Parental Rights to Monitor Internet Usage

Benjamin J. Halpert
Nova Southeastern University, USA

INTRODUCTION

Technological advances do not occur in isolation of the society in which they are intended to be used. As the demand, evolution, and maturation of computing technologies continues to increase, the price of entry for consumers decreases (Baye, 2006). Households that used to have one personal computer may now have several computing devices for each member of the family (Ketchum Global Research Network, 2005). Technologies, for the most part, are not developed to be bound by social or ethical norms (Hansson & Palm, in press). Just as a gun can do no harm unless it is used by an individual with malicious intent, so too is the case with computing technologies. A chat room that is frequented by children for the purposes of casual conversation and exchange of ideas can also be used by a pedophile to recruit children to exploit for purposes of cybersex, cyberporn, molestation, or other socially reprehensible and criminal purposes. In addition to inappropriate uses of technology, ethically questionable material, such as instructions on how to build a bomb, manufacture illegal drugs, and access child pornography, can be found on the Internet.

The extent of parental rights with regard to monitoring their children's Internet activity will be discussed in subsequent sections. As will be expounded upon, although parents have certain obligations to protect their children, neither the bounds of privacy nor the ethical aspect of monitoring have been clearly delineated. Approximately 75% of children between ages 12 and 17, and 40% of 3- to 11-year-olds, are regular Internet users (Market Wire, 2005). Children can be adversely affected by information they read or see on the Internet. In addition, they could be coerced into meeting an online friend that may wish to cause them harm in the physical world. Some parents may not be aware of the negative influences their children can be exposed to on the Internet (Ketchum Global Research Network, 2005). The right to monitor enables parents to address certain issues at appropriate times and to educate their children as to what they may be exposed to when online. According to the U.S. Department of Justice, one in five children between the ages of 10 and 17 received unwanted sexual solicitations online. As a result of receiving such solicitations, many children report being afraid and upset (Finkelhor, Mitchell, & Wolak, 2000). Children that receive unwanted sexual solicitations online may believe that this type of activity is a normal use of the Internet and may respond inappropriately. A parental right to monitor children's Internet use is imperative for parents wishing to teach children appropriate online behavior.

There are multiple ways to monitor a child's online usage. Some monitoring practices include sitting with the child while they are engaged in online activities, checking the computer files and logs at the completion of an online session, placing the computer in a common area of the home, or using an automated monitoring software program. The scope of the information contained herein relates to a parent's right to monitor their children's Internet activity utilizing automated, real-time monitoring tools. These tools take screen shots, capture chat sessions, capture all characters typed, and save or e-mail the data for parents to view. These programs can oftentimes include a feature that hides the existence of the monitoring software from other system users. Much of the product literature does not address the legality of using automated monitoring software (Iopus Software Gmbh, 2005; Net Nanny, 2006; Spectorsoft Corporation, 2006). In one instance, a software developer claims that the use of key logging software as part of their monitoring program is perfectly legal for parents to use without notifying their children (KMiNT21 Software, 2003). Web sites dedicated to providing information on how to protect children while they are online do not mention that it may be a legal violation of a child's privacy to monitor their online activity (Federal Bureau of Investigation, 2006; National Center for Missing & Exploited Children and Boys & Girls Clubs of America, 2006).

There is limited case law that could be used by parents to determine their rights with regard to using automated monitoring software. However, cases heard

in several jurisdictions in the United States show mixed outcomes. The scope of the legal analysis applies to the United States of America.

BACKGROUND

In order to understand parental rights with regard to impeding on their children's online privacy, several non-technologically based areas related to children's privacy rights will be expounded upon. The disparity of privacy constraints as applied to children by various entities is intended to show that a simple definition of privacy rights as applied to children does not exist. Aspects examined will include the extent to which a school, the U.S. government, or specific state governments may impede on a child's privacy. American Civil Liberties Union (ACLU) and Electronic Privacy Information Center (EPIC) positions will be presented in a later section. In 1989, the United Nations adopted the Convention on the Rights of the Child, which spelled out the extent of what a child's right is. Based on the convention, a child's basic rights include:

...the right to survival; the right to the development of their full physical and mental potential; the right to protection from influences that are harmful to their development; and the right to participation in family, cultural and social life. (UNICEF, 2006)

Parents have a legal obligation to provide for their children. This can take the form of providing financial support, ensuring their well-being, providing education, and attending to their healthcare needs (Nolo, 2006).

A child's right to privacy can also be viewed from the aspect of a school's right to search and drug test students. In the United States, schools may randomly search and drug test students if a reasonable suspicion exists that a child may be using drugs. Numerous courts at both the U.S. state and national levels have upheld this right. One item of note is from a U.S. Supreme Court decision that grants more privacy rights to non-athlete students than their athletic counterparts, based on student athletes' more public participation in school activities (Gale Research, 1998). Just as a school can delve deeper into private areas of a student's life simply for playing a sport, parents need to be aware of how far they can go with regard to invading a child's privacy, and on what grounds.

From a state regulatory perspective on a minor's privacy, the California "Supreme Court held that the state may regulate voluntary sexual activity by a minor in ways that would violate adults' right to privacy" (Patton, 2001, p. 3). In the State of Georgia, Title 16 Code Section 16-11-66 addresses a parent's right to monitor his or her children's Internet activity (Georgia General Assembly, 2005). The rights conferred to parents in OCGA 16-11-66 are not without bounds. In order for a parent to be in compliance with the aforementioned law, there must be a concern for the child's welfare. According to the Assistant Attorney General for the State of Georgia, the law was originally developed to detail specifics as to telephony monitoring bounds, but has since been amended to include all electronic communications (C.J. Schansman, personal communication, February 11, 2005).

EXPLORATION OF PARENTAL MONITORING RIGHTS

The Internet creates a feeling of community among individuals that extends beyond immediate physical surroundings. As previously illustrated, the Internet is not free from potential dangers. Parents that wish to ensure their children have pleasant online experiences should be cognizant of potential legal ramifications of doing so.

The Internet has brought about a rapid increase in the amount, frequency of exchange, and sharing of illegal child pornography materials on the Internet. International efforts are underway by national and local governments to track down pedophiles that deal in child pornography (U.S. Department of Justice, 2006). Many pedophiles use Internet chat rooms to locate their victims and to arrange physical encounters that would harm children (Weir, 2005). Additionally, the Internet is used by individuals for online grooming, abusive cybersex, and cyberstalking (U.S. Department of Justice, 2003). Parents may know who their children associate with at school and around the neighborhood via direct observation or reports of observers, such as teachers and other parents. However, if a parent does not have the right to monitor their children's online usage, they may never know who their children are associating with online. It has been reported that "girls were slightly more likely than boys to have close online relationships with sixteen and twelve percent, respec-