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**ALL KNOWLEDGE IS *NOT* EQUAL:
FACILITATING CHILDREN’S ACCESS TO KNOWLEDGE BY
MAKING THE INTERNET SAFER**

Cheryl B. Preston

TABLE OF CONTENTS

I.	INTRODUCTION.....	115
II.	THE PORNOGRAPHIC NET.....	117
III.	THE IMPERIALIST INSTINCT.....	121
IV.	THE INTERNET COMMUNITY PORTS CONCEPT AND ACT.....	124
	A. <i>Creating Community Ports</i>	125
	B. <i>Crafting Appropriate Legislation</i>	126
	C. <i>Choosing a Regulatory Structure</i>	127
V.	TRANS-JURISDICTIONAL ENFORCEMENT.....	128
VI.	RISKS AND LIMITATIONS OF THE PORTS ZONING CONCEPT.....	131
VII.	CONCLUSION.....	132

ALL KNOWLEDGE IS *NOT* EQUAL: FACILITATING CHILDREN'S ACCESS TO KNOWLEDGE BY MAKING THE INTERNET SAFER

Cheryl B. Preston*

Access to Internet knowledge is a worthy goal, especially for the children who will populate the information society; however, access must be considered in the context of imposing Western pornography on every culture and family. This Article suggests an Internet port zoning approach to segregating Internet content. Zoning with the Ports Concept is practical, technologically feasible, and conducive to appropriate legal formulations. The Ports Concept accommodates those who want to speak and hear adult speech, while recognizing the equally legitimate interests of those who do not want pornography in their homes and businesses, eroding their cultural values.

This Article briefly discusses the risks facing children online and the implications of cultural imperialism in Internet expansion. It then describes the Ports Concept and a legislative framework for facilitating and maintaining ports zoning, the Internet Community Ports Act (ICPA). Such a zoning scheme can work with an Internet governance structure relying on a specialized central global authority, or with governance seated in individual national authorities. It suggests various options for trans-national implementation and enforcement if the Ports Concept is applied in a national, rather than centralized, governance approach. The Article also addresses the limitations and risks of this approach.

Finally, this Article links the possibilities of Internet port zoning and principles of cultural self-determination. Nations, communities, and parents must be given the opportunity to access the Internet without drowning in sexually explicit content. Dividing content types on ports permits a simple, electronically-enabled choice about what "wonders" of the Internet must be welcomed into homes in Western and non-Western cultures.

I. INTRODUCTION

Access to knowledge is a worthy goal. The Internet has exponentially expanded the information available to citizens of the globe. The Declaration of Principles¹ of the World Summit on the Information Society (WSIS) urges "all stakeholders [to] work together to: improve access to information and communication infrastructure and technologies as well as to information and knowledge."² Facilitating broad access to the Internet, and the knowledge it contains, is the objective of the Information Society Project's (ISP) Access to Knowledge (A2K)

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¹ World Summit on the Information Society (WSIS), Declaration of Principles: Building the Information Society: a global challenge in the new Millennium (December 12, 2003), available at <http://www.itu.int/wsis/docs/geneva/official/dop.html> (last visited March 4, 2009). These Principles acknowledge the value of knowledge in Paragraph 8.

We recognize that education, knowledge, information and communication are at the core of human progress, endeavour and well-being. Further, Information and Communication Technologies (ICTs) have an immense impact on virtually all aspects of our lives. The rapid progress of these technologies opens completely new opportunities to attain higher levels of development. The capacity of these technologies to reduce many traditional obstacles, especially those of time and distance, for the first time in history makes it possible to use the potential of these technologies for the benefit of millions of people in all corners of the world.

Id. at 8.

² *Id.* at 19.

program.³ Governments, industry, public interest groups and other actors in the information society rightly seek to build, and find funding for, the necessary infrastructure, hardware, and software to connect remote areas in developing countries so their children can learn the skills necessary to be productive in an information-driven world.

Unfortunately, the push for Internet access is accompanied with little apparent thought of the costs of exposing the world's children to massive amounts of age-inappropriate sexually explicit content, particularly in societies where parents lack the technical expertise to effectively monitor their children's Internet usage. Moreover, few of the world's parents even understand the risks of what is available on the Internet, the technology that traps a user in an adult site, and the risks of online predators and human traffickers. Even if filtering software had a chance of working, such parents are unlikely to be in a position to buy, install and maintain an in-box filter, let alone have the skills to track online history or discover caches of images.⁴

If nothing is done to control underage exposure to sexually explicit "knowledge" on the Internet, countries, communities, and parents may well decide that the price of access to knowledge for children is too high. Even the most liberal Western democracies uphold in the real world laws designed to protect children from sexually explicit hard copy materials. Yet, we have failed to find a reasonable response to unfettered Internet porn, even though it is cheaper, more readily accessible, and often more vivid and intense than hard copy material. How arrogant are Western liberals who, in the name of free expression (and let us not forget profits), offer to other cultures and belief systems only this choice: The Internet – all or nothing. Certainly, freedom of expression is important, but we must realize that not all cultures value it at the same level. The academic norms for weighing freedom of expression in the United States need not be the standard for everyone. Individuals, communities, countries and cultures deserve a choice in the matter.

This Article briefly discusses the risks children face online and the implications of cultural imperialism in Internet expansion. I then suggest a zoning regulatory regime that permits choice, accommodating those who want to speak and hear adult speech, while recognizing the equally legitimate interests of those who do not want pornographic material in their homes and businesses. I describe the ports zoning governance concept, sometimes called the Internet Community Ports Concept (the Ports Concept),⁵ and how it would work practically and technically.⁶ I also introduce a legislative framework for facilitating and maintaining ports zoning, the Internet Community Ports Act (ICPA).⁷ I explain, as well, that the Ports Concept can be implemented by an Internet governance structure relying on existing national authorities or a specialized central global authority. Finally, I note various options for trans-national implementation and enforcement if the Ports Concept is applied in a national, rather than

³ Information Society Project (ISP), Access to Knowledge, <http://www.law.yale.edu/intellecualife/6542.htm> (last visited March 4, 2009).

⁴ Cheryl B. Preston, *Zoning the Internet: A New Approach to Protecting Children Online*, 2007 B.Y.U. L. REV. 1417, 1451-54 [hereinafter *Zoning*] (discussing the problems with filters and technically challenged parents).

⁵ The Internet Community Ports Concept was devised by CP80 Foundation. For more information on the workings of this proposal, visit CP80 Solutions: Technology, <http://www.cp80.org/solutions/technology> (last visited March 4, 2009).

⁶ For a more detailed description of the Internet Community Ports Concept, see Preston, *Zoning*, *supra* note 4. *Zoning* discusses the constitutional implications in adopting the Ports Concept and ICPA in the United States.

international, governance approach. I conclude that nations, communities, and parents must be given the opportunity to plug into the Internet without welcoming in the age-inappropriate sexually explicit content and other sexual activity so prevalent on the Internet. I seek ultimately to further the discussion about the repercussions of essentially one-port Internet browsing on the world's children.

Indeed, cyberspace introduces some unusual regulatory challenges. That is a common consequence of innovation. But institutions and individuals smart enough to have developed and harnessed the Internet can surely devise a solution. Now is the time for Internet stakeholders to come together and hash out the options.

