Negative: COPPA Reform – not topical, not needed

By “Coach Vance” Trefethen

***Resolved: The United States federal government substantially reform the use of Artificial Intelligence technology***

Case Summary: The AFF plan adds more regulations to COPPA, a law passed by Congress in 1998 (Children’s Online Privacy Protection Act). It regulates how internet advertisers, marketers and content providers can market stuff to children and collect and use their information.   
  
CHALLENGE AFF TO SHOW ANYWHERE IN THE LEGISLATION WHERE THE PHRASE “ARTIFICIAL INTELLIGENCE” is used. If the bill doesn’t mention “artificial intelligence,” it’s hard to claim they’re reforming the use of AI.

Negative: COPPA Reform – not topical, not needed 3

TOPICALITY 3

1. None of the reforms are about AI 3

The list of reforms is shown below in from a bill introduced in 2019. None of them require or mention any use of AI 3

Violation #1: Failure to uphold the resolution 3

Violation #2: Extra-topicality destroys solvency. 3

INHERENCY 4

1. New California rules are going nationwide 4

California’s “CCPA” is stricter than COPPA and will apply nationwide because companies all do business in Calif. 4

California law CCPA is one of the strongest in the world 4

FTC says COPPA doesn’t block stricter state standards 4

HARMS / SIGNIFICANCE 5

1. It’s not about harm, it’s about information 5

COPPA isn’t designed to protect children from being “harmed.” It’s about disclosing information 5

2. Harms don’t justify the solution 5

We don’t ban children from the street (even if there’s risk in talking to someone). Internet is no different 5

3. No constitutional right to privacy 5

No constitutional right to privacy, just whatever a legislature comes up with 5

SOLVENCY 6

1. Using AI to comply with COPPA would violate COPPA 6

AI algorithms to determine age of users and comply with COPPA would need to use data that would violate COPPA 6

2. Age limits don’t work (so AFF Plan raising the COPPA age limit won’t matter) 6

Facebook has banned underage members for years… but it has no impact 6

Easy for children to bypass COPPA age limits 6

Easy for websites to bypass COPPA age limits 7

COPPA has no definition of what it means to have “actual knowledge” of underage users 7

DISADVANTAGES 7

1. Parental complacency 7

Link: COPPA deceives us into thinking government can protect children online, so parents become complacent 7

Impact: Protection for children gets worse, so the harms get worse 8

Impact: Negative Net Benefits. Complacency under COPPA is worse than having no COPPA at all. 8

2. Parental rights violated 8

Link: COPPA is a clear example of why parents should be in charge of their children, not the government 8

Link & Impact: Parents have the right & duty to decide what their children should be restricted from, not the government 9

3. First Amendment violations 9

Link: AFF plan increases censorship of the internet 9

Link: Violates First Amendment 9

Impact: Negative Net Benefits. Government regulation of the internet is a cure worse than the disease it’s trying to fix 9

Impact: Compromising Freedom of Speech is really bad. It’s the foundation of nearly all other human rights 10

Impact: Harms of censorship outweigh “benefits” - James Madison 1791 10

Negative: COPPA Reform – not topical, not needed

TOPICALITY

1. None of the reforms are about AI

The list of reforms is shown below in from a bill introduced in 2019. None of them require or mention any use of AI

Lisa Vaas 2019. (technology journalist) 13 Mar 2019 “New bill would give parents an ‘Eraser Button’ to delete kids’ data” <https://nakedsecurity.sophos.com/2019/03/13/new-bill-would-give-parents-an-eraser-button-to-delete-kids-data/> (accessed 28 Nov 2021)

Two US senators on Tuesday proposed a major overhaul of the Children’s Online Privacy Protection Act (COPPA) that would give parents and kids an “Eraser Button” to wipe out personal information scooped up online on kids. The [bipartisan bill](https://www.markey.senate.gov/imo/media/doc/Leg%20text%20--Markey-Hawley%203.11.19%20FINAL.pdf), put forward by Senators Edward J. Markey (D-Mass.) and Josh Hawley (R-Mo.), would also expand COPPA protection beyond its current coverage of children under 13 in order to protect kids up until the age of 15.

