DOT KIDS NAME ACT OF 2001

HEARING

BEFORE THE

SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

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DOT KIDS NAME ACT OF 2001

THURSDAY, NOVEMBER 1, 2001

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON TELECOMMUNICATIONS
AND THE INTERNET,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:15 a.m., in room 2123, Rayburn House Office Building, Hon. Fred Upton (chairman) presiding.

Members present: Representatives Upton, Stearns, Cox, Largent, Shimkus, Terry, Markey, Green, Luther, and Sawyer.

Staff present: Kelly Zerzan, majority counsel; Yong Choe, legislative clerk; Jon Tripp, deputy communications director; and Brendan Kelsay, minority professional staff.

Mr. UPTON. Good morning.

As you all know, last night was Halloween, and as the parent of two young kids, I know the anxiety that all get when our kids leave the house to go out after dark to trick or treat. And while in your head you know your children are safe, the anxiety comes from not being able to control what your children will come into contact with when they are out of the house. And once they get home, you breathe a sigh of relief. They are back in an environment that in fact you can control.

However, more and more parents have recognized that they are losing some control over what enters their home as their kids spend more and more time on the home computer surfing the Internet. And while the Internet is an excellent tool for kids to learn, there are all sorts of inappropriate material that with just one wrong click or typo comes right into your living room, den, bedroom, basement—wherever the computer is located. And while there is no substitute for proper parental supervision, responsible parents that I talk to want more tools to assist them in protecting their kids on the Internet. Filters are one solution, but I believe that we can and we must do more to help.

That is why I strongly support the creation of a kid-friendly space on the Internet, just like dot com, dot gov, dot org—a dot kids ought to be created and implemented, which would be a safe place devoted solely to material which is appropriate for kids, where parents could choose to send their kids. It would be like a safe playground with fences around it. There is really no difference in the concept than the children's section at the public library, which is the only part of the library where kids are allowed to check out books.

Today, we are examining proposals to create a dot kids, specifically H.R. 2417, the Dot Kids Domain Act of 2001, an excellent bipartisan, common sense child protection measure sponsored by John Shimkus and Ranking Member Ed Markey and cosponsored by 10 other members of this subcommittee. I commend these gentlemen for their efforts to help parents and their kids. We will also be examining an amendment in the nature of a substitute to the legislation, and I believe that the proposals which we have before us today point us in the right direction.

The original bill relies on ICANN to implement a dot kids. Many of us have urged ICANN to do this for a very long time, but frustratingly, to no avail. My view is that if we were to rely on ICANN to gets its act together to implement a dot kids, my young kids would be parents perhaps by the time that it got done, if at all. My daughter turned 14 this morning.

But ICANN is another issue for another day in the not-too-distant future, as I anticipate our committee will continue its bipartisan oversight of this body. Parents should not have to wait for ICANN. Time is of the essence. And as a result, today we are also examining an amendment in the nature of a substitute to H.R. 2417 which would get us out of any reliance on ICANN by implementing a dot kids in the dot U.S. space—dot kids-dot U.S.—accomplishing virtually the same mission as the original bill. By doing this in the dot U.S. space, I have much greater confidence that in fact it will get done.

Moreover, we know that the NTIA just awarded a new contract this week for the management of the existing dot U.S. domain and that the contract alludes to the establishment of a dot kids within the dot U.S. domain. Today, we will learn more about the aspect of that dot U.S. contract, what it does, what it does not do.

At this point, I want to extend a warm welcome to Assistant Secretary Nancy Victory in her first appearance before the subcommittee. We look forward to hearing from all of you today, as we continue to work with you on this issue and others. And I yield for an opening statement to my friend, Ranking Member Ed Markey.

Mr. MARKEY. Thank you, Mr. Chairman. Thank you for having this hearing.

Welcome, Secretary Victory, to your first hearing before our subcommittee.