II. THE PORNOGRAPHIC NET

Elsewhere, I discuss at length the quantity, reach, and intensity of current commercial and amateur Internet porn.⁸ The scope of the spread of Internet pornography is no longer a matter of serious dispute. Amy Alder puts it bluntly:

Once a widespread but sequestered industry, pornography is now ubiquitous in our society in a way that would have been unimaginable twenty years ago.⁹

[I]t seems arguable that the most prominent factor driving this shift toward the mainstreaming of porn has been technological innovation. The rise of the internet and the development of other new technologies, such as digital cameras, internet relay chats, and peer-to-peer networking, have changed the playing field. These innovations have dramatically lowered the cost of production and distribution for pornography while, at the same time, making it easier for producers and distributors to avoid detection. Pornography has the force of technology on its side.¹⁰

Notwithstanding the remarkably scanty discussion about the implications of global Internet access on children's emotional and sexual health, a few voices of warning and concern arise. One example is the 2005 report of a Ugandan study on expanding Internet access.¹¹ It observed: "The greatest mistake for developing countries, where pornography is still a budding problem would be to adopt the misguided western policy approaches that will simply open the floodgates for the sex industry along with its negative effects."¹² Similarly, in reporting on the results of a survey of South African children, the South African Film and Publications Board observed:

⁷ For a more detailed description of the Internet Community Ports Act (ICPA), see Cheryl B. Preston, *Making a Family-friendly Internet a Reality: The Internet Community Ports Act*, 2007 B.Y.U. L. REV. 1471 [hereinafter *Family-friendly*].

⁸ See Cheryl B. Preston, *Internet and Pornography: What If Congress and the Supreme Court Had Been Comprised of Techies in 1995-97?*, 2008 MICH. ST. L. REV. 61, 83-87.

⁹ Amy Alder, *All Porn All the Time*, 31 N.Y.U. REV. L. & SOC. CHANGE 695, 695 (2007).

¹⁰ *Id.* at 696 (internal citations omitted).

¹¹ REPUBLIC OF UGANDA, REPORT OF THE PARLIAMENTARY SELECT COMMITTEE ON PORNOGRAPHY (2005) (copy on file with the author); see also Record of Parliamentary Proceedings, Ugandan Parliament, October 11, 2005, *available at* http://www.parliament.go.ug/hansard/hans_view_date.jsp?dateYYYY=2005&dateMM=10&dateDD=11 (last visited Mar. 3, 2009).

¹² REPUBLIC OF UGANDA, *supra* note 11.

The extraordinary opportunities offered by the Internet for enhancing our lives do not come without risks. [T]he ease with which children may stumble across disturbing, harmful and age-inappropriate materials are too disturbing and real to ignore. The constitutional obligation to act in the best interests of the child imposes a duty on government, industry and civil society to develop mechanisms to protect children from exposure to materials which pose a risk of harm to their emotional and psychological well-being.¹³

The report further acknowledges that pornography access, “and the consequential harm to [children’s] emotional and psychological well-being,” is not just a problem for South African children.¹⁴ Around the globe, “as the Internet becomes an increasingly indispensable source of information, eventually replacing traditional libraries in schools, more and more children will be exposed to objectionable materials.”¹⁵

The People’s Front for Democracy and Justice Website, addressing issues in the State of Eritrea, Northeast Africa, laments:

The youth today are a step ahead in their abilities to draw information, create information and interact with peers across the globe. While exciting at one end, however, challenges have also appeared for society at large. . . .

The Internet offers tremendous benefits to children, and some very real dangers. Unfortunately, the worst types of pornography are invading homes, libraries, and schools via the Internet. Child pornography, obscenity and harmful contents are easily and freely accessible to children who have unrestricted access to the Internet and online services.¹⁶

The fear is not just the “obstacles to children’s educational benefits” caused by pornography.¹⁷ Rather, “Children may also lose their own cultural and social values.”¹⁸ Cultural and social values are legitimate concerns for governments and educators.

Moreover, exposing children to graphic sexual activity online is itself a form of child abuse.¹⁹ Training children to associate sex with the violence, as is common in online

¹³ Iyavar Chetty and Antoinette Basson, FILM AND PUBLICATION BOARD REPORT ON INTERNET USAGE AND THE EXPOSURE OF PORNOGRAPHY TO LEARNERS IN SOUTH AFRICAN SCHOOLS 2 (Nov. 2006), available at <http://www.fpb.gov.za/research/docs/report.pdf> (last visited March 4, 2009). Subjects in the study were from age thirteen to just over seventeen and in randomly-selected schools in three South African cities. *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 3 (citing, e.g., *Representative Survey on Internet Concerns in Australia, Germany and the United States of America*, in *PROTECTING OUR CHILDREN ON THE INTERNET: TOWARDS A NEW CULTURE OF RESPONSIBILITY*, Jens Waltermann and Marcel Machill (eds), Bertelsmann Foundation Publishers (2000)).

¹⁶ Amanuel Tesfay, Children on Internet: How Could They Be Safe Beneficiaries?, Shebia (Aug. 7, 2008), http://www.shaebia.org/artman/publish/article_5563.shtml (last visited March 4, 2009).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ “I believe, along with many researchers, that exposure to images of inappropriate sexual conduct with minors, not to mention actual sexual abuse of children, is damaging to the young child’s development.” Barbara Bennett Woodhouse, *Reframing Debate About the Socialization of Children: An Environmentalist Paradigm*, 2004 U. CHI. LEGAL F. 85, 115 (2004) (citing Steven J. Heyman, *Ideological Conflict and the First Amendment*, 78 CHI KENT L REV 531, 584-85, 608-11 (2003)).

pornography, is particularly alarming.²⁰ Pornography is particularly damaging to children because their immaturity prevents them from distinguishing between what they see in pornography and what actually happens in reality. Claude Rozier, the head of a study commissioned by the French government, reported, “Hardcore porn has become the principal vehicle for quite young children’s understanding of everything to do with love and sexuality, sometimes their only point of reference.”²¹

Further, the accessibility of pornography feeds a disturbing trend of children creating pornography. Some pornographers take advantage of child-made porn videos by providing forums where children can post their material to “become famous.”²² Thus, children as young as eleven years old use webcams and cell phones to mimic what they see online, film themselves and friends, and subsequently post the films online. A chilling example of child-produced porn was recently reported in South Korea where police busted a sadomasochist sex site run by kids:

[A] Seoul police cyber crimes unit announced it had busted a group of seven elementary and middle school students between the ages of 8 and 13 who had been operating an online community about “perverted” sex, complete with bulletin boards filled with pictures and “how to” descriptions about sadomasochist methods for achieving sexual pleasure.²³

Pornography is a dangerous tool for sexual predators. These sick individuals often use Internet child pornography to seduce their victims, because children who have been exposed to pornography become easier targets. The U.S. Federal Bureau of Investigation confirms that “[p]ornography is often used in the sexual victimization of children.”²⁴ Indeed, investigations “sometimes discover significant amounts of adult and child pornography and other sexually explicit material on the computer of [a] child victim.”²⁵ Pornography is such an effective tool for seduction because it “is used to lower the natural, innate resistance of children to performing sexual acts, thus functioning as a primer for child sexual abuse.”²⁶ Also, “child pornography is used as a type of instruction manual to teach children behaviors that are completely foreign to

²⁰ Woodhouse, *supra* note 19. Woodhouse also reviews various studies about how images of violence influence children.

In an increasingly technological society in which deadly weapons and batterings arise as the most common causes of child fatalities, one might argue that the emphasis in childrearing should be on education, nonviolent conflict resolution, and deferral of procreation. Yet images of sex and violence are ubiquitous in children’s lives--in music videos, in movies and sitcoms, and on the Internet.

Id. at 115-17.

²¹ Jon Henley, *Pornography Forms French Children’s Views on Sex*, GUARDIAN (London), May 25, 2002, available at <http://www.guardian.co.uk/france/story/0,,722017,00.html> (last visited March 4, 2009).

