

March 23, 2006



Senator Max Baucus
511 Hart Senate Office Building
Washington, DC 20510

1634 I Street, NW Suite 1100
Washington, DC 20006
202.637.9800
fax 202.637.0968
<http://www.cdt.org>

Dear Senator Baucus,

We write to express our deep concerns with S. 2426, the Cyber Safety for Kids Act of 2006. The Center for Democracy & Technology (CDT) shares the goal of creating a safe online experience for children. For many years we've worked with our sister organization, the Internet Education Foundation (IEF) to educate parents about the best tools to protect their kids from viewing harmful-to-minors material online. Based on more than a decade of experience in Internet policy, we believe the approach outlined in S. 2426 would dangerously destabilize the Internet's global management structure, violate the constitutional rights of Web site operators and ultimately fail to provide any real protections for children. We urge you to withdraw the legislation before it becomes a rallying cry for those around the world who place control over the Internet in the hands of a Byzantine multi-national bureaucracy that would stifle innovation and threaten the essential freedom of the medium.

Interfering in Internet Governance Will Destabilize Delicate Global Balance

In the past two years, a long-simmering debate over whether the United States exerts too much control over the global Internet reached full boil as developing nations joined with our European allies to call for the creation of a United Nations-like body to oversee the Internet. Backed by the governments of Australia, Argentina and several African nations, U.S. negotiators successfully argued against the proposal at a recent UN summit, but international tensions on this issue remain elevated. Many nations would still like to assume greater control over Internet management, and others like China have signaled their willingness to break the global Internet into fragments by creating their own sovereign networks.

The U.S. Government has played a unique and sensitive role in the management of the Internet. Although American tax dollars funded the creation of the Internet's worldwide addressing system, government leaders wisely concluded by 1998 that the system had become a global resource and needed to be overseen by a more internationally representative body. Since its inception, ICANN has managed the Domain Name System (DNS) with the government serving in an oversight capacity.

Although ICANN has not been perfect, its lightweight, non-governmental oversight has been a key factor in the continued growth and innovation of the Internet. When we in the public interest community argue in international forums for preserving the ICANN structure, one of our strongest arguments has been that the U.S. Government takes a deliberately hands-off approach to overseeing the internationally representative body. This approach is critical to the continued, long-term viability of the ICANN structure and is one from which the U.S. Government cannot afford to deviate.

If the U.S. Congress were to order ICANN to create a new Internet domain -- something no other country has the power to do -- the vision of ICANN as a global, non-governmental body would be shattered forever. Indeed, the mere introduction of S. 2426 has provided ammunition for those committed to imposing multilateral governmental control over Internet communications. For this reason alone, we urge you to withdraw the measure.

S. 2426 Violates The First Amendment

If S. 2426 passed as written, it would almost certainly face a constitutional challenge on First Amendment grounds. We are convinced such a challenge would succeed. The bulk of the speech that S. 2426 targets is lawful, and the courts have been clear that the government cannot force speakers to designate their speech with labels such as “harmful to minors.”

Moreover, the proposed statute would burden speech that is clearly valuable for adults but is far removed from the type of content that an “xxx” label would suggest.

Finally, as detailed in the following section, S. 2426 would not be effective at protecting children online, and thus the government would be unable to carry its burden under First Amendment jurisprudence to demonstrate that the law would be effective in achieving its goals.

Adults-Only Domain Won't Protect Kids

Compounding the serious legal and diplomatic flaws with S. 2426 is the fact that it would likely do very little to protect kids from harmful material on the Internet.

The Child Online Protection Act (COPA) Commission, a bipartisan, multidisciplinary panel appointed by Congress to determine the best ways to protect kids from harmful-to-minors material declined to endorse the creation of Internet "red-light districts" like .xxx in a report issued to Congress in 2000.

More recently, following two years of research, the National Academy of Science issued a major report -- "Youth, Pornography and the Internet" -- detailing how U.S. criminal laws would have very little impact on the hundreds of thousands of sexually-oriented web sites that are hosted outside of the United States. Even if one imagines that every U.S.-based provider of “adult” content moved that material into the .xxx domain, overseas

sites would not, and thus online sexual content would continue to be readily available to children in the U.S. If anything, S. 2426 may give parents a false sense of security, if they are led to believe that they can protect their kids from adult material by simply restricting access to Web addresses ending in ".xxx."

There is a far better way to protect children on the Internet. The COPA Commission urged Congress to encourage and promote the distribution of Internet filtering software and Web monitoring tools that give parents the power to personally tailor their kids' Internet experiences. Similarly, the National Academy of Science report concluded that a combination of education, technology tools like filtering, and enforcement of existing laws was the appropriate way to protect kids online. Resources like GetNetWise (<http://www.getnetwise.org>) and OnGuard Online (<http://onguardonline.gov>) provide tips and links to tools parents can use to protect their kids. Congress could take a major step toward keeping kids safer by helping to endorse and promote such programs, and by implementing the educational recommendations of the National Academy of Science.

Although written with the best intentions, S. 2426 would have severe unintended consequences if it became law. By its mere introduction, the bill has already weakened the position of those seeking to preserve the lightweight, nongovernmental management structure that has served the Internet so well. The measure would fail to protect kids online and would almost certainly be struck down for violating the First Amendment rights of Web site operators. We again urge you to withdraw the measure, and to work with the Internet community on common sense proposals to protect kids online.

Sincerely

Leslie Harris
Executive Director
Center for Democracy & Technology (CDT)
(202) 637-9800

cc: Senator Mark Pryor