



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 20, 2006

The Honorable J. Dennis Hastert
Speaker
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

As you may be aware, this morning the Attorney General announced that today the Administration would transmit to Congress a new legislative proposal, the Child Pornography and Obscenity Prevention Amendments of 2006. This proposal, which is attached for your convenience, will help to ensure that electronic communications providers report the presence of child pornography on their systems by strengthening the criminal penalties for failure to report it. It will also prevent people from inadvertently stumbling across pornographic images on the Internet.

If we can be of further assistance, please do not hesitate to contact this office. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this package.

Sincerely,

A handwritten signature in black ink that reads "William E. Moschella".

William E. Moschella
Assistant Attorney General

Attachment

A BILL

To enhance prosecution of child pornography by strengthening section 13032 of title 42, United States Code, to ensure that child pornography is effectively reported, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE.

- (1) Short Title- This Act may be cited as the 'Child Pornography and Obscenity Prevention Amendments of 2006'.
- (2) Table of Contents- The table of contents for this Act is as follows:
 - Sec. 1. Short title.
 - Sec. 2. Findings.
 - Sec. 3. Strengthening section 13032 of title 42 to ensure that child pornography is effectively reported.
 - Sec. 4. Requiring that warning labels be placed on commercial websites containing sexually explicit material.
 - Sec. 5. Prohibiting the embedding of words or images on a website in order to deceive individuals into viewing obscenity or material harmful to minors.

SEC. 2. FINDINGS.

Congress makes the following findings:

- (1) The importance of electronic communications service providers reporting the presence of child pornography on the Internet to the CyberTipline at the National Center for Missing and Exploited Children:
 - (A) A substantial interstate market in child pornography exists, including not only a multimillion dollar industry, but also a nationwide network of individuals openly advertising their desire to exploit children and to traffic in child pornography. Many of these individuals distribute child pornography with the expectation of receiving other child pornography in return.
 - (B) The interstate market in child pornography is carried on to a substantial extent through the mails and other instrumentalities of interstate and foreign commerce, such as the Internet. The advent of the Internet has greatly increased the ease of transporting, distributing, receiving, and advertising child pornography in interstate commerce. The advent of



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digital cameras and digital video cameras, as well as videotape cameras, has greatly increased the ease of producing child pornography. The advent of inexpensive computer equipment with the capacity to store large numbers of digital images of child pornography has greatly increased the ease of possessing child pornography. Taken together, these technological advances have had the unfortunate result of greatly increasing the interstate market in child pornography.

- (C) Ensuring that electronic communication service providers effectively report violations of the child pornography laws to the CyberTipline at the National Center for Missing and Exploited Children, which in turn will forward that report to law enforcement agencies designated by the Attorney General, will reduce both supply and demand in the interstate market for child pornography and will enhance the prosecution of such offenses.
- (2) The importance of requiring that warning labels be placed on commercial websites that contain sexually explicit material:
- (A) The World Wide Web contains a substantial amount of sexually explicit content that is inappropriate for children to view.
 - (B) Many such commercial websites may accidentally be visited by children or other individuals who do not wish to view sexually explicit content.
 - (C) The provision of information on each page of a commercial website that contains sexually explicit material indicating that such material is present will enable filtering software and other tools identify web sites to place on their list of sites to be blocked by the software to more effectively protect children and other individuals from inadvertently viewing material that they do not wish to view.
 - (D) Requiring websites to provide information about the presence of sexually explicit material on their “home page” will allow individuals to make an individualized decision about whether to view such material and will protect them from inadvertently being subjected to such material.
- (3) The importance of prohibiting the embedding of words or images on a website in order to deceive individuals into viewing obscenity or to deceive minors into viewing material harmful to minors:
- (A) Many websites containing sexually explicit material attempt to lure unsuspecting victims, primarily children, into visiting these sites by embedding commonly used search terms or phrases within the source code of the website.

- (B) Luring unsuspecting victims to such commercial websites is a form of fraud that has a substantial impact on interstate commerce.
- (C) Prohibiting the use of such misleading and deceptive words or images will serve to reduce the instance of such fraudulent activity.

