EDITORIAL

Off-target on child porn

Two recent legal cases illustrate overreach and ineffectiveness by Congress in a worthy fight.

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THE FEDERAL government has a compelling interest in combating the social cancer of pedophilia and in shielding children from indecency. But a pair of recent court cases illustrate how Congress' zeal to fight these battles has led it to restrict legal speech and overlook more effective ways to fight the problem.

One of the cases involved the Child Online Protection Act, or COPA, a 1998 law barring online delivery of material "harmful to minors" to anyone younger than 17 — effectively requiring websites to check a recipient's age before offering sexually explicit goods. Legislators enacted it after the Supreme Court threw out parts of the Communications Decency Act, a 1996 law that also tried to limit the flow of indecent material online.

A federal judge in Philadelphia temporarily blocked COPA in 1999, and the Supreme Court later affirmed the stay pending trial. Last month, the same judge ruled, rightly, that the law was unconstitutional, on grounds that it was neither the "least restrictive" nor the "most effective" means to protect children. Those are the standards set by the Supreme Court to judge laws that brush up against the 1st Amendment right to free speech.

The Internet is a global medium, largely indifferent to U.S. law and efficient at routing material online. Congress has no business meddling in foreign courts or dictating to global companies that do business in the United States. The federal government cannot make traffic laws for the entire planet.

The second case involves an attempt to limit depictions of 18-year-olds in salacious poses. Called the PROTECT Act, the 2003 law prohibits people from seeking or offering material advertised as or believed to be child pornography. The Supreme Court threw out an earlier version of the law five years ago, ruling that suggestive but non-obscene material couldn't be prohibited unless real children were depicted.

An appeals court in Atlanta nullified the PROTECT Act last year, ruling that Congress had criminalized the exchange of material that, while interesting to a pedophile, would seem innocent to the average person. (A snapshot of a naked toddler in a bathtub, for instance.) The Bush administration persuaded the Supreme Court last month to review the appeals panel's ruling, arguing that Congress was trying to crack down on offers and requests for kiddie porn — in other words, on the market and its participants.

The problem with the PROTECT Act, though, is that it still focuses on how material is perceived, not what it actually is. As the appeals court noted, that amounts to Congress restricting the public's freedom to think. Which is unacceptably dangerous ground, even when the goal is as important as stopping pedophilia.