**[END QUOTE. THEY GO ON LATER IN THE CONTEXT QUOTE:]**  
These are the specific privacy protections that the bill would strengthen:  
- Prohibiting internet companies from collecting personal and location information from anyone under 13 without parental consent, and from anyone 13 to 15 years old without the user’s consent.  
- Banning targeted advertising directed at children.  
- Revising COPPA’s “actual knowledge” standard to a “constructive knowledge” standard for the definition of covered operators. [Here’s a discussion of the difference](https://www.insideprivacy.com/uncategorized/ftc-releases-updated-guidance-on-new-coppa-rule-1/).  
- Requiring online companies to explain the types of personal information collected, how that information is used and disclosed, and the policies for the collection of personal information.  
- Prohibiting the sale of internet-connected devices targeted towards children and minors unless they meet robust cybersecurity standards.  
- Requiring manufacturers of connected devices targeted to children and minors to prominently display on their packaging a privacy dashboard detailing how sensitive information is collected, transmitted, retained, used, and protected.

Violation #1: Failure to uphold the resolution

The Affirmative had a burden of proof to prove that the resolution is true. Even if they prove COPPA should be reformed, if it can be reformed without doing the resolution, then the resolution is unproven and the Negative wins.

Violation #2: Extra-topicality destroys solvency.

If at the end of this round you believe that some COPPA reforms do involve AI, even though isn’t mentioned anywhere in them, it’s clear that some of the reforms DO NOT involve AI. For example, “banning advertising directed at children” is clearly not a function of AI. All of the Affirmative’s evidence that says these reforms would work is talking about the entire package of reforms. But the Affirmative can only enact the ones that are “reforming the use of AI” and not all the others. This means none of their solvency or advantage evidence applies to their plan, because their plan can’t do what their evidence says you have to do to work. Extra-topical mandates must be dropped from the round, and the Affirmative loses any benefits from those mandates, since they don’t come from affirming the resolution. The resulting failure of solvency means the plan won’t work and a Negative ballot is justified.

INHERENCY

1. New California rules are going nationwide

California’s “CCPA” is stricter than COPPA and will apply nationwide because companies all do business in Calif.

Katie Riley 2019 (*Second Year Law Student at the Benjamin N. Cardozo School of Law and a Staff Editor at the Cardozo Arts & Entertainment Law Journal*) 18 Nov 2019 “My COPPA Runneth Over: CCPA Adds to Children’s Online Privacy Protections” <https://cardozoaelj.com/2019/11/18/my-coppa-runneth-over-ccpa-adds-to-childrens-online-privacy-protections/> (accessed 28 Nov 2021) (ellipses in original)

However, COPPA is no longer the only privacy legislation concerning the collection of children’s personal information online. The first provisions of the California Consumer Privacy Act (“CCPA”) go into effect January 1, 2020 as the first US privacy law to meet the modern international trend of increasing privacy protections. The CCPA was passed in 2018 and has already served as model to Nevada’s updated privacy law that went into effect October 1, 2019. But as a state law, how will CCPA interact with existing federal legislation concerning children? The CCPA applies to out-of-state merchants who do business with Californians or have a website available in the state. Since California is the world’s fifth largest economy, “rather than create separate systems…companies will just apply the CCPA nationwide—especially in light of larger societal trends in favor of privacy,” so consumers on a national level may be exposed to tighter privacy practices online.

California law CCPA is one of the strongest in the world

Dr Emmanuel Pernot-Leplay 2020 (PhD in comparative law focusing on data protection) “U.S. Data Privacy Laws: CCPA, HIPAA, COPPA…and soon a Federal Data Protection Act?” last updated 6 Apr 2020 https://pernot-leplay.com/us-data-privacy-laws-federal-ccpa-hipaa-coppa/#23\_Childrens\_Online\_Privacy\_Protection\_Act\_of\_1998\_COPPA



FTC says COPPA doesn’t block stricter state standards

Dr. Bilyana Petkova 2016. (Postdoctoral Max Weber Fellow, European University Institute, and Visiting Fellow at Yale Information Society Project) THE SAFEGUARDS OF PRIVACY FEDERALISM <https://law.lclark.edu/live/files/22074-lcb202art7petkovapdf> (accessed 28 Nov 2021) (brackets in original)

The FTC argued that “[n]othing in COPPA’s language, structure, or legislative history indicates that Congress intended for that law to preempt state law privacy protections for people outside of COPPA’s coverage, including teenagers.” In an expression of cooperative federalism, the federal tier represented by the FTC has tried to reinforce a state legislative initiative, which in turn may at some point seep into the federal level.