²² Neil Mitchell, *Kids in Porn Net*, HERALD SUN, Feb. 8, 2007, available at <http://www.news.com.au/heraldsun/story/0,21985,21188668-5006029,00.html> (last visited March 4, 2009).

²³ *Young Students Busted for Online S&M Ring*, THE HANKYOREH, Feb. 12, 2007, available at http://english.hani.co.kr/arti/english_edition/e_national/190152.html (last visited March 4, 2009).

²⁴ FED. BUREAU OF INVESTIGATION, A PARENT’S GUIDE TO INTERNET SAFETY: INTRODUCTION, <http://www.fbi.gov/publications/pguide/pguidee.htm> (2006) (last visited March 4, 2009).

²⁵ KENNETH V. LANNING, NAT’L CTR. FOR MISSING & EXPLOITED CHILDREN, CHILD MOLESTERS: A BEHAVIORAL ANALYSIS 97 (2001), http://www.ncmec.org/en_US/publications/NC70.pdf.

²⁶ SHARON COOPER, MEDICAL, LEGAL, & SOCIAL SCIENCE ASPECTS OF CHILD SEXUAL EXPLOITATION: A COMPREHENSIVE REVIEW OF PORNOGRAPHY, PROSTITUTION, AND INTERNET CRIMES 198 (2005).

them.”²⁷ When children repeatedly see Internet pornography, they begin to accept the acts portrayed as normal, acceptable activities.²⁸

Moreover, predators are able to contact children using the Internet – “a favored site for stalking children” – through chat rooms, instant messages, and email.²⁹ Nearly ninety percent of sexual solicitations are made in online chat rooms or instant messaging,³⁰ and thirteen million teens use instant messenger.³¹ The Internet “deliver[s] victims ‘on a plate’ to traffickers.”³²

The U.S. State Department’s 2008 *Trafficking in Persons Report* links global human trafficking, the Internet, and pornography. “The crime [of human trafficking] is typically fueled by weak law enforcement, corruption, the Internet, ease of travel, and poverty. . . . Child pornography is frequently involved in these cases”³³ This report provides various examples of trafficking in humans for the purpose of making pornography.³⁴ A 2007 Council of Europe report on human trafficking and Internet recruitment concludes: “Traffickers now have an effective and unrestricted means of recruiting their victims. Online employment agencies . . . and marriage agencies can all be lures for victims. . . . For young people, the risk of falling into the traffickers’ clutches has increased substantially.”³⁵

One estimate is that nineteen percent of youth ages ten to seventeen in the United States who use the Internet frequently have experienced online sexual solicitation.³⁶ Hamish McCulloch, the assistant director of Interpol and head of the human-trafficking subdirector, notes the significant increase in the numbers of children that have been recruited to make child

²⁷ *Id.* at 199.

²⁸ *See Id.* at 197.

²⁹ Mohamed Chawki and Mohamed Wahab, *Technology is a Double-Edged Sword: Illegal Human Trafficking in the Information Age*, Computer Crime Research Center, March 5, 2005, <http://www.crime-research.org/articles/Mohamed2/> (last visited March 4, 2009). Chawki and Wahab conclude that “Internet technology is directly used to commit [trafficking] crime.” *Id.*

³⁰ Kimberly J. Mitchell, David Finkelhor, & Janis Wolak, *Risk Factors for and Impact of Online Sexual Solicitation of Youth*, 285 J. AM. MED. ASS’N 3011 (June 20, 2001). *See also* Gery L. Deer, *Proactive Parents Foil Online Predators*, Deer Computer Consulting, Ltd. 2 (Nov. 15, 2006), available at <http://www.deercomputerconsulting.com/newsletters/foiling%20predators.pdf>.

³¹ Gery L. Deer, *Proactive Parents Foil Online Predators*, Deer Computer Consulting, Ltd. 2 (Nov. 15, 2006), available at <http://www.deercomputerconsulting.com/newsletters/foiling%20predators.pdf>. *See also* Kimberly J. Mitchell, David Finkelhor, & Janis Wolak, *Risk Factors for and Impact of Online Sexual Solicitation of Youth*, 285 J. Am. Med. Ass’n 3011, 3013 (June 20, 2001) (“Young people who stay away from chat rooms and are cautious about corresponding with strangers on the Internet appear to be solicited at lower rates.”).

³² Athanassia P. Sykiotou, Directorate General of Human Right and Legal Affairs, Council of Europe, *Trafficking in Human Beings: Internet Recruitment: Misuse of the Internet for the Recruitment of Victims of Trafficking in Human Beings*, Executive Report, at 21 (2007), available at [http://www.coe.int/t/e/human_rights/equality/EG-THB-INT_\(2007\)_1_en.pdf](http://www.coe.int/t/e/human_rights/equality/EG-THB-INT_(2007)_1_en.pdf).

³³ UNDER SECRETARY FOR DEMOCRACY AND GLOBAL AFFAIRS, OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, U.S. DEPT. OF STATE, *TRAFFICKING IN PERSONS REPORT 25* (June 4, 2008), available at <http://www.state.gov/documents/organization/105501.pdf> [hereinafter STATE DEPARTMENT 2008 REPORT]. “Annually, according to U.S. Government-sponsored research completed in 2006, approximately 800,000 people are trafficked across national borders, which does not include millions trafficked within their own countries. Approximately 80 percent of transnational victims are women and girls and up to 50 percent are minors.” *Id.* at 7.

³⁴ STATE DEPARTMENT 2008 REPORT, *supra* note 33, at 93 (Chili); *Id.* at 111 (Dominican Republic); *Id.* at 149 (Japan); and *Id.* at 259 (Uruguay).

³⁵ Sykiotou, *supra* note 32, at 21.

³⁶ Kimberly J. Mitchell, David Finkelhor, and Janis Wolak, *Risk Factors for and Impact of Online Sexual Solicitation of Youth*, 285 JAMA 3011, 3012 (2001), available at <http://www.unh.edu/ccrc/pdf/cv42jama.pdf> (“19% (286/1501) of the youth interviewed experienced at least 1 sexual solicitation while using the Internet in the past year and 3% reported an aggressive solicitation.”)

pornography since the growth of the Internet.³⁷ He estimates that at least 20,000 different children appeared on the Internet being sexually abused in 2003.³⁸

The WSIS Principles extol access to knowledge and free expression, but also declare: “All actors in the Information Society should take appropriate actions and preventive measures, as determined by law, against abusive uses of ICTs, such as . . . all forms of child abuse, including pedophilia and child pornography, and trafficking in, and exploitation of, human beings.”³⁹ Internet access is indeed a double-edge sword. Any discussion about expanding Internet access must include strategies to avoid the various forms of the child sexual abuse it facilitates.

III. THE IMPERIALIST INSTINCT

Western reformers *should* be concerned about increasing access to knowledge for every living being. But is every bombardment of images and words “knowledge?” Should access to the Internet mean surrendering to all the abuses of Western moral laxness? Should women in every village be required to walk the streets past men who have suddenly found a cheap, limitless supply of graphic, degrading, and violent depictions of women being raped? As designed, the Internet offers no reasonable option to avoid exposure or to make local decisions about what is in the best interests of a community, and especially their children. Any discussion of expanding Internet access must address, in addition to child exploitation, fundamental questions of self-determination and the right of countries, cultures, religions, families and individuals to honor their own conceptions of morality and human dignity.

The conduct of outsiders from the West toward the “Third World”⁴⁰ must be understood in the context of our colonialist past. Imperialist instincts and racism may taint our thinking, even as we attempt benevolence. Ara Irititja observes: “It is easy for those of us who are aficionados of technology to see IT as some kind of panacea that will change historical relationships and have indigenous communities sharing information with other communities and cultural organizations. This kind of sentiment is likely to communicate naivety, arrogance and disrespect to indigenous people.”⁴¹

Although the following statement was made in the context of imposing Western feminist ideals, it readily adapts to insensitively imposing Western views of “knowledge.”

