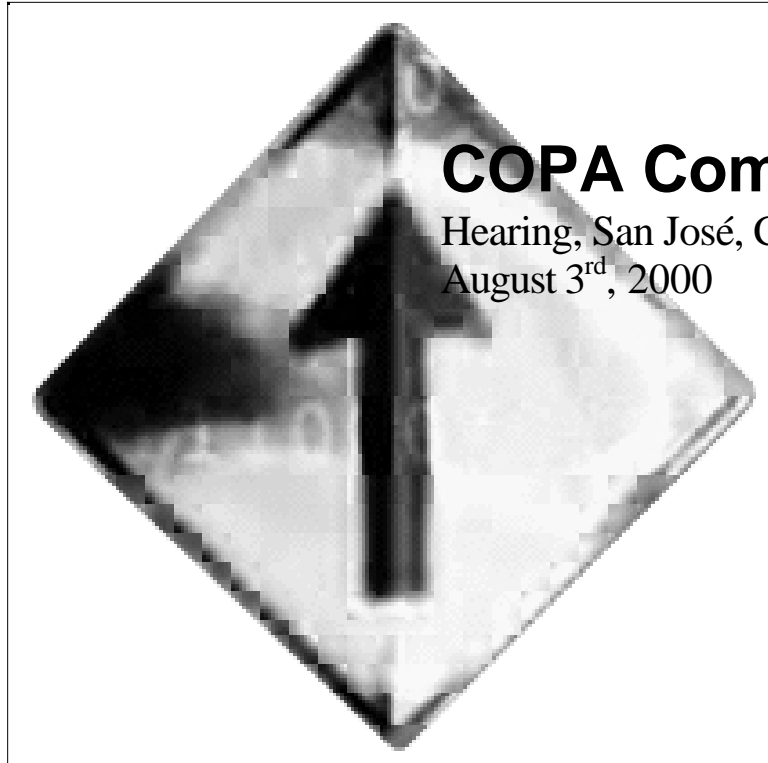


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Key Recommendations

The following recommendations have been published by the Bertelsmann Foundation, an independent think tank based in Germany with offices in New York City, as the *Memorandum on Self-regulation of Internet Content* and have been discussed, at first, at the Internet Content Summit in Munich, Germany, in September 1999.

The overall objective of the Foundation's project – supported by an international expert network of policy makers, industry representatives, media supervisory bodies, free speech advocates and researchers from Asia, Australia, Europe and North America – is to provide a framework for protecting children online.

The Bertelsmann Foundation is highly honored to testify before the COPA Commission and to elaborate on specific points. We also would like to draw the Commission's attention to the results of our representative Internet User Survey carried out in the U.S., in Australia and in Germany. A representative sample was asked about attitudes towards child protection online, filter systems, hotlines and self-regulatory mechanisms in general. The full report together with expert reports on codes of conduct, self-rating and filtering, hotlines and law enforcement is published in *Protecting our Children on the Internet. Towards a new Culture of Responsibility*, edited by Jens Waltermann and Marcel Machill (Gütersloh: Bertelsmann Foundation Publishers 2000). A free copy will be distributed to each member of the COPA Commission on August 3rd so that results may not be reproduced in this summary.

Further information about the project can be found at www.stiftung.bertelsmann.de/internetcontent

1. The Internet: changing the way people live

As an international community of users and providers of information, we are at a dramatic turning point. The Internet will change the way people live: it offers extraordinary opportunities for enhancing creativity and learning, for trading and relating across borders, for safeguarding human rights, for realizing democratic values and for strengthening pluralism and cultural diversity. The change holds promise and it holds challenges. Although a limited phenomenon within the overall amount of Internet content, racist and discriminatory web sites, child pornography exchanged in certain newsgroups and chatrooms and "how to" guides for terrorist activities are too disturbing to ignore. Mechanisms have to be developed to deal with illegal content, to protect children online as well as guarantee free speech.

2. Self-regulation of Internet content: towards a systematic, integrated and international approach

No single approach, relying on one form or one set of actors, can provide a solution to content concerns in the changing and shifting environment that is the Internet. For a public response to be effective, it must be integrated, systematic and dynamic, sensitive to public needs and national differences within a framework that encourages robust communication. Only such a systematic approach - bringing technological potential together with the energies and capacities of government, the Internet industry and the citizenry - has the promise of success in meeting what often seem to be competing goals. Given the global and borderless architecture of the Internet, such a systematic approach requires not only coordination at a national and regional level, but its scope must be international.

3. Internet industry: developing and implementing codes of conduct

Codes of conduct should be adopted to ensure that Internet content and service providers act in accord with principles of social responsibility. These codes should meet community concerns and operate as an accountability system that guarantees a high level of credibility and quality. As part of the codes of conduct, Internet providers hosting content have an obligation to remove illegal content when put on notice that such content exists. The procedure for such notice and take-down - while laid down by regulation - should be reflected in codes of conduct and should specify the requirements for proper notification of service providers. The service provider may include in its contracts with users and content providers terms which allow it to comply with its legal obligations and protect it from liability. It is in the best interest of industry to take on such responsibility since it enhances consumer confidence and is ultimately good for business.

