficking Institute.
- xvi. Kids Need Stronger Parental Oversight Online. (2019) Center for Cyber Safety and Education.
- xvii. Self-Generated Child Sexual Abuse Material: Attitudes and Experiences. (2020) Thorn.
- xviii. Pornography: Public health crisis. National Decency Coalition. (n.d.). <https://decencyusa.org/pornography-public-health-crisis/>
- xix. Kühn S, Gallinat J. Brain Structure and Functional Connectivity Associated With Pornography Consumption: The Brain on Porn. JAMA Psychiatry. 2014;71(7):827–834. doi:10.1001/jamapsychiatry.2014.93
- xx. Ybarra, M.L., Thompson, R.E. Predicting the Emergence of Sexual Violence in Adolescence. Prev Sci 19, 403–415 (2018). <https://doi.org/10.1007/s11121-017-0810-4>
- xxi. Internet safety 101: Pornography. Internet Safety 101: Pornography's Cycle of Abuse. (n.d.). https://internetsafety101.org/cycleofabuse?fbclid=IwAR3mbKndaaFo6Dc_WeR8rIY-6wGZ80RidG_UhgARoC9jD0laW6gqAd0cmE
- xxii. Obscenity. The United States Department of Justice. (2021, March 29). <https://www.justice.gov/criminal-ceos/obsenity#:~:text=Federal%20law%20makes%20it%20illegal,selling%20or%20transferring%20%20obscene%20matter.>
- xxiii. Obscenity. The United States Department of Justice. (2021, March 29). <https://www.justice.gov/criminal-ceos/obsenity#:~:text=Federal%20law%20makes%20it%20illegal,selling%20or%20transferring%20%20obscene%20matter.>
- xxiv. Suppression of Trade in, and Circulation of, Obscene Literature and Articles of Immoral Use. March 3, 1873, ch. 258, § 2, 17 Stat. 599
- xxv. MILLER V. CALIFORNIA, 413 U.S. 15, 93 S. Ct. 2607, 37 L. Ed. 2d 419 (1973).
- xxvi. S.314 - 104th Congress (1995-1996): Communications Decency Act of 1995. (1995, February 1). <https://www.congress.gov/bill/104th-congress/senate-bill/314>
- xxvii. Reno v. ACLU, 521 U.S. 844, 878 n. 44, 117 S.Ct. 2329, 2347 n. 44 (1997).
- xxviii. Obscenity. The United States Department of Justice. (2021, March 29). <https://www.justice.gov/criminal-ceos/obsenity#:~:text=Federal%20law%20makes%20it%20illegal,selling%20or%20transferring%20%20obscene%20matter.>
- xxix. US Department of Justice. OBSCENITY PROSECUTION TASK FORCE ESTABLISHED TO INVESTIGATE, PROSECUTE PURVEYORS OF OBSCENE MATERIALS. May 5, 2005. https://www.justice.gov/archive/opa/pr/2005/May/05_crm_242.htm
- xxx. Internet safety 101: Pornography. Internet Safety 101: Pornography's Cycle of Abuse. (n.d.). https://internetsafety101.org/cycleofabuse?fbclid=IwAR3mbKndaaFo6Dc_WeR8rIY-6wGZ80RidG_UhgARoC9jD0laW6gqAd0cmE