

The reach of the state may even extend to private possession of child pornography in the home. In *Osborne v. Ohio*<sup>1354</sup> the Court upheld a state law criminalizing the possession or viewing of child pornography as applied to someone who possessed such materials in his home. Distinguishing *Stanley v. Georgia*, the Court ruled that Ohio's interest in preventing exploitation of children far exceeded what it characterized as Georgia's "paternalistic interest" in protecting the minds of adult viewers of pornography.<sup>1355</sup> Because of the greater importance of the state interest involved, the Court saw less need to require states to demonstrate a strong necessity for regulating private possession as well as commercial distribution and sale.

In *Ashcroft v. Free Speech Coalition*, the Court held unconstitutional the federal Child Pornography Prevention Act (CPPA) to the extent that it prohibited pictures that were not produced with actual minors.<sup>1356</sup> Prohibited pictures included computer-generated ("virtual") child pornography, and photographs of adult actors who appeared to be minors, as well as "a Renaissance painting depicting a scene from classical mythology."<sup>1357</sup> The Court observed that statutes that prohibit child pornography that use real children are constitutional because they target "[t]he production of the work, not the content."<sup>1358</sup> The CPPA, by contrast, targeted the content, not the means of production. The government's rationales for the CPPA included that "[p]edophiles might use the materials to encourage children to participate in sexual activity" and might "whet their own sexual appetites" with it, "thereby increasing . . . the sexual abuse and exploitation of actual children."<sup>1359</sup> The Court found these rationales inadequate because the government "cannot constitutionally premise legislation on the desirability of controlling a person's private thoughts" and "may not prohibit speech because it increases the chance an unlawful act will be committed 'at some indefinite future time.'"<sup>1360</sup> The government had also argued that the existence of "virtual" child pornography "can make it harder to prosecute pornographers who do use real minors," because, "[a]s imaging technology improves . . . , it becomes more difficult to prove that a particular picture was produced using actual children."<sup>1361</sup> This

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<sup>1354</sup> 495 U.S. 103 (1990).

<sup>1355</sup> 495 U.S. at 108.

<sup>1356</sup> 535 U.S. 234 (2002).

<sup>1357</sup> 535 U.S. at 241.

<sup>1358</sup> 535 U.S. at 249; *see also* *id.* at 241.

<sup>1359</sup> 535 U.S. at 241.

<sup>1360</sup> 535 U.S. at 253.

<sup>1361</sup> 535 U.S. at 242.