It is irresponsible and inhumane to encourage [Nonwestern Muslim] women to move too fast, too soon and to repudiate many of the established norms of their culture or religious law, without due regard to the full

³⁷ Eugen Tomiuc, World: Interpol Official Discusses Human Trafficking, Internet Pornography, GlobalSecurity.org (2003) *available at* <http://www.globalsecurity.org/security/library/news/2003/05/sec-030514-rfel-142137.htm> (last visited March 4, 2009).

³⁸ *Id.*

³⁹ WSIS, Principles, *supra* note 1.

⁴⁰ “The current move to introduce the term ‘two thirds-world’ attempts to acknowledge that in geographical space, and certainly in population, those who occupy the underside of the purchasing and ruling powers in the human community constitutes *more* than a third.” WITH PASSION AND COMPASSION: THIRD WORLD WOMEN DOING THEOLOGY, at ix (Virginia Fabella, M.M. & Mercy Amba Oduyoye eds., 1988). I choose to use the term “Third World” only because it is more familiar.

⁴¹ Ara Irititja, *Towards Culturally Appropriate IT Best Practice in Remote Indigenous Australia*, in INFORMATION TECHNOLOGY AND INDIGENOUS PEOPLE 146, 157 (Laurel Evelyn Dyson, et al., eds., 2007) [hereinafter “IT AND INDIGENOUS PEOPLE”].

implications of such action. It must be remembered that it is these women who will have to remain there to endure the full consequences of their actions.⁴²

There is something quite disturbing in our smugness about the superiority of “our” knowledge. Leti Volpp observes that “domestic violence murders in the U.S. are just as much a part of American culture as dowry death is a part of Indian culture. . . . We identify sexual violence in . . . Third World communities as cultural, while failing to recognize the cultural aspects of sexual violence affecting mainstream white women,” because we do not “ascribe the label of culture” to white groups.⁴³

Some scholars are talking about the implications of “imposing” the Internet on other cultures when it is filled with porn and designed by and written in the cultural script of the West.⁴⁴ Others focus primarily on the feminist implications of expanding access to pornography.⁴⁵ The imposition of visual culture, especially in commodifying female sexuality, is exaggerated by the Internet. “Representational . . . practices – associated with colonization – continue through the Internet today, furthering the destructive process. Commercialization and its associated commodification and stereotyping continue to assail indigenous peoples. Dominant society continues to use the Internet to exert its control over images of indigenous peoples, art, production and creativity.”⁴⁶ In an unpublished paper prepared for the Division for the Advancement of Women, Department for Policy Coordination and Sustainable Development of the United Nations, Margaret Gallagher observes that the issues of “pornography” and “freedom of expression” may be perceived much differently by women than by men.⁴⁷ It is not unreasonable, therefore, for the women of the world to insist that the discussion of global Internet access include opportunities for choice in Internet content.

The implications of flooding the world with the current content of the Internet are only beginning to be conceptualized. In a recent effort, Claire Wright applies legal and social science to place the advent of Internet access in a larger cultural context.⁴⁸ She lays out a framework for this analysis beginning with the Convention on the Promotion and Protection of the Diversity of

⁴² Julie Dimauro, *Toward a More Effective Guarantee of Women’s Human Rights: A Multicultural Dialogue in International Law*, 17 Women’s Rts. L. Rep. 333, 337 (1996).

⁴³ Leti Volpp, *Feminism Versus Multiculturalism*, 101 COLUM. L. REV. 1181, 1187-88 (2001).

⁴⁴ See, e.g., Henry H. Perrit, Jr., *The Internet and the Sovereign State: The Role and Impact of Cyberspace on National and Global Governance*, 5 IND. J. GLOBAL LEGAL STUD. 423 (1998) (“As the well-known controversies about cyberporn demonstrate, the Internet also challenges the traditional state role of protecting civic and moral values of the society. . . . In other contexts, governments-like China’s or Singapore’s-see the threat to values as cultural imperialism or as ideologically hostile . . .”).

⁴⁵ United Nations, Division for the Advancement of Women, Department of Economic and Social Affairs, *Women 2000: Women and the Information Revolution*, Oct. 1996, <http://www.un.org/womenwatch/daw/public/Women2000%20%20Women%20and%20the%20Information%20Revolution.pdf> (discussing the request to the mass media and advertising organizations “to develop, consistent with freedom of expression, professional guidelines and codes of conduct and other forms of self-regulation . . . that address violent, degrading or pornographic materials concerning women.”).

⁴⁶ Judy Iseke-Barnes & Deborah Danard, *Indigenous Knowledges and Worldview: Representations and the Internet*, in Judy Iseke-Barnes & Deborah Danard, *Indigenous Knowledges and Worldview: Representations and the Internet*, in IT and Indigenous People, *supra* note 41, at 34-35.

⁴⁷ Margaret Gallagher, *Lipstick Imperialism and the New World Order: Women and Media at the Close of the Twentieth Century*, Dec. 1995, under “Pornography and Free Expression,” available at <http://www.un.org/documents/ecosoc/cn6/1996/media/gallagh.htm> (last visited March 4, 2009).

⁴⁸ Claire Wright, *Reconciling Cultural Diversity and Free Trade in the Digital Age: A Cultural Analysis of the International Trade in Content Items*, 41 AKRON L. REV. 399 (2008)

Cultural Expressions (the “Convention”) approved by the United Nations Educational, Scientific, and Cultural Organization (“UNESCO”).⁴⁹ The Convention urges parties to “adopt measures aimed at protecting and promoting the diversity of ‘cultural expressions’ within [their] . . . territor[ies].”⁵⁰ Wright explains that the Convention protects “content items,”⁵¹ or “items that ‘contain’ ‘meaning or significance,’ or, in other words, items that provide ‘intangible benefits,’ such as cultural identity, social cohesion, intellectual stimulation, entertainment, and relaxation.”⁵² Thus, content served on the Internet that relates to social norms, human relationships, sexual identity, gender expectations, and so forth, easily qualifies as “content items.”

Wright then establishes that nations and communities are entitled to the established right “of self-determination that is binding on all nations. This principle is reflected in Article 1.1 of the International Covenant on Social and Political Rights (the “Covenant”).”⁵³ A Community Port option would go far in allowing the self-determination of nations and communities in the face of the onslaught of Western sexualization and pornography.

Wright carefully elucidates the literature on the power of the Internet, especially visual images,⁵⁴ to alter culture, change norms, and attitudes.⁵⁵ Wright surveys an array of cultural theorists, including those who see the information age as the end of cultural diversity.⁵⁶ She also discusses the consequences of imposing an unfettered diet of Western “knowledge” on other cultures.

A number of cultural theorists have noted that an abrupt and significant alteration in a society's cultural norms will often cause great social unrest. In fact, the term “culture shock” has been used to describe the sensation that many human beings perceive when their “way of life” or “culture” changes dramatically with little warning. Psychologists explain that individuals in such

⁴⁹ U.N. Educ., Scientific, and Cultural Org. (UNESCO), Convention on the Protection and Promotion of the Diversity of Cultural Expressions, Paris, Fr., Oct. 3-21, 2005 *available at* http://portal.unesco.org/en/ev.php-URL_ID=31038&URL_DO=DO_TOPIC&URL_SECTION=201.html [hereinafter Convention].