HARMS / SIGNIFICANCE

1. It’s not about harm, it’s about information

COPPA isn’t designed to protect children from being “harmed.” It’s about disclosing information

Melanie L. Hersh 2001 (J.D. Candidate, 2002, Fordham University School of Law) FORDHAM URBAN LAW JOURNAL Vol. 28 No. 6 “IS COPPA A COP OUT? THE CHILD ONLINE PRIVACY PROTECTION ACT AS PROOF THAT PARENTS, NOT GOVERNMENT, SHOULD BE PROTECTING CHILDREN'S INTERESTS ON THE INTERNET” https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2058&context=ulj&httpsredir=1&referer=

Because children can access pornography and encounter dangerous people on the Internet, the government has a justification for regulating access to the Internet. However, it is unclear whether this power extends to protection of children from people who solicit their personal information. All previous court holdings have related to a child's encounters with preexisting materials, such as pornography; there has not yet been a court holding protecting a child from disclosing the child's personal information. This would be much like a law that attempts to forbid a child from talking to strangers on the street; it is improbable that such a law would withstand judicial scrutiny.

2. Harms don’t justify the solution

We don’t ban children from the street (even if there’s risk in talking to someone). Internet is no different

Melanie L. Hersh 2001 (J.D. Candidate, 2002, Fordham University School of Law) FORDHAM URBAN LAW JOURNAL Vol. 28 No. 6 “IS COPPA A COP OUT? THE CHILD ONLINE PRIVACY PROTECTION ACT AS PROOF THAT PARENTS, NOT GOVERNMENT, SHOULD BE PROTECTING CHILDREN'S INTERESTS ON THE INTERNET” https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2058&context=ulj&httpsredir=1&referer=

Although it is true that in the off-line world the government can regulate where pornography is placed both within a locality and within a store, there is no regulation of what a child may encounter on the street or with whom he might speak. The most obvious solution to protecting children's privacy is to restrict Internet access to minors. But if we don't keep children constantly off the streets for fear of what or whom they might encounter, why would we keep children off the Internet for the same reason?

3. No constitutional right to privacy

No constitutional right to privacy, just whatever a legislature comes up with

Melanie L. Hersh 2001 (J.D. Candidate, 2002, Fordham University School of Law) FORDHAM URBAN LAW JOURNAL Vol. 28 No. 6 “IS COPPA A COP OUT? THE CHILD ONLINE PRIVACY PROTECTION ACT AS PROOF THAT PARENTS, NOT GOVERNMENT, SHOULD BE PROTECTING CHILDREN'S INTERESTS ON THE INTERNET” https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2058&context=ulj&httpsredir=1&referer=

There is no broad privacy protection in the United States, despite the fact that the Supreme Court has described privacy as "implicit in the concept of ordered liberty.' There is a collection of diverse privacy laws focusing on specific issues. There is no specific constitutional right to privacy, but rather "various provisions of the United States Constitution limit state and federal government activities affecting the individual's disclosural privacy.

SOLVENCY

1. Using AI to comply with COPPA would violate COPPA

AI algorithms to determine age of users and comply with COPPA would need to use data that would violate COPPA

Stuart Cobb 2021 (J.D. Candidate 2021, University of Houston Law Center ) “It’s COPPA-cated: Protecting Children’s Privacy in the Age of YouTube” HOUSTON LAW REVIEW 19 Apr 2021 <https://houstonlawreview.org/article/22277-it-s-coppa-cated-protecting-children-s-privacy-in-the-age-of-youtube> (accessed 28 Nov 2021) (ellipses in original)

Google is in the business of personalized marketing, and its algorithms are able to accurately predict a user’s attributes such as age, education level, home ownership status, and other interests. Advertising networks boast that they can drill down target audiences to such specificity as to target people who have visited hospitals or medical care facilities. “In other words, these companies possess information that can and should be used to affirmatively identify websites or online services that are child-directed in practice . . . .” The irony of this proposition is that in order for companies to accurately predict the age of a user without implementing an age-gate system, they would be required to engage in passive tracking of children—in violation of current COPPA rules.

