

Union Calendar No. 441

105TH CONGRESS
2^D SESSION

H. R. 3783

[Report No. 105-775]

To amend section 223 of the Communications Act of 1934 to require persons who are engaged in the business of selling or transferring, by means of the World Wide Web, material that is harmful to minors to restrict access to such material by minors, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 30, 1998

Mr. OXLEY (for himself, Mr. GREENWOOD, Mr. MANTON, Mr. GILLMOR, Mr. DEAL of Georgia, Mr. WHITFIELD, Mr. NORWOOD, Mrs. CUBIN, Mr. BURR of North Carolina, and Mr. UPTON) introduced the following bill; which was referred to the Committee on Commerce

OCTOBER 5, 1998

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on April 30, 1998]

A BILL

To amend section 223 of the Communications Act of 1934 to require persons who are engaged in the business of selling or transferring, by means of the World Wide Web, material that is harmful to minors to restrict access to such material by minors, and for other purposes.

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 “Child Online Protection*
5 *Act”.*

6 **SEC. 2. CONGRESSIONAL FINDINGS.**

7 *The Congress finds that—*

8 *(1) while custody, care, and nurture of the child*
9 *resides first with the parent, the widespread availabil-*
10 *ity of the Internet presents opportunities for minors*
11 *to access materials through the World Wide Web in a*
12 *manner that can frustrate parental supervision or*
13 *control;*

14 *(2) the protection of the physical and psycho-*
15 *logical well-being of minors by shielding them from*
16 *materials that are harmful to them is a compelling*
17 *governmental interest;*

18 *(3) to date, while the industry has developed in-*
19 *novative ways to help parents and educators restrict*
20 *material that is harmful to minors through parental*
21 *control protections and self-regulation, such efforts*
22 *have not provided a national solution to the problem*
23 *of minors accessing harmful material on the World*
24 *Wide Web;*

1 (4) a prohibition on the distribution of material
2 harmful to minors, combined with legitimate defenses,
3 is currently the most effective means by which to sat-
4 isfy the compelling government interest; and

5 (5) notwithstanding the existence of protections
6 that limit the distribution over the World Wide Web
7 of material that is harmful to minors, parents, edu-
8 cators, and industry must continue efforts to protect
9 children from dangers posed by the Internet.

10 **SEC. 3. REQUIREMENT TO RESTRICT ACCESS BY MINORS TO**
11 **MATERIALS SOLD BY MEANS OF THE WORLD**
12 **WIDE WEB THAT ARE HARMFUL TO MINORS.**

13 Part I of title II of the Communications Act of 1934
14 (47 U.S.C. 201 et seq.) is amended by adding at the end
15 the following new section:

16 **“SEC. 231. RESTRICTION OF ACCESS BY MINORS TO MATE-**
17 **RIALS SOLD BY MEANS OF WORLD WIDE WEB**
18 **THAT ARE HARMFUL TO MINORS.**

19 “(a) **REQUIREMENT TO RESTRICT ACCESS.**—

20 “(1) **PROHIBITED CONDUCT.**—Whoever, in inter-
21 state or foreign commerce, by means of the World
22 Wide Web, knowingly makes any communication for
23 commercial purposes that includes any material that
24 is harmful to minors, without restricting access to
25 such material by minors pursuant to subsection (c),

1 *shall be fined not more than \$50,000, imprisoned not*
2 *more than 6 months, or both.*

3 “(2) *INTENTIONAL VIOLATIONS.*—*In addition to*
4 *the penalties under paragraph (1), whoever inten-*
5 *tionally violates such paragraph shall be subject to a*
6 *fine of not more than \$50,000 for each violation. For*
7 *purposes of this paragraph, each day of violation*
8 *shall constitute a separate violation.*

9 “(3) *CIVIL PENALTY.*—*In addition to the pen-*
10 *alties under paragraphs (1) and (2), whoever violates*
11 *paragraph (1) shall be subject to a civil penalty of*
12 *not more than \$50,000 for each violation. For pur-*
13 *poses of this paragraph, each day of violation shall*
14 *constitute a separate violation.*

15 “(b) *INAPPLICABILITY OF CARRIERS AND OTHER*
16 *SERVICE PROVIDERS.*—*For purposes of subsection (a), a*
17 *person shall not be considered to make any communication*
18 *for commercial purposes to the extent that such person is—*