The proposed dot kids domain will be a cyberspace sanctuary for content that is suitable for kids 13 and under, and will be an area devoid of content that is harmful to such minors. The harmful-to-minors standard was the standard that many public interest groups proposed as an antidote to the Telecommunications Act debate, while the problematic constitutional nature of the provision in that law addressing Internet pornography.

Now that harmful-to-minors standard is obviously subject to court challenge currently, and we will have to see how the court rules in the future. Yet I want to emphasize a number of points about the free speech issues that have been raised about the current proposal that distinguish it from that debate. First, the proposed legislation that Mr. Shimkus has constructed will not subject all of the Internet communications to a harmful-to-minors standard. If you are in Tennessee or Timbuktu, you can publish or speak

any content you want on the Internet. This proposal does not affect your ability to do so. This proposal now only addresses a subset of Internet commerce, the dot U.S. space.

Moreover, it doesn't even curtail speech throughout the entirety of the dot U.S. country code domain. If you are in Providence, Rhode Island or Provo, Utah, under this bill you are free to exercise your constitutional rights, and this bill contains no proposal that would subject everyone utilizing the dot U.S. space to a standard suitable to kids. The bill solely stipulates that if you want to operate in the dot kids area of the dot U.S. country code domain, we want that area a green-light district, if you will, to be an area of healthy content for children.

And finally, let me note that there is no requirement that anyone utilize that space. Signing up for a dot kids domain and parents sending their kids to web sites in that location remains completely voluntary, and the free choice of both speakers and parents.

Another issue that has been raised is whether this sets a precedent for other countries, and whether the creation of a dot kids domain under our country code here in the United States will induce other countries to choose routes that undermine free expression. Let me say that free expression is very important and that we want to safeguard important civil liberties of expression here and around the globe. Since this proposal does not stifle speech on any global top-level domain or even throughout the country code top-level domains, it preserves free expression.

If another country, on the other hand, chose to restrict certain speech within its own country code domain space, that in itself would not prevent citizens there from speaking on a global top-level domain such as dot com or dot org. What is problematic is not a restriction within a country code, because such a restriction leaves ample room throughout the rest of the Internet for speech. But rather, laws in other countries that may muzzle speakers across the entirety of the Internet, in other words on a country code, but also on dot com and everywhere else.

Again, this proposal simply creates an area where healthy speech for children can exist, and inappropriate speech is free to exist anywhere else.

Finally, there are a number of issues regarding implementation of this idea that we must continue to work through. We must look at those who have already started to create this process in the marketplace, and names that have already been registered. In addition, there are a number of serious lingering concerns with the dot U.S. process at NTIA that affect taxpayers, competition and the public interest that we must also explore when looking at what NTIA has proposed for commercialization of the dot U.S. space.

I want to thank you, Mr. Chairman, for holding this hearing and I want to congratulate Congressman Shimkus for his excellent work on this bill.

Mr. UPTON. Well, like a great outfield catch in left field, and the first batter up happens to be that left-fielder/catcher John Shimkus, author of the bill, is recognized for an opening statement.

Mr. SHIMKUS. Thank you, Mr. Chairman.

I want to first apologize for being late. I pride myself on being punctual. I chair the House Page Board and I had some meetings

this morning with the Clerk of the House. So it just conflicted and I could not get back here in time. So I do apologize, and also to those panelists who are here.

And I want to thank you, Chairman Upton, for holding this hearing today, and I want to really thank my colleague and friend from Massachusetts, Mr. Markey, on his partnership and leadership and help in crafting legislation that we think has a good chance of moving expeditiously through here, and hopefully if we produce a good work product, we can get it on the Senate desk and maybe we will—I will use your influence, Mr. Markey—get it pulled off the desk or something and we can get moving.

I also want to thank you for the use of your staffer Colin for his help, and my legislative assistant, Courtney Anderson. They have been working very, very closely together, along with Energy and Commerce Committee staffers Mike O'Reilly, Kelly Zerzan—all these famous people—and Will Nordwind for their invaluable assistance in working through this.