⁵⁰ Claire Wright, *Reconciling Cultural Diversity and Free Trade in the Digital Age: A Cultural Analysis of the International Trade in Content Items*, 41 AKRON L. REV. 399, 405 (2008) (citing Tania Voon, Cultural Products and the World Trade Organization 19 (2007) (citing Milagros del Corral et al., Culture, Trade and Globalization: Questions and Answers (2000) (question 1))).

⁵¹ *Id.* at 406-09.

⁵² *Id.* at 409.

⁵³ *Id.* at 444 (citing ANTONIO CASSESE, SELF DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL 171-72 (1999), and the International Covenant on Social and Political Rights, GA Res 2200 (XXI), at 52, U.N. GAOR, 21 Sess., Supp. No. 16, U.N. Doc. A/6316 (Dec. 16, 1966)).

⁵⁴ “[A] number of studies have concluded that texts incorporating visual images (sometimes referred to as “visuals”) are more effective at influencing people's beliefs than texts containing only words (e.g., a book), sounds (e.g., instrumental music), or even texts combining both words and sounds (e.g., vocal recordings).” *Id.* at 466 n. 337

⁵⁵ *Id.* at 428-29, 428 n. 109, 457-58.

⁵⁶ *Id.* at 476-77 n. 400 (citing Anthony Giddens, *Runaway World: How Globalization is Reshaping Our Lives* (2002); Paul Hopper, *Rebuilding Communities in an Age of Individualism* 31-33 (2003); *Global Culture: Media, Arts, Policy, and Globalization* (Diana Crane, Nobuko Kawashima & Ken'ichi Kawasaki eds., 2002); George Ritzer, *The McDonaldization of Society* 5 (2007); and Marshall McLuhan, *Marshall McLuhan, The Gutenberg Galaxy: The Making of a Typographic Man* 31 (1969)).

a society are experiencing an identity crisis and they are engaging in conflict, or “acting out.”⁵⁷

Wright concludes that the only workable solution is to find ways to finance efforts “to invigorate sub-national and national cultures . . . to create a much greater quantity of national content items [and] encourage the production of electronic content items, in particular visuals and music recordings.”⁵⁸

In a world plagued by sexual violence and exploitation, especially against children, can we be sure that every culture needs to accept the ballooning availability of sexual abuse primers on the Internet as knowledge? Surely, the dialogue about “access to knowledge” and global Internet expansion should include discussion of how other cultures, and especially children and women, are affected. True liberators respectfully offer choice.

IV. THE INTERNET COMMUNITY PORTS CONCEPT AND ACT

This section discusses a proposal that uses code and law to address the problem of minors’ access to Internet pornography.⁵⁹ The core concept, consistent with regulation of hardcopy pornography in many countries, is zoning. Zoning and land-use regulations are common around the world,⁶⁰ as are efforts to employ area isolation to regulate adult businesses and activity.⁶¹ In the virtual world, the Internet cannot be zoned geographically based on real world boundaries; however, Internet content can easily be sorted, and each user can be given power to select which Internet ports or pathways are allowed into his or her home or business computer. I have presented elsewhere a lay person’s explanation of the technology and how ports work on the Internet in the context of the Ports Concept.⁶²

Under the Ports Concept, Internet users who want to block legal but harmful to minors

⁵⁷ *Id.* at 447 (internal citation omitted).

⁵⁸ *Id.* at 485.

⁵⁹ Some portions of this Article that describe the workings of the proposal, at least as applied in the United States, were included in the more complete descriptions in Preston, *Zoning*, *supra* note 4, and Preston, *Family-friendly*, *supra* note 7.

⁶⁰ *See, e.g.*, Philippe Brusick Simon J. Evenett *Should Developing Countries Worry about Abuse of Dominant Power?* 2008 WIS. L. REV. 269 (2008) (noting Indonesia’s use of local zoning measures to support local business against U.S. superstores); Laetitia Dablanc, *Urban Goods Movement and Air Quality Policy and Regulation Issues in European Cities*, 20 J. ENVTL. L. 245 (2008) (surveying European cities’ planning and regulatory measures, including zoning); James Gordley, *Takings*, 82 TUL. L. REV. 1505 (2008) (comparing land use and zoning restrictions in, and citing applicable statutes of, *inter alia*, Germany, France, England, and Italy); Daniel H. Cole, *Political Institutions, Judicial Review, and Private Property: A Comparative Institutional Analysis*, 15 SUP. CT. ECON. REV. 141 (2007); Matthew A. Light, Note, *Different Ideas of the City: Origins of Metropolitan Land-Use Regimes in the United States, Germany, and Switzerland*, 24 YALE J. INT’L L. REV. 577, 582 (1999).

⁶¹ *See, e.g.*, Mariana Valverde, *Authorizing the Production of Urban Moral Order: Appellate Courts and their Knowledge Games*, 39 LAW & SOC’Y REV. 419, 439 (2005) (claiming that the judicial review of municipal zoning laws aimed at “disreputable businesses” in the United States and other common-law countries are similar); James R. Curtis and Daniel D. Arreola, *Zonas de Tolerancia on the Northern Mexican Border*, 81 GEO. REV. 333 (1991) (discussing “*Zonas de Tolerancia*, or zones of tolerance,” as “quarters of prostitution and adult entertainment in Mexican cities”); John Skow, *Games That Play People*, TIME, Jan. 18, 1982, at 50, 53, available at <http://www.gamearchive.com/General/Articles/ClassicNews/1982/TimePg50.htm> (last visited March 4, 2009) (“West Germany has banned persons under 18 from arcades.”); David A. J. Richards, *Commercial Sex and the Rights of the Person: A Moral Argument for the Decriminalization of Prostitution*, 127 U. PA. L. REV. 1195 (1979) (discussing location isolation of prostitution in Europe and England).

⁶² Preston, *Zoning*, *supra* note 4.

material can purchase a “Community Ports” service. Internet users who do nothing in response to this port separation, or who specifically request access to all ports, will continue to receive all available ports. Similar to the shifts between regular port 80 content and a secure socket layer for transmitting credit card information, the designation and separation of the ports on which material is transmitted happens technologically and will be completely transparent to these users, whose Internet experience will not change in any way.

A. Creating Community Ports

While there are over sixty-five thousand available ports on the Internet,⁶³ only a small fraction are being used for general Internet traffic. Currently all standard Web content uses the same port for transmission—port 80.⁶⁴ Whether it is sport scores, financial information, news, children’s programming, or pornography, the information packets are transmitted over port 80. There is no particular logic to this choice; it is a happenstance of history. Although there is plenty of capacity on port 80 for this kind of browsing, nothing requires that all of this information be conducted over a single port.⁶⁵ Equipment attached or wirelessly linked to a Community Ports-only service will never receive packets from any Open Port. Access to Open Ports is impossible using the service purchased, rather than merely subject to imperfect computer-installed filters, which users can hack past, circumvent, or disable, and which must be regularly updated and monitored.

Free programming code divides content by machine-readable port numbers at the Web server level through ISPs. The divisions would separate content into two basic categories of port ranges, in addition to those ports that are now separated for governmental, military, and other uses. More sophisticated divisions could be implemented upon increased consumer demand and technological innovation. The initial categories are “Community Ports” and “Open Ports.” ICPA imposes civil and criminal penalties, depending on the degree and nature of the violation, on those who post or place content on a Community Port that is Obscene, Harmful to Minors, or consists of child pornography.⁶⁶ Open Ports may transmit all other legal content, including adult material that fits the definition of Harmful to Minors. This proposed zoning of content regulates the means of delivery of Internet pornography by separating it rather than blocking it.