SEC. 3. STRENGTHENING SECTION 13032 OF TITLE 42 TO ENSURE THAT CHILD PORNOGRAPHY IS EFFECTIVELY REPORTED.

Section 13032 of title 42 of the United States Code is amended—

(1) By amending paragraph (4) of subsection (b) to read as follows:

- (4) Failure to report.
 - (A) A provider of electronic communication services or remote computing services described in paragraph (1) who knowingly and willfully fails to make a report under that paragraph shall be fined—
 - (i) in the case of an initial failure to make a report, not more than \$ 150,000; and
 - (ii) in the case of any second or subsequent failure to make a report, not more than \$ 300,000.

SEC. 4. REQUIRING THAT WARNING LABELS BE PLACED ON COMMERCIAL WEBSITES CONTAINING SEXUALLY EXPLICIT MATERIAL

Title 15 of the United States Code is amended by adding the following—

§ 7801. Requirement to place warning labels on commercial websites containing sexually explicit material.

(1) **In general**

No person who operates a website located on the Internet where such website is primarily operated for commercial purposes, in or affecting interstate or foreign commerce, may knowingly, and with knowledge of the character of the material, place on that website sexually explicit material, and—

- (A) fail to include on each page of the website that contains sexually explicit material, the marks and notices prescribed by the Commission under this subsection; and

- (B) fail to provide that the matter on the website that is initially viewable, absent any further actions by the viewer, does not include any sexually explicit material.

(2) Prescription of marks and notices

Not later than 90 days after the enactment of this section, the Commission shall, in consultation with the Attorney General, provide by regulation clearly identifiable marks or notices to be included in the code, if technologically feasible, or if not feasible on the pages, of websites that contain sexually explicit material in order to inform the viewer of that fact and to facilitate the filtering of such pages.

(3) Inapplicability to carriers and other service providers

This section shall not apply to any person to the extent that person is—

- (A) a telecommunications carrier engaged in the provision of a telecommunications service;
- (B) a person engaged in the business of providing an Internet access service;
- (C) similarly engaged in the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication made by another person, without selection or alteration of the content of the communication, except that such person's deletion of a particular communication or material made by another person in a manner consistent with any applicable law or regulation shall not constitute such selection or alteration of the content of the communication.

(4) Definitions

For the purposes of this section, the term—

- (A) “Commission” means the Federal Trade Commission;
- (B) “website” means any collection of material placed in a computer server-based file archive so that it is publicly accessible, over the Internet, using hypertext transfer protocol or any successor protocol except that the term does not include any collection of material where access to sexually explicit material is restricted to a specific set of individuals through the provision of a password or through another access restriction mechanism;
- (C) “sexually explicit material” means any material that depicts sexually explicit conduct (as that term is defined in subsection (2)(A) of section 2256 of title 18), unless the depiction constitutes a small and insignificant

part of the whole, the remainder of which is not primarily devoted to sexual matters;

- (D) "Internet" means the combination of computer facilities and electromagnetic transmission media, and related equipment and software, comprising the interconnected worldwide network of computer networks that employ the Transmission Control Protocol/Internet Protocol or any successor protocol to transmit information;
- (E) "Internet access service" means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. Such term does not include telecommunications services.

(5) Penalties

- (A) Whoever violates paragraph (1) shall be fined under title 18, or imprisoned not more than 5 years, or both.

SEC. 5. PROHIBITING THE EMBEDDING OF WORDS OR IMAGES ON A WEBSITE IN ORDER TO DECIEVE INDIVIDUALS INTO VIEWING OBSCENITY OR MATERIAL HARMFUL TO MINORS.

Title 18 of the United States Code is amended by adding the following—

§ 2252C. Misleading Words or Digital Images on the Internet.