4. Sharing responsibility: self-regulatory agencies enforcing codes of conduct

To be effective, codes of conduct must be the product of and be enforced by self-regulatory agencies. Such agencies must be broadly representative and accessible to all relevant parties. Subject to a process of acquiescence by public authorities they should enjoy certain legal privileges enhancing their functions. Effective self-regulation requires active consumer and citizen consultation by such agencies. Without user involvement, a self-regulatory mechanism will not accurately reflect user needs, will not be effective in delivering the standards it promotes, and will fail to create confidence.

5. Governments: supporting and reinforcing self-regulation

Self-regulation cannot function without the support of public authorities, be it that they simply do not interfere with the self-regulatory process, be it that they endorse or ratify self-regulatory codes and give support through enforcement. There are clearly limits to what can be achieved by self-regulation. The process cannot alone guarantee that child pornographers are caught and punished, although self-regulatory mechanisms can help ensure that criminals cannot use the Internet with impunity. Governments should, through education and public information, raise awareness among users about self-regulatory mechanisms such as the means to filter and block content and to communicate complaints about Internet content through hotlines.

6. Self-rating and filtering systems: empowering user choice

Filtering technology can empower users by allowing them to select the kinds of content they and their children are exposed to. Used wisely, this technology can help shift control of and responsibility for harmful content from governments, regulatory agencies, and supervisory bodies to individuals. Thus, at the core of the recommendations for an integrated system of self-regulation and end user autonomy must be an improved architecture for the rating and filtering of Internet content. There should be an independent organization to provide a basic vocabulary for rating and to oversee updates to the system at periodic intervals. Content providers worldwide must be mobilized to label their content and filters must be made available to guardians and all users of the Internet.

The Bertelsmann Foundation is a co-founding organization of the *Internet Content Rating Association* (ICRA) and is supporting ICRA both financially and by intellectual input. Also, a representative of the Bertelsmann Foundation currently is ICRA's Chairman. The Foundation believes that providing an internationally acceptable platform or system for filter templates, negative list and positive list providers is the most promising approach to protect children online.

On September 8, 2000, the Bertelsmann Foundation will bring together over 80 representatives from socially relevant groups from all over the world in order to discuss ways to provide filter templates, negative lists and positive lists. Governments should support this responsibility shift by creating awareness among users and internet industry.

7. Internet filtering: ensuring youth protection and freedom of speech

A good filtering system realizes several important values: end user autonomy; respect for freedom of expression; ideological diversity; transparency; respect for privacy; interoperability and compatibility. Equally important, the system must feature a user-friendly interface that encourages actual use of its features and makes choice a real possibility for the vast majority of end users. Third parties should be encouraged to develop and provide free filters. Industry should promote the availability and use of filtering systems, educating consumers about how to filter and making it easy for parents, teachers, and other concerned adults to choose filters, install and adapt them to their set of values. There should be no regulatory requirements on service providers to screen or filter content. Government or regulatory agencies may supply filters but should not mandate their use.

8. Hotlines: communicating and evaluating content concerns

We need technical and organizational communication devices to ensure that users can respond to content on the Internet that they find of substantial concern. These "hotlines" ensure that - where necessary and appropriate - effective action can be taken to remedy such concerns. The task of evaluating the legality or illegality of specific data is difficult for Internet providers and should, therefore, be integrated into the work of hotlines. In order to function, hotlines need an environment and operational rules that honor their specific task of handling problematic - and perhaps illegal - content. Legislators should formulate minimum requirements on the organizational setup and procedures of hotlines and, in turn, shield them from criminal or civil liability incurred in the proper conduct of their business ("safe harbor").

9. International cooperation: acting against content where it is located

There should be an international network of hotlines governed by a framework agreement containing minimum standards on the handling of content concerns and stipulating mutual notification between hotlines. The hotline in the country where the content is located is asked to evaluate it and to take action. This mechanism results in content providers being acted against only if the material is illegal in the host country. The mechanism also overcomes difficulties in the complex diplomatic procedures necessary for cross-border cooperation of law enforcement authorities.

10. The legal framework: limitations on liability

There should be no criminal responsibility of mere access and network providers for third parties' illegal content transmissions taking place in real-time through their networks. Host service providers merely storing third party content should be held liable only if they have actual knowledge of illegal content, and if a removal of such content is technically possible and can reasonably be expected. Providers party to an enforceable and broadly representative self-regulatory regime, recognized by public authorities, should not be liable for third party content when complying with the requirements of that regime and the decisions of the relevant self-regulatory body.

11. Law enforcement: cooperation and continuous training

It should be a top priority to create adequate law enforcement bodies to combat computer crime and illegal content like child pornography on the Internet. This requires the development of centralized units and/or a better coordination of existing competent bodies. Such units must have adequate technical know-how and on-going training. The Internet industry should cooperate in training. Law enforcement and the Internet industry should develop cooperative structures to exchange views on common points of concern.

12. A "learning system": education and constant evaluation

No self-regulatory mechanism can work independently of an education and awareness campaign. The Internet industry should develop a continuous online and off-line effort to provide general awareness of self-regulatory mechanisms such as filtering systems and hotlines. Schools should provide the necessary skills for children to understand the benefits and limitations of online information and to exercise self-control over problematic Internet content. The Internet is, itself, a process, an enormous system for change and response, feedback and transformation. Like the Internet, the legal system and self-regulatory mechanisms around it must incorporate similar practices of learning and changing. The integrated system recommended here depends on continuous (re-)evaluation.

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