Publishers of mature content are certainly not “banished” to the Open Ports. If a Web site contains both mature content and content appropriate for minors, the Web publisher can easily configure its server to transmit the information packets containing adult content over Open Ports, and the remainder may continue to be transmitted over Community Ports.⁶⁷ An Internet user with only Community Port service will open a page with content acceptable for the entire family, but that has, rather than immediately visible adult images or text, links to such content. When such a user attempts to follow a link to the adult content, the computer screen will indicate that the page requested is not available. The Internet user whose service includes both categories of

⁶³ Internet Assigned Numbers Authority, Port Numbers, <http://iana.org/assignments/port-numbers> (last visited March 4, 2009) (explaining the uses for the different numbered ports)

⁶⁴ Charles M. Kozirook, TCP/IP Application Assignments and Server Port Number Ranges: Well-Known, Registered and Dynamic/Private Ports, TCP/IP Guide, http://www.tcpipguide.com/free/t_TCPIPApplicationAssignmentsandServerPortNumberRang.htm (last visited March 4, 2009) (describing port 80 as the default port).

⁶⁵ *See id.* (explaining that users may explicitly direct the Web browser to use a port other than the default port 80).

⁶⁶ Preston, Family-friendly, *supra* note 7, at 1471 app. § III(8)–(9).

⁶⁷ For a discussion on defining what is adult or harmful to minors, see *id.* at 1483-85.

ports will be able to follow the link without delay. Thus, publishers of mature content can still publish the universally acceptable material on Community Ports with simple “click” links to the adult material.

Additionally, setup costs for Internet providers and publishers are minimal. Web publishers who wish to post adult content may comply with the regulation by configuring their servers with a simple code, like a zip code, that directs such content to Open Ports. This computer code is unseen and has no impact on the content of the material served. Indeed, Web publishers will suffer little to no additional costs associated with this proposed zoning of the Internet.

B. Crafting Appropriate Legislation

In addition to the technological structures that make user choice possible, the solution to Internet pornography also requires some regulatory mechanism to make the Ports Concept viable. The model suggested in this Article is the Internet Community Ports Act. When referring to ICPA in this section, the terms defined in the statutory model are capitalized. The definitions are available with a proposed draft of the Act.⁶⁸

Very briefly, the proposed statutory scheme of ICPA is as follows. Knowingly publishing content that is Child pornography, Obscene, or Harmful to Minors on Community Ports would constitute a violation.⁶⁹ The statutory model also prohibits creating Proxy sites that enable Internet Users on a Community Port-only service to access Open Ports. The statute enforcement can be driven by private actors, an individual Internet users reporting scheme by which Internet Users who find prohibited content on Community Ports may notify the regulatory agency, or by international or national authority investigations, or both. Because individual user-based identification of offending content is fairly novel, unlike top-down authority investigations, it is elaborated in more detail in ICPA.

ICPA contains another feature that has been under-explored in current Internet governance dialogues. ICPA is drafted to allow private parties to take the burden of enforcement through a civil right of action. Under ICPA, a private party that receives prohibited Communications over a Community Port and reports the violation through the established Notification procedure, is also empowered to pursue civil remedies, through a national or international court or arbitration process, with an economic recovery dependent on several factors, such as whether the violating Communication was Obscene or merely Harmful to Minors and whether the Communication was made for Commercial Purposes.⁷⁰ The remedies and recovery available under an ICPA scheme vary depending on type of violation and type of offender. This approach eases the enforcement burden of the administrative authority by giving economic incentives for parties to pursue civil remedies. The international enforcement of a civil judgment is of course a factor in such approach, and it is discussed at length in Part IV. In any event, a court of competent jurisdiction could order an offending Web site be taken off the Internet.

The statute provides safe harbors from liability for ISPs, so long as the ISPs keep a record of those individuals to whom they have issued IP Addresses so that information identifying

⁶⁸ See Preston, Family-friendly, *supra* note 7, Appendix A.

⁶⁹ *Id.* at 1471 app. § II(1).

⁷⁰ *Id.* § III(8)(i).

offending Web publishers can be obtained by court order.⁷¹ ISPs in the United States already store this information. ICPA does not require a record of sites visited by a user, only the ISP customer to whom the IP Address was assigned when the offending content was posted.

The statute also addresses a variety of peripheral issues, such as Wireless Networks that broadcast an Open Port connection. Such public-accessible Networks, only if they broadcast Open Ports, would be required to use passwords or other reasonable methods to limit access to adult content over their networks by Minors.⁷² Finally, ICPA defines technical jargon and other critical terms, such as the standard for material that is “Harmful to Minors.”⁷³ Options for funding the administration of ICPA, at a national or global level, are discussed elsewhere.⁷⁴

C. Choosing a Regulatory Structure

This Article does not resolve the question of regulatory structure. The Ports Concept works well with any of the proposed approaches, except those advocating market or industry self regulation without any form of governmental involvement.⁷⁵ As the Internet is currently

⁷¹ *Id.* § II(4).

⁷² *Id.* § II(2).

⁷³ The ICPA definition of an Internet communication that is “Harmful to Minors” generally comports with the definition for such material under COPA, with some additions explained in the Community Ports Concept later in this issue. The definition is as follows:

[A]ny Communication that:

- i. the average adult, applying a contemporary national standard, would find, taking the Communication as a whole, is designed to appeal to, or is designed to pander to, the prurient interest;
- ii. depicts, describes, or represents, in a manner patently offensive with respect to Minors, an actual or simulated sexual act or sexual contact, an actual or simulated normal or perverted sexual act, or a lewd exhibition of the genitals or post-pubescent female breast, or describes or depicts Sexually Explicit Conduct [as defined in 47 U.S.C. § 231(e)(6), which lists graphically the actions that constitute such Conduct for child pornography purposes]; and
- iii. taken as a whole, lacks serious literary, artistic, political, or scientific value for Minors.

Id. at § V(22). ICPA also defines “Minor” as any person who is under seventeen years of age. The “under age seventeen” standard should be interpreted to mean that only those materials inappropriate for fifteen- and sixteen-year-olds are targeted. Although material that is suitable for sixteen- and fifteen-year-olds may not be suitable for a five-year-old, parents have much greater control over the activity of a five-year-old, and few five-year-olds are computer savvy enough to hack through a filter or creatively explore the Internet. The designation of a person under age seventeen is taken from Supreme Court language in *Ginsberg v. New York*, 390 U.S. 629, 631 (1968), and *Reno I*, 521 U.S. 844, 859 (1997).

⁷⁴ See Preston, Family-friendly, *supra* note 7.

⁷⁵ For sampling of literature discussing alternative models for exercising Internet governance authority, see, e.g., Slavka Antonova, *Deconstructing an Experiment in Global Internet Governance: The ICANN Case*, 12 INT’L J. COMM. L. & POL’Y 1 (2008) (“arguing that ICANN, as a multistakeholder consensus seeking entity, epitomized the neo-liberal agenda of opening the global regulatory field to industry self-governance and a limited government involvement”); Lawrence B. Solum, *Models of Internet Governance*, Illinois Public Law Research Paper No. 07-25 (May 23, 2008) available at SSRN: <http://ssrn.com/abstract=1136825> (identifying the range of Internet Governance models as (1) unregulated; (2) “quasi-private cooperatives or international organizations based on treaty arrangements between national governments;” (3) regulation based on code, Internet architecture, and protocols; (4) national governments through traditional legal regulation; and (5) market control); Peng Hwa Ang, *Self-Regulation After WGIG*, in REFORMING INTERNET GOVERNANCE: PERSPECTIVES FROM THE WORKING GROUP ON INTERNET GOVERNANCE 129 (William J. Drake ed., 2005), available at http://www.wgig.org/docs/book/WGIG_book.pdf [hereinafter WGIG] (discussing delegation to a private entity and industry self regulation); Waudo Siganga, *The Case For National Internet Governance Mechanisms*, in WGIG, at 155 (stressing strong national governance based

managed, a zoning scheme would require the International Assignment of Numbers Authority (IANA), now administered by the International Corporation of Assigned Names and Numbers (ICANN) pursuant to a contract with the U.S. Department of Commerce, to designate the port ranges for Open Ports and Community Ports. Designating ports is routine. There is no shortage of unassigned ports at this time, and involvement of the U.S. government with a Ports Concept would assure cooperation.