19 “(1) *a telecommunications carrier engaged in the*
20 *provision of a telecommunications service;*

21 “(2) *a person engaged in the business of provid-*
22 *ing an Internet access service;*

23 “(3) *a person engaged in the business of provid-*
24 *ing an Internet information location tool; or*

1 “(4) *similarly engaged in the transmission, stor-*
2 *age, retrieval, hosting, formatting, or translation (or*
3 *any combination thereof) of a communication made*
4 *by another person, without selection or alteration of*
5 *the content of the communication, except that such*
6 *person’s deletion of a particular communication or*
7 *material made by another person in a manner con-*
8 *sistent with subsection (c) or section 230 shall not*
9 *constitute such selection or alteration of the content of*
10 *the communication.*

11 “(c) *AFFIRMATIVE DEFENSE.—*

12 “(1) *DEFENSE.—It is an affirmative defense to*
13 *prosecution under this section that the defendant, in*
14 *good faith, has restricted access by minors to material*
15 *that is harmful to minors—*

16 “(A) *by requiring use of a credit card, debit*
17 *account, adult access code, or adult personal*
18 *identification number; or*

19 “(B) *by any other reasonable measures that*
20 *are feasible under available technology.*

21 “(2) *PROTECTION FOR USE OF DEFENSES.—No*
22 *cause of action may be brought in any court or ad-*
23 *ministrative agency against any person on account of*
24 *any activity that is not in violation of any law pun-*
25 *ishable by criminal or civil penalty, and that the per-*

1 *son has taken in good faith to implement a defense*
2 *authorized under this subsection or otherwise to re-*
3 *strict or prevent the transmission of, or access to, a*
4 *communication specified in this section.*

5 *“(d) PRIVACY PROTECTION REQUIREMENTS.—*

6 *“(1) DISCLOSURE OF INFORMATION LIMITED.—A*
7 *person making a communication described in sub-*
8 *section (a)—*

9 *“(A) shall not disclose any information col-*
10 *lected for the purposes of restricting access to*
11 *such communications to individuals 17 years of*
12 *age or older without the prior written or elec-*
13 *tronic consent of—*

14 *“(i) the individual concerned, if the in-*
15 *dividual is an adult; or*

16 *“(ii) the individual’s parent or guard-*
17 *ian, if the individual is under 17 years of*
18 *age; and*

19 *“(B) shall take such actions as are nec-*
20 *essary to prevent unauthorized access to such in-*
21 *formation by a person other than the person*
22 *making such communication and the recipient of*
23 *such communication.*

1 “(2) *EXCEPTIONS.*—A person making a commu-
2 nication described in subsection (a) may disclose such
3 information if the disclosure is—

4 “(A) necessary to make the communication
5 or conduct a legitimate business activity related
6 to making the communication; or

7 “(B) made pursuant to a court order au-
8 thorizing such disclosure.

9 “(e) *DEFINITIONS.*—For purposes of this subsection,
10 the following definitions shall apply:

11 “(1) *BY MEANS OF THE WORLD WIDE WEB.*—The
12 term ‘by means of the World Wide Web’ means by
13 placement of material in a computer server-based file
14 archive so that it is publicly accessible, over the Inter-
15 net, using hypertext transfer protocol or any successor
16 protocol.

17 “(2) *COMMERCIAL PURPOSES; ENGAGED IN THE*
18 *BUSINESS.*—

19 “(A) *COMMERCIAL PURPOSES.*—A person
20 shall be considered to make a communication for
21 commercial purposes only if such person is en-
22 gaged in the business of making such commu-
23 nications.

24 “(B) *ENGAGED IN THE BUSINESS.*—The
25 term ‘engaged in the business’ means that the

1 *person who makes a communication, or offers to*
2 *make a communication, by means of the World*
3 *Wide Web, that includes any material that is*
4 *harmful to minors, devotes time, attention, or*
5 *labor to such activities, as a regular course of*
6 *such person's trade or business, with the objective*
7 *of earning a profit as a result of such activities*
8 *(although it is not necessary that the person*
9 *make a profit or that the making or offering to*
10 *make such communications be the person's sole*
11 *or principal business or source of income). A*
12 *person may be considered to be engaged in the*
13 *business of making, by means of the World Wide*
14 *Web, communications for commercial purposes*
15 *that include material that is harmful to minors,*
16 *only if the person knowingly causes the material*
17 *that is harmful to minors to be posted on the*
18 *World Wide Web or knowingly solicits such ma-*
19 *terial to be posted on the World Wide Web.*