2. Age limits don’t work (so AFF Plan raising the COPPA age limit won’t matter)

Facebook has banned underage members for years… but it has no impact

Shannon Finnegan 2020 (J.D. Candidate, 2020, Seton Hall University School of Law) HOW FACEBOOK BEAT THE CHILDREN’S ONLINE PRIVACY PROTECTION ACT:A LOOK INTO THE CONTINUED INEFFECTIVENESS OF COPPA AND HOW TO HOLD SOCIAL MEDIA SITES ACCOUNTABLE IN THE FUTURE 9 Jan 2020 <https://scholarship.shu.edu/cgi/viewcontent.cgi?article=1721&context=shlr> (accessed 28 Nov 2021)

Since COPPA’s enactment in 1998, Instagram and Facebook (collectively “Facebook, Inc.”) have effectively managed to circumvent the requirements imposed on websites under COPPA by simply banning users under the age of thirteen from their websites. This restriction does not adequately prevent children from accessing these websites. Despite this, the Federal Trade Commission (FTC)—the agency tasked with the enforcement of COPPA—has accepted this practice as an acceptable means to determinatively fall outside the scope of COPPA regulations.

Easy for children to bypass COPPA age limits

Shannon Finnegan 2020 (J.D. Candidate, 2020, Seton Hall University School of Law) HOW FACEBOOK BEAT THE CHILDREN’S ONLINE PRIVACY PROTECTION ACT:A LOOK INTO THE CONTINUED INEFFECTIVENESS OF COPPA AND HOW TO HOLD SOCIAL MEDIA SITES ACCOUNTABLE IN THE FUTURE 9 Jan 2020 <https://scholarship.shu.edu/cgi/viewcontent.cgi?article=1721&context=shlr> (accessed 28 Nov 2021)

Children’s technological savviness has also proven to be problematic in the general enforcement of COPPA because children often have the capacity to implement an immediate work-around to avoid any age-control limits that a website operator may have in place. For example, some child-users claim they are older than they actually are so they can access the website.

Easy for websites to bypass COPPA age limits

Shannon Finnegan 2020 (J.D. Candidate, 2020, Seton Hall University School of Law) HOW FACEBOOK BEAT THE CHILDREN’S ONLINE PRIVACY PROTECTION ACT:A LOOK INTO THE CONTINUED INEFFECTIVENESS OF COPPA AND HOW TO HOLD SOCIAL MEDIA SITES ACCOUNTABLE IN THE FUTURE 9 Jan 2020 <https://scholarship.shu.edu/cgi/viewcontent.cgi?article=1721&context=shlr> (accessed 28 Nov 2021)

Essentially, this guideline purports that an operator may only have “actual knowledge” if they have taken affirmative steps to learn the user’s age—it requires the site to ask. This guideline disregards other avenues in which an operator might come to know that it is obtaining information from children on its site. It is under this understanding of “actual knowledge” that Facebook, Inc. has effectively evaded the requirements under COPPA for which they would otherwise be held accountable. Specifically, Facebook has evaded having “actual knowledge” under COPPA by only allowing activation of an account after a user has self-identified as older than thirteen years old. Likewise, Instagram has evaded having “actual knowledge” by simply not asking for the user’s age upon creating an account.

COPPA has no definition of what it means to have “actual knowledge” of underage users

Shannon Finnegan 2020 (J.D. Candidate, 2020, Seton Hall University School of Law) HOW FACEBOOK BEAT THE CHILDREN’S ONLINE PRIVACY PROTECTION ACT:A LOOK INTO THE CONTINUED INEFFECTIVENESS OF COPPA AND HOW TO HOLD SOCIAL MEDIA SITES ACCOUNTABLE IN THE FUTURE 9 Jan 2020 <https://scholarship.shu.edu/cgi/viewcontent.cgi?article=1721&context=shlr> (accessed 28 Nov 2021)

In general, COPPA prohibits any operator of a website directed to children, or any operator that has actual knowledge that it is collecting or maintaining personal information from a child, to collect personal information from a child in a manner that violates the provisions of the act. Although COPPA defines “child,” “operator,” and a “website directed to children,” it fails to explicitly define what it means to have “actual knowledge” of underage users.