And I want to thank you for being here and testifying on this and giving your input on how we can move forward. We think it is very, very important. Originally, H.R. 2417 would have directed ICANN to create a new dot kids top-level domain. And we have heard that there has been reticence and problems with that proposal. So we have acceded to some of those concerns and agreed to move to the dot U.S. country code domain. I think that solves a huge roadblock and will be very, very helpful in moving forward.

Aside from the change in the Internet address, the bill remains largely the same after that. It requires the Department of Commerce and NTIA to work with the dot U.S. administrator to develop a plan to create a new kid-friendly domain within the dot U.S. country code, using the green light approach where all material will be appropriate for children. And my colleague, Mr. Markey, said it very plainly and succinctly. I was at a library on Monday. All we are trying to do is get a wing of a library open for kids to check out books, and that is the intent here.

It establishes the structure for a new domain, including an independent board selection process, continuous monitoring for inappropriate content, and consultation requirements. It requires the Department of Commerce and NTIA to publicize dot kids to parents, and to work with the Department of Justice to prevent children from being targeted on the new domain.

As many of you know, this has been an issue that I have been concerned with, as many of my colleagues, for a long time. The World Wide Web holds a vast treasure of knowledge, but within this web is a great deal of material that is harmful or simply not suitable for children to view. And we have it here. I have been on this committee now 5 years. Every year we will have Internet gambling and how it creates addiction; Internet pornography; problems with chat rooms. You name it, we have heard it. And this is an attempt to at least protect our children from that. As youngsters try to navigate their way through the complex jungles of dot com or dot org, they are at the mercy of whatever pops up on the screen.

Study after study on children and the Internet are concluding that inappropriate material and targeting by predators are the new perils that all of our children face online. We cannot control behav-

ior or content on a borderless Internet. However, we can create a special place for our country's children on our own country's web domain as a workable alternative. As a representative in Congress and a father of three young boys, I think it is time we get this valuable tool for parents implemented. And again, we have heard about this for 5 years and it is time to start moving on something.

One thing I want to make clear about H.R. 2417 is that it is not a silver bullet. As I have said, and has been said to me, that the creation of a dot kids domain would not prevent curious youngsters from venturing onto web sites or chat rooms where they could expose themselves to harmful material or dangerous predators. My bill is in no way designed to replace the important role of parental supervision on the Internet. And a lot of my friends have actually moved their computer to centralized locations in the house. My kids will not have an Internet in their room. They are not going to have a TV in their room, especially with cable these days.

My bill is in no way designed to replace the important role of parents. Dot kids will be an area, a safe site for children, but nothing can replace parental vigilance when it comes to safe surfing. Dot kids will not only serve to help protect children from unsuitable material, but just like a children's store or a children's section in the library, I believe a child-friendly domain will promote positive education and entertainment web sites by serving as a forum for children's material. And I think it is going to be well-received.

Finally, I would like to add that this bill sends an important message. It says that we as a country care about the character development of our children, and we are going to do everything we can to protect them on this information medium. I hope my colleagues will join me in support of this legislation.

Thank you again, Chairman Upton, for bringing this important issue before the committee today. I thank you for your advice and consultations on your proposed manager's amendment which hopefully we will also discuss today, and I look forward to hearing the testimony of the panel. And again, I apologize for being late, and I yield back my time.

Mr. UPTON. Thank you.

The gentleman from Texas, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman. I just have an opening statement. I want to commend both Mr. Shimkus and Mr. Markey for developing this excellent idea. Creating a safe haven for children's Internet content not only represents a reasonable approach to protecting our kids, but also protecting the First Amendment.

Having ICANN grant a dot kids top level domain would afford Internet service providers greater ability to create safe havens for children on the Internet. I do, however, have some concerns with not keeping dot kids as a top level domain. Creating it a second-level domain would, I believe, be cumbersome for children to navigate, and thus would fail its primary purpose to provide children with easy access to safe content.