20 “(3) *INTERNET.*—*The term ‘Internet’ means the*
21 *combination of computer facilities and electro-*
22 *magnetic transmission media, and related equipment*
23 *and software, comprising the interconnected world-*
24 *wide network of computer networks that employ the*

1 *Transmission Control Protocol/Internet Protocol or*
2 *any successor protocol to transmit information.*

3 “(4) *INTERNET ACCESS SERVICE.*—*The term*
4 *‘Internet access service’ means a service that enables*
5 *users to access content, information, electronic mail,*
6 *or other services offered over the Internet, and may*
7 *also include access to proprietary content, informa-*
8 *tion, and other services as part of a package of serv-*
9 *ices offered to consumers. Such term does not include*
10 *telecommunications services.*

11 “(5) *INTERNET INFORMATION LOCATION TOOL.*—
12 *The term ‘Internet information location tool’ means a*
13 *service that refers or links users to an online location*
14 *on the World Wide Web. Such term includes direc-*
15 *tories, indices, references, pointers, and hypertext*
16 *links.*

17 “(6) *MATERIAL THAT IS HARMFUL TO MINORS.*—
18 *The term ‘material that is harmful to minors’ means*
19 *any communication, picture, image, graphic image*
20 *file, article, recording, writing, or other matter of any*
21 *kind that—*

22 “(A) *the average person, applying contem-*
23 *porary community standards, would find, taking*
24 *the material as a whole and with respect to mi-*

1 *nors, that such material is designed to appeal to*
2 *or panders to the prurient interest;*

3 “(B) *depicts, describes, or represents, in a*
4 *manner patently offensive with respect to mi-*
5 *nors, an actual or simulated sexual act or sexual*
6 *contact, an actual or simulated normal or per-*
7 *verted sexual act, or a lewd exhibition of the*
8 *genitals or female breast; and*

9 “(C) *taken as a whole, lacks serious lit-*
10 *erary, artistic, political, or scientific value for*
11 *minors.*

12 “(7) *MINOR.—The term ‘minor’ means any per-*
13 *son under 17 years of age.”.*

14 **SEC. 4. NOTICE REQUIREMENT.**

15 (a) *NOTICE.—Section 230 of the Communications Act*
16 *of 1934 (47 U.S.C. 230) is amended—*

17 (1) *by redesignating subsections (d) and (e) as*
18 *subsections (e) and (f), respectively;*

19 (2) *by inserting after subsection (c) the following*
20 *new subsection:*

21 “(d) *OBLIGATIONS OF INTERACTIVE COMPUTER SERV-*
22 *ICE.—A provider of interactive computer service shall, at*
23 *the time of entering an agreement with a customer for the*
24 *provision of interactive computer service and in a manner*
25 *deemed appropriate by the provider, notify such customer*

1 *that parental control protections (such as computer hard-*
2 *ware, software, or filtering services) are commercially avail-*
3 *able that may assist the customer in limiting access to ma-*
4 *terial that is harmful to minors. Such notice shall identify,*
5 *or provide the customer with access to information identify-*
6 *ing, current providers of such protections.”.*

7 (b) *CONFORMING AMENDMENT.—Section 223(h)(2) of*
8 *the Communications Act of 1934 (47 U.S.C. 223(h)(2)) is*
9 *amended by striking “230(e)(2)” and inserting “230(f)(2)”.*

10 **SEC. 5. STUDY BY COMMISSION ON ONLINE CHILD PROTEC-**
11 **TION.**

12 (a) *ESTABLISHMENT.—There is hereby established a*
13 *temporary Commission to be known as the Commission on*
14 *Online Child Protection (in this section referred to as the*
15 *“Commission”) for the purpose of conducting a study under*
16 *this section regarding methods to help reduce access by mi-*
17 *norors to material that is harmful to minors on the Internet.*

18 (b) *MEMBERSHIP.—The Commission shall be com-*
19 *posed of 17 members, as follows:*

20 (1) *INDUSTRY MEMBERS.—The Commission shall*
21 *include—*

22 (A) *2 members who are engaged in the busi-*
23 *ness of providing Internet filtering or blocking*
24 *services or software;*

1 (B) 2 members who are engaged in the busi-
2 ness of providing Internet access services;

3 (C) 2 members who are engaged in the busi-
4 ness of providing labeling or ratings services;

5 (D) 2 members who are engaged in the busi-
6 ness of providing Internet portal or search serv-
7 ices;

8 (E) 2 members who are engaged in the busi-
9 ness of providing domain name registration serv-
10 ices; and

11 (F) 4 members who are engaged in the busi-
12 ness of making content available over the Inter-
13 net.