DISADVANTAGES

1. Parental complacency

Link: COPPA deceives us into thinking government can protect children online, so parents become complacent

Melanie L. Hersh 2001 (J.D. Candidate, 2002, Fordham University School of Law) FORDHAM URBAN LAW JOURNAL Vol. 28 No. 6 “IS COPPA A COP OUT? THE CHILD ONLINE PRIVACY PROTECTION ACT AS PROOF THAT PARENTS, NOT GOVERNMENT, SHOULD BE PROTECTING CHILDREN'S INTERESTS ON THE INTERNET” (accessed 28 Nov 2021) https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2058&context=ulj&httpsredir=1&referer=

In response to these failed acts, The Child Online Privacy Protection Act of 1998 ("COPPA") was enacted in April 21, 2000 to deal with a different problem-privacy. COPPA grants more freedom to parents by allowing them to choose whether or not their children can access sites, in a way that is similar to regulation of other industries. However, it still places too much of the burden of regulation on website providers and the government, which leads to parental complacency. COPPA is not the answer; it is simply the latest failed attempt at statutory regulation, proving self-regulation to be far preferable to less useful statutes.

Impact: Protection for children gets worse, so the harms get worse

Nancy Willard 2002 (with Responsible Netizen Institute) “Safe and Responsible Use of the Internet: A Guide for Educators” https://www.ntia.doc.gov/legacy/ntiahome/ntiageneral/cipacomments/comments/willard/Chapters.htm

We, as society, are too often willing to believe that a technological "quick fix" will solve the problem. When we believe in the sufficiency of the technological "quick fix," we fail to engage in the more important actions that are necessary to effectively address the underlying concerns. Far too many decision-makers, educators, and parents believe in a myth--that the installation and use of a "technology protection measure" will protect children against access to potentially harmful material and people on the Internet. The unfortunate result of the belief in this myth is false security, which leads to complacency, which results in the failure to adequately protect our children by preparing them to use the Internet in a safe and responsible manner.

Impact: Negative Net Benefits. Complacency under COPPA is worse than having no COPPA at all.

Melanie L. Hersh 2001 (J.D. Candidate, 2002, Fordham University School of Law) FORDHAM URBAN LAW JOURNAL Vol. 28 No. 6 “IS COPPA A COP OUT? THE CHILD ONLINE PRIVACY PROTECTION ACT AS PROOF THAT PARENTS, NOT GOVERNMENT, SHOULD BE PROTECTING CHILDREN'S INTERESTS ON THE INTERNET” (accessed 28 Nov 2021) https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2058&context=ulj&httpsredir=1&referer=

It is turning out to be even more dangerous to have COPPA than to have no regulation at all, because under COPPA, despite appearances, no one, is really in control. Ironically, COPPA gives parents the false impression their role in protecting their children from the Internet is no longer needed. When Bonus.com, a game website for children, asked for parental consent from its members, only forty-nine percent of parents even responded (five percent declined). This website is losing more than half of the children who are interested in participating, and it doesn't even have chat, email, e-commerce, or instant messaging-the potentially dangerous activities against which the law was intended to protect. Even so, parents are likely not doing their part because they feel someone else has already taken on that responsibility.

2. Parental rights violated

Link: COPPA is a clear example of why parents should be in charge of their children, not the government

Melanie L. Hersh 2001 (J.D. Candidate, 2002, Fordham University School of Law) FORDHAM URBAN LAW JOURNAL Vol. 28 No. 6 “IS COPPA A COP OUT? THE CHILD ONLINE PRIVACY PROTECTION ACT AS PROOF THAT PARENTS, NOT GOVERNMENT, SHOULD BE PROTECTING CHILDREN'S INTERESTS ON THE INTERNET” (accessed 28 Nov 2021) https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2058&context=ulj&httpsredir=1&referer=

As with most new legislation, there is praise for what COPPA has done well and criticism for its shortcomings. As was the case when its predecessor laws were enacted, the debate is between those who believe that regulation of the Internet to protect children should come from the government and those who believe the industry should regulate itself in a way that allows families to make individualized choices. COPPA presents this regulation conflict in a new context-privacy. An analysis of the Act and what consequences have arisen since its enactment in April 2000, makes clear that in this new realm of cyberspace, the regulating power has not been placed in the right hands. COPPA's shortcomings demonstrate, once again, that the government should not be regulating the Internet. Instead, this power should be left primarily with parents, with help from the industry

Link & Impact: Parents have the right & duty to decide what their children should be restricted from, not the government

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Lastly, government regulation of the Internet does not allow parents to have enough control over what their children see or hear, and this kind of control has been constitutionally placed in their hands. As the court held in Action for Children's Television v. FCC, letting the government control what channels a child can watch infringes upon the rights of parents to raise their children. In FCC v. Pacifica Foundation, the Court held the government may not control children's access to materials contrary to the wishes of their parents. These two cases stand for the proposition that parents, not governments, need the power to control the actions of children when it comes to interactions with media.