Mr. Chairman, more invasive steps have been attempted in the past with trying to regulate content or describe material that is harmful to children. I think this legislation is truly a step in the right direction. I am glad we are having a legislative hearing on

it, and hopefully we will see it at a markup soon, and I congratulate the two sponsors, and thank you, Mr. Chairman.

Mr. UPTON. Thank you.

The gentleman from California, Mr. Cox.

Mr. COX. Thank you, Mr. Chairman.

This is an issue that I have been interested in and concerned with for several years. We have had other hearings in this committee on this topic. Some of them on the flip of this issue, which is the creation of a domain that would cabin away pornography and so on in one spot so that it would be easy for people not run into it by accident on the Internet. This is a more modest venture that will create perhaps one area, one space on the Internet where it will be safe for children.

It is certainly important that we commend the initiative shown by our members on both sides, Mr. Shimkus and Mr. Markey, and it is also important for us to recognize that apart from the genius of the essential idea, there are a lot of nettlesome difficulties that need to be overcome in order to make such an idea work. And that is why it is coming to a hearing, and I am pleased, Mr. Chairman, that you have done so.

Mr. UPTON. Thank you.

At this point, I would like to make unanimous consent requests that all members of the subcommittee be afforded the opportunity to enter into the record an opening statement. I know we have a number of subcommittee meetings that are meeting this morning. The House is also in session. We expect some votes in about an hour as well.

[Additional statements submitted for the record follow:]

PREPARED STATEMENT OF HON. W.J. "BILLY" TAUZIN, CHAIRMAN, COMMITTEE ON ENERGY AND COMMERCE

First, let me thank Chairman Upton for holding today's hearing, which considers a subject central to parents' efforts to ensure their children can experience the best of the Internet, while minimizing its downside.

It's a rule of life that with the good comes some bad. The Internet is no different. Although there are enormous benefits that flow from the Internet, parents and children's advocates have long complained that it offers a wide window to material that is inappropriate, even harmful, for children.

The tech industry and government have tried to respond to parents' concerns: software companies have offered filters to help sift through content, and this Committee has reported and Congress has passed a number of measures intended to help parents protect their children. But success on this front has been limited.

Today, we have before us two legislative options that seek to go beyond existing efforts and create a "safe space" on the Internet for children. H.R. 2417—the Dot Kids Domain Name Act of 2001, introduced by Mr. Shimkus and Ranking Member Mr. Markey—and an amendment in the nature of a substitute both seek to build a "green light" domain, the equivalent of a children's playground or children's library on the Internet. H.R. 2417 would create a generic, top level domain—a ".kids"—while the amendment would create a secondary domain within the .us country code—a "kids.us."

Regardless of the location, the use of a child-friendly domain would be completely voluntary: parents could chose to use it, and website operators could opt to be located within it. However, the domain would be filled only with material that is appropriate for children.

While there are real benefits to making a safe space for children through a global, generic top-level domain, this cannot be achieved without the cooperation of ICANN. Unfortunately, even if H.R. 2417 was signed into law, based on the memorandum of understanding between the Department of Commerce and ICANN, there is no assurance that ICANN would ever implement a ".kids" domain. Moreover, for years

now this Committee has questioned the operations at ICANN, its methods of choosing new domains, and the organization's lack of transparency.

For these reasons, the substitute amendment may be a quicker route to the goal of protecting the Internet experiences of children and families. The ".us" space provides us with a guarantee that a safe space for children will be created. Parents want it, kids need it, and we will make sure it happens.

I want to commend the sponsors of this legislation, Mr. Shimkus, for his unswerving dedication to protecting children using the Internet, and Mr. Markey, who has been an invaluable ally, arguing not only for a safe space for children, but for ICANN reform. I know that many Members have pushed for additional oversight of ICANN and the Commerce Department's authority over ICANN. And I look forward, as well, to this Subcommittee's continued good work doing just this in the upcoming session.

