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The Ninny State

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In the 1940s and '50s, kids fell in love with a new technology, and adults freaked out. A psychiatric researcher warned that this latest pastime was “a distinct influencing factor in the case of every single delinquent or disturbed child” he had studied. In 1948, Time magazine said that it would “not only inspire evil but suggest a form for the evil to take.” As David Hajdu relates in his insightful history of the era, “The Ten-Cent Plague,” states and cities introduced more than a hundred laws to ban or limit its sale. Congress held televised hearings to denounce it.



Which is all to say, the country panicked — because of the comic book. Sixty-odd years on, of course, this seems hysterical. And yet substitute “Internet,” “video game” or “texting,” and the sky seems to be falling again. We have visions of children becoming victims of lurking adult predators or teenagers themselves sending compromising sexual photos that go viral. We worry about the use of social-networking sites to humiliate vulnerable classmates or start fights that can turn physical. These are legitimate concerns. Online seductions of children are rare but devastating. Some children are hurt by sexting and cyberbullying.

And yet the overall rates of child sex crimes and of teen sex are down since the 1990s, as are juvenile crime, school violence and teen fighting. David Finkelhor, director of the Crimes Against Children Research Center at the University of New Hampshire, calls this distance between anxiety and reality “juvenioia” and chalks it up to an “exaggerated fear about the influence of social change on children.” Parents and lawmakers are, in short, so worried about protecting our children that they can fail to distinguish between real threats and phantom ones. That can lead to quick fixes that send the government, with all its law-enforcement power, in the wrong direction.

California, for example, decided to play the role of protector by banning the sale of violent video games to kids under age 18. The state says that the ban was passed to help prevent “violent, aggressive and antisocial behavior” among children. But even though the American Academy of Pediatrics and the American Psychological Association see a link between the games and aggression, others in the field disagree, viewing the games simply as a vehicle for fantasy. The video-game makers argued in the U.S. Court of Appeals for the Ninth Circuit that no court had found firm evidence that gaming causes violence. As the court pointed out in its ruling in favor of the game makers, the state’s leading expert concluded his analysis with the admission that there is a “glaring empirical gap” in the research. It’s possible that over time, children who blast on-screen avatars are more likely to punch their classmates. But we don’t really know. The case ended up in front of the Supreme Court, and a decision is expected this month.

Parents can of course decide to err on the side of caution for their own children. But with its sales ban, California went over the heads of parents who don’t think the games hurt their children, and who may turn out to be right. The state also collided with another value enshrined in law: free speech. Amid all the blasting and beheading, video games tell stories.

During oral arguments at the Supreme Court, Ruth Bader Ginsburg, Antonin Scalia and Sonia Sotomayor signaled their skepticism about the ban. They asked California’s lawyer why scary video games were different from scary movies and books. (Video games have a ratings system like the M.P.A.A.’s for film.) The lawyer said that violent Bugs Bunny cartoons, for example, were in a separate category because their content did not “depart from the established norms.” In other words, video games don’t deserve the same First Amendment protection because they haven’t been around as long. Scalia was unimpressed. “I mean, every time there’s a new technology, you can make that argument,” he said.

Scalia and the court have credibility here, because they have been anything but cavalier when technology clearly puts children in harm’s way. The court has long upheld laws prohibiting [child pornography](#), in the face of First Amendment challenges, because studies show that the creation of the images is “intrinsically related” to child sexual abuse. With the advent of the Internet, prosecutors confronted a new problem: people accused of dealing in child porn began to contend that their images were simulated — and so didn’t involve harm to real children. Congress responded by outlawing the “pandering” of images, even if they turn out to be computer-generated, as long as the recipient of the images believes that they depict real children or the distributor presents them as if they do. In a 7-2 ruling in 2008, the court upheld the pandering law as a necessary tool to fight child sexual abuse.

That all makes sense. Now, however, in the panic over teenager sexting, some prosecutors are going too far, turning the child-pornography laws that are supposed to protect children into a weapon that can be used against them. The easiest way to crack down on teenagers who send around sexual photos is to charge them as if they're child pornographers. But this approach is the latest damaging example of the effects of juvenoia. A conviction for child pornography can trigger heavy punishment that includes registering as a sex offender, a consequence that's too harsh for teenagers in all but the most egregious cases.

Recognizing this, many states are drafting new laws to address sexting by minors. They should take into account an important distinction: Many kids who send sexts say they meant to play a joke, and often the kid in the photo was in on it. This may be incredibly stupid and thoughtless but not necessarily malicious. At the same time, in a smaller number of disturbing cases, one teenager can coerce another into giving him a naked photo — and then send it out widely for the purpose of shredding the victim's reputation or undermining his or her self-image.

The best approach, then, is to use the criminal-justice system to go after the miscreants who are out to do real damage and to leave the punishment of the merely foolish kids to their parents and schools. A North Dakota law passed in March, for example, would allow authorities to charge a person with sexting only when he or she intends to cause "emotional harm or humiliation." The law directs prosecutors to focus on real threats and real harm. Similar bills that are directed at teenagers are being considered in Indiana, Oregon, Oklahoma and Pennsylvania.

Meanwhile, other legislation treats all teenage sexting as criminal, regardless of the circumstances and the mind-set of the kids involved. Utah, Arizona and Connecticut have passed these sorts of laws, and more are pending in Ohio, Hawaii and in a competing bill in Pennsylvania. This approach is tempting precisely because it's so broad: it appears to offer a blanket protection for kids. And yet 60 years from now, it's likely to look about as smart as banning comic books does now.