

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2104

To amend section 1464 of title 18, United States Code, to punish transmission by computer of indecent material to minors.

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IN THE HOUSE OF REPRESENTATIVES

JULY 24, 1995

Mr. SMITH of New Jersey introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend section 1464 of title 18, United States Code, to punish transmission by computer of indecent material to minors.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protection of Children  
5 From Computer Pornography Act of 1995”.

6 **SEC. 2. TRANSMISSION BY COMPUTER OF INDECENT MATE-**  
7 **RIAL TO MINORS.**

8 (a) OFFENSES.—Section 1464 of title 18, United  
9 States Code, is amended—

1 (1) in the heading by striking “**Broadcast-**  
2 **ing obscene language**” and inserting “**Utter-**  
3 **ance of indecent or profane language by**  
4 **radio communication; transmission to**  
5 **minor of indecent material from remote**  
6 **computer facility, electronic communica-**  
7 **tions service, or electronic bulletin board**  
8 **service**”;

9 (2) by striking “Whoever” and inserting “(a)  
10 UTTERANCE OF INDECENT OR PROFANE LANGUAGE  
11 BY RADIO COMMUNICATION.—A person who”;

12 (3) by adding at the end the following:

13 “(b) TRANSMISSION TO MINOR OF INDECENT MATE-  
14 RIAL FROM REMOTE COMPUTER FACILITY, ELECTRONIC  
15 COMMUNICATIONS SERVICE, OR ELECTRONIC BULLETIN  
16 BOARD SERVICE PROVIDER.—

17 “(1) DEFINITIONS.—As used in this sub-  
18 section—

19 “(A) the term ‘remote computer facility’  
20 means a facility that—

21 “(i) provides to the public computer  
22 storage or processing services by means of  
23 an electronic communications system; and

1           “(ii) permits a computer user to  
2           transfer electronic or digital material from  
3           the facility to another computer;

4           “(B) the term ‘electronic communications  
5           service’ means any wire, radio, electromagnetic,  
6           photo optical, or photoelectronic system for the  
7           transmission of electronic communications, and  
8           any computer facility or related electronic  
9           equipment for the electronic storage of such  
10          communications, that permits a computer user  
11          to transfer electronic or digital material from  
12          the service to another computer; and

13          “(C) the term ‘electronic bulletin board  
14          service’ means a computer system, regardless of  
15          whether operated for commercial purposes, that  
16          exists primarily to provide remote or on-site  
17          users with digital images, or that exists pri-  
18          marily to permit remote or on-site users to par-  
19          ticipate in or create on-line discussion groups or  
20          conferences.

21          “(2) TRANSMISSION BY REMOTE COMPUTER FA-  
22          CILITY OPERATOR, ELECTRONIC COMMUNICATIONS  
23          SERVICE PROVIDER, OR ELECTRONIC BULLETIN  
24          BOARD SERVICE PROVIDER.—A remote computer fa-  
25          cility operator, electronic communications service

1 provider, electronic bulletin board service provider  
2 who, with knowledge of the character of the mate-  
3 rial, knowingly—

4 “(A) transmits or offers or attempts to  
5 transmit from the remote computer facility,  
6 electronic communications service, or electronic  
7 bulletin board service provider a communication  
8 that contains indecent material to a person  
9 under 18 years of age; or

10 “(B) causes or allows to be transmitted  
11 from the remote computer facility, electronic  
12 communications service, or electronic bulletin  
13 board a communication that contains indecent  
14 material to a person under 18 years of age or  
15 offers or attempts to do so,

16 shall be fined in accordance with this title, impris-  
17 oned not more than 5 years, or both.

18 “(3) PERMITTING ACCESS TO TRANSMIT INDE-  
19 CENT MATERIAL TO A MINOR.—Any remote com-  
20 puter facility operator, electronic communications  
21 service provider, or electronic bulletin board service  
22 provider who willfully permits a person to use a re-  
23 mote computing service, electronic communications  
24 service, or electronic bulletin board service that is  
25 under the control of that remote computer facility

1 operator, electronic communications service provider,  
2 or electronic bulletin board service provider, to  
3 knowingly or recklessly transmit indecent material  
4 from another remote computing service, electronic  
5 communications service, or electronic bulletin board  
6 service, to a person under 18 years of age, shall be  
7 fined not more than \$10,000, imprisoned not more  
8 than 2 years, or both.

9 “(4) THREE-JUDGE COURT FOR CIVIL AC-  
10 TION.—Any civil action challenging the constitu-  
11 tionality of any provision of this subsection shall be  
12 heard and determined by a district court of three  
13 judges in accordance with section 2284 of title 28,  
14 United States Code.”.

15 (b) CLERICAL AMENDMENT.—The item relating to  
16 section 1464 in the table of sections at the beginning of  
17 chapter 71 of title 18, United States Code, is amended  
18 to read as follows:

“1464. Utterance of indecent or profane language by radio communication;  
transmission to minor of indecent material from remote com-  
puter facility.”.

19 (c) REPORT BY ATTORNEY GENERAL.—

20 (1) IN GENERAL.—Not later than 2 years after  
21 the date of the enactment of this Act, the Attorney  
22 General shall report to the Congress on the state of  
23 the technology that would permit parents to block or

1 otherwise filter the transmission of indecent material  
2 to minors.

3 (2) RECOMMENDATIONS.—The report shall in-  
4 clude recommendations regarding whether the use of  
5 blocking or filtering technology by a remote com-  
6 puter facility operator, electronic communications  
7 service provider, or electronic bulletin board service  
8 provider should be treated as an affirmative defense  
9 to prosecution under section 1464(b) of title 18,  
10 United States Code, as added by section 2(a)(3).

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