Beyond designating port range numbers, a centralized authority, conceived perhaps through the United Nations' Internet Governance Forum, could be the vehicle for adopting the regulatory framework. In addition, the ICPA could be a guide to an international convention, such as the U.N. Convention on the Law of the Sea. If ICANN gains legitimacy, which would likely require a partnership with governments through the extant ICANN Government Advisory Council, it might incorporate a measure similar to ICPA in the Uniform Domain-Name Dispute Resolution Policies (UDRP). Any sort of government and industry coalition could similarly use the ICPA as a template for setting standards and facilitation enforcement.

The Ports Concept could also be a basis for enactments by individual countries. If a reasonable coalition of countries cooperate together in enacting and enforcing port channeling, ISPs in such nations can easily block web pages that originate in locations that do not comply with equivalent standards. Opportunistic web publishers who flee countries where restrictions are in place will be less likely to find willing domiciles if non-compliance means that all content published from the IP Address numbers assigned to that zone are prevented from reaching the rich consumer markets in the United States and Europe. The opportunity to do business in Western cyberspace is a strong economical incentive for complying with zoning regulations.

Such a multi-national scheme could allow for variations, with individual countries determining whether other countries' standards are sufficiently in accord with their citizens' interests. For that matter, individual countries could be assigned their own Community Port, and ISPs in other countries could market packages of Internet access services that include some or all of the international Community Port content.

Although such a regulatory scheme could take various forms, this Article assumes a statute similar to ICPA as a model. Significantly, this proposed law does not prevent an adult from publishing or viewing any legal pornographic content. Rather, it only requires that adult content be published to transmit over a Port option that not all Internet Users need allow onto their computers.

V. TRANS-JURISDICTIONAL ENFORCEMENT

If ICPA is not adopted by a centralized global authority, the problem arises of extra-territorial enforcement. But this is less daunting than it may at first seem. Children in the countries that adopt ICPA will in any event be protected from harmful content posted by perpetrators within their national jurisdiction.

Effective enforcement in even a few countries, particularly the United States, would make enormous inroads into the global problem of children accessing age-inappropriate sexually explicit content online. A majority of the global Internet pornography problem now arises in the

on the Brazilian model); David R. Johnson, *et al.*, *The Accountable Internet: Peer Production of Internet Governance*, 9 VA. J.L. & TECH. 9 (2004), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=529022 (comparing "benevolent dictatorship" and democracy to "peer production governance," where power rests with the individual users, companies, and ISPs").

United States.⁷⁶ Furthermore, the architecture of the Internet and the popularity of top level domains administered in the United States present various options for U.S. Courts to require the removal from the Internet of content that is in violation of U.S. laws, even if served offshore. For instance, all Web sites whose URL ends in .com, .org, .net, and many other popular domains are subject to a U.S. registrar, registry, or ISP in the DNS that is bound to honor U.S. court orders based on violations of U.S. law.⁷⁷ Many popular registrars are located in the U.S. and include in their customer agreements the right to terminate Internet access for domain owners who violate laws.

To adjust to the advent of the Internet, courts and scholars are developing approaches to cross-border enforcement and jurisdiction. For instance, the American Law Institute (ALI) has recently examined U.S. and foreign law to gather and recommend global principles for the enforcement of transnational judgments in cases of copyright and trademark issues on the Internet.⁷⁸

In addition to these traditional enforcement options, strong economic incentives will produce compliance and cooperation. If major markets, such as the U.S. and the European Union, adopt a Community Port option on which Internet content originating in noncompliant regions is blocked, web publishers in those regions will be blocked from that lucrative market. The opportunity to reach families and general-use customers in such markets is extremely economically valuable. Many Web site owners would be willing to comply with the laws on which such access is predicated.

Accessing the U.S. market, for instance, has always been subject to regulation and restrictions based on the need to protect the welfare of U.S. residents. One example is the recently announced requirements concerning all wood packaging material, such as pallets, crates, and boxes. Such material entering or traveling through the United States must be heat treated or fumigated with methyl bromide and marked with an approved international logo, certifying it has

⁷⁶ One expert has estimated that roughly 88.4 percent of pornography pages (rather than websites) originate in the United States. *Rebuttal Expert Report of and Rule 26(e) Disclosure of Philip B. Stark, Ph.D.* at 21, *ACLU v. Gonzales*, 478 F. Supp. 2d 775, 789 (E.D. Penn. 2007). Techies at CP80 Foundation have run a website tracing computer program against the “black list” at regular intervals over the last two years. The black list is a public domain list of pornographic websites and pages that many Internet filtering companies use as a minimum standard. This tracing program determines the geographical area in which the server of that domain is located by the particular numerals in the IP Address. Most commercial IP Addresses are assigned in blocks to certain geographical locations. None of the CP80 tests have returned a result that identifies the U.S. as the geographical location of less than eighty percent of these black listed sites. The results show an average of between eighty eight and ninety percent of these pornographic site’s IP Addresses are served from the United States. The details of these tracing activities and results are on file with the author.

⁷⁷ Cheryl B. Preston, *ICANN Can: Contracts and Porn Sites: Or Choosing to Play Internet Ball in American Cyberspace*, 21 PAC. MCGEORGE GLOBAL BUS. & DEV. L. J. 79 (2008).

⁷⁸ THE AMERICAN LAW INSTITUTE (ALI), *INTELLECTUAL PROPERTY: THE PRINCIPLES GOVERNING JURISDICTION, CHOICE OF LAW, AND JUDGMENTS IN TRANSNATIONAL DISPUTES* (2008).

been appropriately treated.⁷⁹ Virtually every kind of import is regulated,⁸⁰ and the trend is to tighten even further the restrictions of accessing the U.S. market.⁸¹

While many critics of Sarbanes-Oxley Act say that the U.S. will lose many foreign investors due to the increased regulatory requirements, the fact still remains, that the benefits of doing business with the United States outweigh the cost of compliance, especially for the kind of reputable businesses we want to encourage.⁸² In the context of protecting U.S. consumers, demanding compliance to regulation in exchange for access to the U.S. market is even more powerful. The following analysis is significant with respect to the U.S. Internet market, especially in light of the location of .com and other highly marketable domains in the U.S.:

The U.S. physical, legal, and economic infrastructure (“U.S. market”) on which the nonresident depends is largely the result of U.S. government activitiesIf the nonresident mineral exploiter can be taxed for accessing and exploiting a U.S. natural resource deposit, it also is legitimate to tax a nonresident for accessing and exploiting the U.S. market that, to a great extent, the creature of U.S. government services and programs.⁸³

The same is true of any of the Group of Eight (G8) highly industrialized nations.⁸⁴

In any event, “legitimate” pornographers—those who are not interested in trapping children—will willingly comply with such a statute. The majority of the pages of commercial Internet pornography are owned by a very limited number of U.S. companies.⁸⁵ These companies are more than sufficiently visible to recognize that they will be subject to enforcement. Such companies are not moving offshore, either; they will easily choose to stay under the protection of U.S. laws and commercial environment.