Thank you, again, Chairman Upton for calling this important hearing and I look forward to hearing from our witnesses.

PREPARED STATEMENT OF HON. ELIOT ENGEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman: First I want to thank our colleague, Mr. Shimkus, for his continued work on behalf of children. We may not always agree on certain things, but I have no doubt that when it comes to protecting children, he does so with the best of intentions.

To be honest at first glance, this seems like a simple, good idea. But as with so many things, the devil is in the details.

Having reviewed HR 2417, I must admit I like the general idea, but have some concerns about the specifics. Most importantly, I am not sure that any act of Congress could force ICANN to create a Top-Level Domain. The United States has entered into an international agreement to manage the Internet and so I think we must be sensitive to that, or face some anger from our partners in developing the Internet around the globe.

Therefore, I was pleased to see the draft substitute that would create a dot-kids under the dot-us Top Level Domain. I think Congress' influence and authority is much clearer here and I think in the end it makes more sense to do create dot-kids this way.

I also appreciate that in the substitute the definition of minor has been changed from 17 to 13 years old. I am an ardent defender of the First Amendment, but do recognize that there are things I don't want my 8 year old son Philip seeing on the Internet. I think it would be great for him to get math and social studies help, but I certainly don't think he needs to be visiting sites that are sexually explicit.

The problem is what to do about older "minors" in the traditional legal sense. I think many 15 year old children have legitimate questions about sex and sexuality that they just won't feel comfortable talking to their parents about. I do believe they should have access to such information. Lowering the age will help.

And of course there are the 11, 12, and 13 year old children who will have their own questions about how their bodies are changing and why. The Internet has been very successful at allowing people to find others in a similar situation—from cancer patient support groups to bird watchers—and I believe the Internet can be useful to many children who are experiencing some many new feelings and emotions. They can find there are thousands of other children just like them.

Finally, I am sure that in the future we will be having new arguments about whether or not we should have anything on dot-kids that discusses homosexuality. The fact is that there are many children today being raised by gay and lesbian parents. And, most children start going through puberty at 11, 12, or 13. The sad fact is that the suicide rate among gay male teens is significantly higher than the norm and may be three times as high. The Internet, I believe and hope, can be a safe place for these teens to find support and a medium to help prevent suicide.

I commend my colleague for trying to create a safe harbor for children. I am hopeful that with some further thought and investigation, we will be able to create such a place.

Mr. UPTON. So with that being done, I want to welcome our panel this morning. We will start with the Honorable Nancy Victory, who is the Administrator and Assistant Secretary for the National Telecommunications and Information Administration, NTIA; Mr. David Hernand, CEO of New.net; Mr. Page Howe, President of

DOT KIDS Domains, Inc,; Mr. Bruce Taylor, President and Chief Counsel of the National Law Center for Children and Families; and Ms. Donna Hughes, Internet safety expert, adviser and spokesperson for Family Click.com, and also an author, and we thank you for the complimentary copy, I presume, but if not, the copy, paperback of your book.

Thank you.

We will start. We would like to thank you in advance for submitting your testimony, and we would like you to proceed with the opening statements, and if you would not mind trying to stay close to the 5-minute rule, we will start the clock and, Ms. Victory, we will start with you. Thank you. Welcome.

STATEMENTS OF HON. NANCY J. VICTORY, ADMINISTRATOR, NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION; DAVID HERNAND, CEO, NEW.NET; H. PAGE HOWE, PRESIDENT AND CEO, .KIDS DOMAIN, INC.; BRUCE A. TAYLOR, PRESIDENT AND CHIEF COUNSEL, NATIONAL LAW CENTER FOR CHILDREN AND FAMILIES; AND DONNA RICE HUGHES, FORMER COPA COMMISSIONER

Ms. VICTORY. Chairman Upton, I would like to thank you and the members of the subcommittee for inviting me here to testify today. Developing a safe space on the Internet for children is certainly a worthwhile undertaking, and I appreciate this opportunity to work with you to realize this goal.