- (a) Whoever knowingly embeds words or digital images into the source code of a website with the intent to deceive a person into viewing material constituting obscenity shall be fined under this title or imprisoned not more than 2 years, or both.
- (b) Whoever knowingly embeds words or digital images into the source code of a website with the intent to deceive a minor into viewing material harmful to minors on the Internet shall be fined under this title or imprisoned not more than 4 years, or both.
- (c) For the purposes of this section, a word or digital image that clearly indicates the sexual content of the site, such as "sex" or "porn", is not misleading.
- (d) For the purposes of this section, the term "material that is harmful to minors" means any communication, consisting of nudity, sex, or excretion, that, taken as a whole and with reference to its context—

- (1) predominantly appeals to a prurient interest of minors;
 - (2) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
 - (3) lacks serious literary, artistic, political, or scientific value for minors.
- (e) For the purposes of subsection (d), the term "sex" means acts of masturbation, sexual intercourse, or physical contact with a person's genitals, or the condition of human male or female genitals when in a state of sexual stimulation or arousal.
- (f) For the purposes of this section, the term "source code" means the combination of text and other characters comprising the content, both viewable and non-viewable, of a web page, including but not limited to any website publishing language, programming language, protocol or functional content, as well as any successor languages or protocols.

Brief Section-by-Section Summary of Proposed Legislation:

Child Pornography and Obscenity Prevention Amendments of 2006

Section 1:

Sets forth the short title and table of contents for the legislation.

Section 2:

Makes findings regarding the importance of: (1) reporting the presence of child pornography on the Internet; (2) requiring the placement of warning labels on commercial websites containing sexually explicit material; and (3) prohibiting the embedding of words or images that are intended to deceive individuals into unintentionally viewing sexually explicit material.

Section 3:

Section 3 would amend existing provisions of the law that require certain providers of electronic communications services to report violations of the child pornography laws. Current law provides that a provider who knowingly and willfully fails to report such violations shall be subject to a criminal fine of up to \$50,000 for the initial failure to report and \$100,000 for each subsequent failure to report. Prosecutors and law enforcement sources report that this criminal provision has been virtually impossible to enforce because of the particular mens rea requirement and the low amount of the potential penalty. This legislation would triple the criminal fines available for knowing and willful failures to report, making the available fines \$150,000 for the initial violation and \$300,000 for each subsequent violation.

Section 4:

Section 4 requires all websites that are operated primarily for commercial purposes to include specific marks and notices on every page of the website that contains sexually explicit material. The legislation also requires that the material initially viewable by any individual on a website not contain any sexually explicit material absent further actions (e.g., an additional click) by the viewer. Sexually explicit material is defined as material depicting sexually explicit conduct as that term is defined in the criminal code (i.e., sexual intercourse; bestiality; masturbation; sadistic or masochistic abuse; or lascivious exhibition of the genitals or pubic area of any person). Websites where access to sexually explicit material is restricted to specific individuals (e.g., password protected websites) are not covered by this legislation. The specifications for the relevant marks and notices are to be provided by the Federal Trade Commission in consultation with the Attorney General. The legislation employs language similar to that of the CAN-SPAM Act, 15 U.S.C. § 7704(d), in order to require the placement of warning labels on websites. The legislation provides for a criminal fine and up to five years in prison, or both, for violations of this provision.

Section 5:

Section 5 would prohibit the practice often engaged in by certain sexually explicit websites of hiding innocuous terms in a website's hypertext markup language so that a search for those terms on the Internet yields links to the sexually explicit websites. For example, the owner of a website called, say, "pornphotos.com", can hide the words, "Disney," "Bob the Builder," and "Barbie" in the computer code used to program the website, so that a search through Google for sites about Disney, Bob the Builder, or Barbie would bring up "pornphotos.com" in addition to "disney.com," "bobthebuilder.com" or "Barbie.com." A child or other individual who was not interested in or expecting to come across pornography would then unwittingly be directed to such material. The text of the section is similar to that of 18 U.S.C. § 2252B, the Misleading Domain Names Act, which prohibits use of domain names, such as "www.dinseyland.com" and "www.bobthebiulder.com," that are intended to draw children and others to sexually explicit sites if they make typing errors when searching for a site. The legislation would prohibit an individual from knowingly acting with the intent to deceive another individual into viewing obscene material and provides for a criminal fine and up to two years in prison, or both, for violations of this provision. The legislation would also prohibit an individual from knowingly acting with the intent to deceive a minor into viewing material harmful to minors and provides for a criminal fine and up to four years in prison, or both, for violations of this provision.