3. First Amendment violations

Link: AFF plan increases censorship of the internet

If not, it doesn’t accomplish anything.

Link: Violates First Amendment

Judge Stewart Dalzell 1996 (United States District Judge of the United States District Court for the Eastern District of Pennsylvania)11 June 1996 opinion of the court in the case of ACLU v. Reno 924 F. Supp. 824 <https://law.justia.com/cases/federal/district-courts/FSupp/929/824/1812782/> (accessed 28 Nov 2021)

As the most participatory form of mass speech yet developed, the Internet deserves the highest protection from governmental intrusion. True it is that many find some of the speech on the Internet to be offensive, and amid the din of cyberspace many hear discordant voices that they regard as indecent. The absence of governmental regulation of Internet content has unquestionably produced a kind of chaos, but as one of plaintiffs' experts put it with such resonance at the hearing:  
What achieved success was the very chaos that the Internet is. The strength of the Internet is that chaos. Hust as the strength of the Internet is chaos, so the strength of our liberty depends upon the chaos and cacophony of the unfettered speech the First Amendment protects.

Impact: Negative Net Benefits. Government regulation of the internet is a cure worse than the disease it’s trying to fix

Melanie L. Hersh 2001 (J.D. Candidate, 2002, Fordham University School of Law) FORDHAM URBAN LAW JOURNAL Vol. 28 No. 6 “IS COPPA A COP OUT? THE CHILD ONLINE PRIVACY PROTECTION ACT AS PROOF THAT PARENTS, NOT GOVERNMENT, SHOULD BE PROTECTING CHILDREN'S INTERESTS ON THE INTERNET” (accessed 28 Nov 2021) (brackets and ellipses in original) https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2058&context=ulj&httpsredir=1&referer=

Self-regulation also has the advantage of allowing government and industry groups to set industry behavioral norms together. An absence of regulation will inevitably cause some chaos, but even the government admits that "[t]he strength of the Internet is that chaos. Although self-regulation is not perfect, and will not deter all crime or prevent all harm, "[c]ertain types of crimes... simply cannot be entirely prevented, short of adoption of repressive forms of order that would constitute a cure worse than the disease.

Impact: Compromising Freedom of Speech is really bad. It’s the foundation of nearly all other human rights

Prof. Stephen J. Wermiel 2018. (professor of practice of constitutional law at American University Washington College of Law) The Ongoing Challenge to Define Free Speech (article is undated but says it was written 227 years after the ratification of the Bill of Rights in 1791) <https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-ongoing-challenge-to-define-free-speech/the-ongoing-challenge-to-define-free-speech/> (accessed 6 Oct 2021)

Freedom of speech, Supreme Court Justice Benjamin Cardozo declared more than 80 years ago, “is the matrix, the indispensable condition of nearly every other form of freedom.” Countless other justices, commentators, philosophers, and more have waxed eloquent for decades over the critically important role that freedom of speech plays in promoting and maintaining democracy.

Impact: Harms of censorship outweigh “benefits” - James Madison 1791

Jackie Mansky 2018 (journalist) The Age-Old Problem of “Fake News” 7 May 2018 SMITHSONIAN MAGAZINE <https://www.smithsonianmag.com/history/age-old-problem-fake-news-180968945/> (accessed 24 Oct 2021)

Whether it's “fake news” fabrications like those promulgated by the Sons of Liberty or “fake news” stories that in reality break down to a difference of opinion, the tradeoffs of having a free independent press has been part of American politics since the beginning. “I think Madison was probably the best on that one when he basically said you have to tolerate some sedition in order to have free communication. You can’t root out all,” says Halperin. Writing anonymously in the *National Gazette* in 1791, Madison speaks to the power of the literati, which he classified as people who are writing things in newspapers and influencing public opinion. There, says Sheehan, he articulates the importance of a free press, partisan though it may be, writing: “They are the cultivators of the human mind—the manufacturers of useful knowledge—the agents of the commerce of ideas—the censors of public manners—the teachers of the arts of life and the means of happiness.”