In addition to these trans-national enforcement and incentive possibilities, Jack Goldsmith articulates a wide variety of other approaches to addressing the Internet’s borderlessness that are currently available or will be available with likely technological

⁷⁹ U.S. Customs and Border Protection, *Full Enforcement for Wood Packaging Material Import Regulations to Begin* July 5, Thursday, June 29, 2006 http://www.cbp.gov/xp/cgov/newsroom/news_releases/archives/2006_news_releases/062006/06292006.xml (last visited March 4, 2009).

⁸⁰ For a list of such regulations, see JETRO, Handbook for Consumer Product Import Regulations, March, 2006, available at <http://www.jetro.go.jp/en/market/regulations/pdf/consumer-e.pdf>.

⁸¹ See, e.g., Christopher Lahiff, David J. Levine and Jay T. Taylor, *United States: Potential New Requirements For U.S. Businesses And Their Foreign Suppliers In The Wake Of U.S. Import Scares*, Mondaq Business Briefing, October 5, 2007.

⁸² Joseph R. Biden, Jr., *Cost of Corporate Fraud Far Outweighs Cost of Legal Compliance*, February 15, 2007, <http://biden.senate.gov/newsroom/details.cfm?id=269403>. “[A]lthough [foreign] companies are not listing on Nasdaq at the rate they were when the market was hot in the 1990s, listings on Nasdaq have increased since Congress enacted Sarbanes-Oxley, and the rate of new listings on the New York Stock Exchange is where it was immediately before the law was enacted.” *Id.*

⁸³ Stephen E. Shay, et al., *The David R. Tillinghast Lecture: “What’s Source Got to Do with It:” Source Rules and U.S. International Taxation*, 56 TAX L. REV. 81, 90 (2002) (internal citations omitted).

⁸⁴ The G8 are Canada, France, Germany, Italy, Japan, Russia, United Kingdom, and United States. British Broadcasting Corporation, Profile: G8, BBC News, January, 2008, http://news.bbc.co.uk/2/hi/americas/country_profiles/3777557.stm (last visited March 4, 2009).

⁸⁵ Jan LaRue, *Obscenity and the First Amendment*, SUMMIT ON PORNOGRAPHY. Rayburn House Office Building. Room 2322. May 19, 2005 (“By the end of 2004, there were 420 million pages of pornography, and it is believed that the majority of these websites are owned by less than 50 companies.”).

innovation.⁸⁶ Goldsmith's and others' attempts to apply existing legal doctrines to the Internet evoked a firestorm of arguments claiming that "cyberspace is different and therefore best regulated by its own sets of rules."⁸⁷ These two positions are characterized by Jonathan Zittrain as the first two of the three primary strands of cyberlaw.⁸⁸ A third position, championed by Larry Lessig, is that the regulation of the Internet is primarily by code.⁸⁹ While the debate about these strands is interesting, none of these positions counter or invalidate the Ports Concept. The Ports Concept utilizes code and a source of regulatory authority, which, as mentioned above, could be based on existing, national conceptions of law or a unique cyberspace law administered by a centralized global authority. I only argue here that if and until the governance of the Internet is structured according to an alternative pattern, the Ports Zoning Concept can be implemented.

VI. RISKS AND LIMITATIONS OF THE PORTS ZONING CONCEPT.

The Internet Ports Concept has not been free of skeptics. As part of the 2007 *Kids Online!* Conference, Professor Dawn Nunziato suggested several potential roadblocks to the effective implementation of ICPA.⁹⁰ One is the risk that Web publishers will choose not to post to the Community Ports at all, for fear that something on their pages may be challenged under ICPA.⁹¹ This would result in a potential "chilling" of speech and a reduction of access to legitimate speech by those who subscribe to Community Ports.⁹² In addition, the fundamental act of identifying some speech as less valuable or harmful "substantially and unconstitutionally restrict[s] speech" by creating an unconstitutional stigma.⁹³ Professor Nunziato also argued that ICPA unconstitutionally overblocks protected speech;⁹⁴ and (4) filters offer a less restrictive alternative to ICPA.⁹⁵ I respond to each of these concerns in my article, *Zoning the Internet: A New Approach to Protecting Children Online*.⁹⁶ These are questions of balancing and weighing values.

⁸⁶ Jack L. Goldsmith, *Against Cyberanarchy*, 65 U. CHI. L. REV. 1199 (1998).

⁸⁷ Jonathan L. Zittrain, *The Generative Internet*, 119 HARV. L. REV. 1974, 1997 n. 80 (2006) (This article discusses the primary articles and authors in this debate)

⁸⁸ *Id.* See also, Viktor Mayer-Schönberger and Malte Ziewitz *Jefferson Rebuffed: the United States and the Future of Internet Governance*, 8 Colum. Sci. & Tech. L. Rev. 188 (2006-07) (This article discusses another description of these debates.)

⁸⁹ LAWRENCE LESSIG, CODE AND OTHER LAWS OF CYBERSPACE 19-20 (1999).

⁹⁰ Dawn C. Nunziato, *Technology and Pornography*, 2007 BYU L. REV. 1535, 1571-84.

⁹¹ *Id.* at 1578 ("Because ICPA imposes optional and technologically straightforward requirements, the burdens it imposes on content providers are minimal, but so are the likely benefits accruing from the statute.")

⁹² *Id.*

⁹³ *Id.* at 1580 ("Although . . . the designation itself is not technologically burdensome, such a requirement would substantially and unconstitutionally restrict speech.")

⁹⁴ *Id.* at 1582.

Accordingly, although ICPA imposes minor technological and financial burdens on content providers in designating which types of ports to publish their content over, it would likely operate to substantially restrict the speech available to those who receive content over Community Ports, and a reviewing court would likely find that it operated to substantially overblock harmful speech.

Id.

⁹⁵ *Id.* at 1570 ("First, courts prefer regulations that empower the end user to screen out harmful content on the receiving end, rather than regulations punishing the content provider for failing to initially screen out harmful content.")

⁹⁶ Preston, *Zoning*, *supra* note 4, at 1458-68.

In addition, the specific legal language and practical implementation of such a scheme is complex. I believe these can be resolved and are worth the effort. In addition to the issues of implementation discussed above in connection with the description of ICPA, careful thought must, of course, be given to (1) defining age-inappropriate sexually explicit content; (2) choosing among approaches to enforcement, including civil and criminal penalties and private rights of action; (3) locating offenders who post adult material on Community Ports, particularly content posted using proxy and hosted sites; (4) carving out safe harbors to limit intermediary liability of ISPs; (5) conceiving of reasonable record keeping paradigms that balance privacy and permit locating offenders; and (6) dealing with unsecured wireless Internet networks that receive Open Ports and provide access to adult material over handheld toys and gaming devices. I offer resolutions to these issues,⁹⁷ but there may be a number of reasonable alternatives. We need to come together and face, rather than ignore, these hard issues. While not simple and convenient, the goal of giving Internet access choice surely warrants some effort in resolving such details.

VII. CONCLUSION

Certainly, global extension of Internet access is a worthy objective. But breadth of access cannot be the sole focus. The Internet need not be an all-or-nothing package. A zoning scheme permits nations, communities, and individuals to enjoy the miracle of the Internet without the "culture shock" of Western pornography.

Finding a workable solution to the problem of underage access to Internet pornography is not impossible. The Internet can be structured to provide a meaningful choice for those who want to keep pornography out of their homes. The Ports Concept offers an opt-in choice to Internet users with minimal to no interference with the rights of those who choose to continue accessing legal sexual material. The technology for zoning the Internet exists. A regulatory structure that facilitates choice by zoning is within reach.

⁹⁷ Family-friendly, *supra* note 7.