In *Reno v. American Civil Liberties Union*,[1371] the Court struck down two provisions of the Communications Decency Act of 1996 (CDA), one of which would have prohibited use of an "interactive computer service" to display indecent material "in a manner available to a person under 18 years of age."[1372] This prohibition would, in effect, have banned indecent material from all Internet sites except those accessible by only by adults. Although intended "to deny minors access to potentially harmful speech . . . , [the CDA's] burden on adult speech," the Court wrote, "is unacceptable if less restrictive alternatives would be at least as effective . . . . [T]he Government may not 'reduc[e] the adult population . . . to . . . only what is fit for children.'"[1373]

In *Reno*, the Court distinguished *FCC v. Pacifica Foundation*,[1374] in which it had upheld the FCC's restrictions on indecent

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tiny applies), nonetheless struck down a requirement that cable operators segregate and block indecent programming on leased access channels. The segregate-and-block restrictions, which included a requirement that a request for access be in writing, and which allowed for up to 30 days' delay in blocking or unblocking a channel, were not sufficiently protective of adults' speech and viewing interests to be considered either narrowly or reasonably tailored to serve the government's compelling interest in protecting children. In United States v. Playboy Entertainment Group, Inc., 529 U.S. 803 (2000), the Supreme Court, explicitly applying strict scrutiny to a content-based speech restriction on cable TV, struck down a federal statute designed to "shield children from hearing or seeing images resulting from signal bleed." Id. at 806.

The Court seems to be becoming less absolute in viewing the protection of all minors (regardless of age) from all indecent material (regardless of its educational value and parental approval) to be a compelling governmental interest. In striking down the Communications Decency Act of 1996, the Court would "neither accept nor reject the Government's submission that the First Amendment does not forbid a blanket prohibition on all 'indecent' and 'patently offensive' messages communicated to a 17-year-old—no matter how much value the message may have and regardless of parental approval. It is at least clear that the strength of the Government's interest in protecting minors is not equally strong throughout the coverage of this broad statute." Reno v. American Civil Liberties Union, 521 U.S. 844 (1997). In *Playboy Entertainment Group*, 529 U.S. at 825, the Court wrote: "Even upon the assumption that the government has an interest in substituting itself for informed and empowered parents, its interest is not sufficiently compelling to justify this widespread restriction on speech." The Court also would "not discount the possibility that a graphic image could have a negative impact on a young child" (id. at 826), thereby suggesting again that it may take age into account when applying strict scrutiny.

[1371] 521 U.S. 844 (1997).

[1372] The other provision the Court struck down would have prohibited indecent communications, by telephone, fax, or e-mail, to minors.

[1373] 521 U.S. at 874–75. The Court did not address whether, if less restrictive alternatives would not be as effective, the government would then be permitted to reduce the adult population to only what is fit for children. Courts of appeals, however, have written that "[t]he State may not regulate at all if it turns out that even the least restrictive means of regulation is still unreasonable when its limitations on freedom of speech are balanced against the benefits gained from those limitations." ACLU v. Reno, 217 F.3d 162, 179 (3d Cir. 2000), *vacated and remanded sub nom.*, Ashcroft v. ACLU, 535 U.S. 564 (2002); Carlin Communications, Inc. v. FCC, 837 F.2d 546, 555 (2d Cir. 1988).

[1374] 438 U.S. 726 (1978).