14 Of the members of the Commission by reason of each
15 subparagraph of this paragraph, an equal number
16 shall be appointed by the Speaker of the House of
17 Representatives and by the Majority Leader of the
18 Senate.

19 (2) *EX OFFICIO MEMBERS.*—The Commission
20 shall include the following officials:

21 (A) The Assistant Secretary (or the Assist-
22 ant Secretary's designee).

23 (B) The Attorney General (or the Attorney
24 General's designee).

1 (C) *The Chairman of the Federal Trade*
2 *Commission (or the Chairman’s designee).*

3 (c) *STUDY.*—

4 (1) *IN GENERAL.*—*The duty of the Commission*
5 *shall be to conduct a study (and submit a report*
6 *under subsection (d) on the study) to identify techno-*
7 *logical or other methods, if any, to help reduce access*
8 *by minors to material that is harmful to minors on*
9 *the Internet that—*

10 (A) *the Commission determines meet the re-*
11 *quirements for use as affirmative defenses for*
12 *purposes of section 231(c) of the Communica-*
13 *tions Act of 1934 (as added by this Act); or*

14 (B) *may be used in any other manner to*
15 *help reduce such access.*

16 *Any methods so identified shall be used as the basis*
17 *for making legislative recommendations to the Con-*
18 *gress under subsection (d)(3).*

19 (2) *SPECIFIC METHODS.*—*In carrying out the*
20 *study, the Commission shall identify and analyze*
21 *various technological tools and methods for protecting*
22 *minors from material that is harmful to minors,*
23 *which shall include—*

1 (A) a common resource for parents to use to
2 help protect minors (such as a “one-click-away”
3 resource);

4 (B) filtering or blocking software or serv-
5 ices;

6 (C) labeling or rating systems;

7 (D) age verification systems;

8 (E) the establishment of a domain name for
9 posting of any material that is harmful to mi-
10 nors; and

11 (F) any other existing or proposed tech-
12 nologies or methods for reducing access by mi-
13 nors to such material.

14 (3) ANALYSIS.—In analyzing technologies and
15 other methods identified pursuant to paragraph (2),
16 the Commission shall examine—

17 (A) the cost of such technologies and meth-
18 ods;

19 (B) the effects of such technologies and
20 methods on law enforcement entities;

21 (C) the effects of such technologies and
22 methods on privacy;

23 (D) the extent to which material that is
24 harmful to minors is globally distributed and the

1 *effect of such technologies and methods on such*
2 *distribution; and*

3 *(E) the accessibility of such technologies and*
4 *methods to parents.*

5 *(d) REPORT.—Not later than 1 year after the enact-*
6 *ment of this Act, the Commission shall submit a report to*
7 *the Congress containing the results of the study under this*
8 *section, which shall include—*

9 *(1) a description of the technologies and methods*
10 *identified by the study and the results of the analysis*
11 *of each such technology and method;*

12 *(2) the conclusions and recommendations of the*
13 *Commission regarding each such technology or meth-*
14 *od;*

15 *(3) recommendations for legislative or adminis-*
16 *trative actions to implement the conclusions of the*
17 *committee; and*

18 *(4) a description of the technologies or methods*
19 *identified by the study that may be used as affirma-*
20 *tive defenses for purposes of section 231(c) of the Com-*
21 *munications Act of 1934 (as added by this Act).*

22 *(e) STAFF AND RESOURCES.—The Assistant Secretary*
23 *for Communication and Information of the Department of*
24 *Commerce shall provide to the Commission such staff and*
25 *resources as the Assistant Secretary determines necessary*

1 *for the Commission to perform its duty efficiently and in*
2 *accordance with this section.*

3 *(f) TERMINATION.—The Commission shall terminate*
4 *30 days after the submission of the report under subsection*
5 *(d).*

6 *(g) INAPPLICABILITY OF FEDERAL ADVISORY COMMIT-*
7 *TEE ACT.—The Federal Advisory Committee Act (5 U.S.C.*
8 *App.) shall not apply to the Commission.*

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