I believe that the Internet should be a tool of electronic commerce, education, entertainment and communications for all Americans. During my tenure at NTIA, I intend to further policies that produce opportunities for all Americans to take greater part in the digital age. At the same time, I want to ensure that the Internet provides positive, safe online experiences for our children. The administration continues to support ongoing private sector efforts to address many of the concerns raised by our children's increasing access to the Internet. There have been many thoughtful and innovative approaches taken by industry, nonprofit organizations and public institutions to provide ready access to child-friendly, quality content on the Internet, and to develop technological tools that help parents and guardians protect children from material they consider inappropriate.

As you know, there are a number of excellent web sites specifically designed for children. Industry has also developed any number of innovative technology tools, including filtering software and browser applications. For example, in recent weeks, the Internet Content Rating Association and EarthLink both announced efforts to empower parents to manage their children's online experiences. The administration continues to believe that industry working with concerned parents and family organizations can make great strides in improving the quality of a child's experience on the Internet.

I wanted to report on one action that the Department of Commerce announced this week that I believe has particular relevance to the subject matter today. Last Friday, the department awarded a contract to NeuStar, Inc. for the management of the existing dot U.S. domain. One of the interesting aspects of the NeuStar proposal is to create public resource domains under dot U.S. to serve

as common spaces to further various public interest and service objectives. Pertinent to today's hearing is that NeuStar specifically proposes for one such public resource domain a dot kids/dot U.S. space as a safe space on the Internet specifically tailored to the needs of children. The Department of Commerce is looking forward to working with NeuStar to explore implementation of their proposal.

The subcommittee has asked for my comments on H.R. 2417, the Dot Kids Domain Name Act of 2001, and the manager's amendment. While the NeuStar proposal may obviate the need for such legislation, I very much appreciate the opportunity to share my thoughts.

While I support the goal of the legislation, the mechanisms contemplated in both versions raise substantial policy and legal concerns. The bill as introduced seeks to mandate the creation of a top-level dot kids domain by requiring the Internet Corporation for Assigned Names and Numbers, ICANN, to select a dot kids domain operator. Such regulation of the management of the Internet domain name system is inconsistent with the established policy goal of privatization of that system, and particularly private sector leadership with respect to the introduction of new top level domains.

Among other things, unilateral action by the United States to create an international dot kids domain is at odds with the global nature of the Internet and the domain name system. International reaction to U.S. efforts to legislate in the area of domain name management could hamper the United States' abilities to advance its foreign policy objectives, particularly critical information and technology policy goals. Our international allies have a strongly held aversion to United States efforts to assert its national will on the Internet, a global resource. In fact, some governments have already raised objections to the instant legislation and have suggested that this kind of U.S. action supports their position that Internet-related decisionmaking should more properly be decided through international governmental organizations.

I am also concerned about the mechanisms that the bill uses to mandate the creation of such a domain. The bill uses the memorandum of understanding between the Department of Commerce and ICANN to regulate ICANN's activities with respect to the new top-level domain. All activities under the memorandum of understanding, however, are by mutual agreement. The Department of Commerce does not regulate ICANN. The memorandum of understanding very clearly leaves the selection and introduction of top-level domains to the private sector-led process within ICANN. I continue to believe that the private sector is best able to make decisions about new top-level domains that affect the global Internet.

The bill would also prohibit ICANN from considering, or the department from approving, any new top-level domain or country code top-level domain until a dot kids domain is established. I am very concerned about the potentially anti-competitive impact of this provision on U.S. stakeholders, including information technology companies seeking to enter the domain name market.

The bill also establishes a content standard for the dot kids domain and requires ICANN and the department to regulate online content based on this standard. As Congressman Markey has rec-

ognized, some courts have in the past found such government-mandated standards to be problematic and this issue on this particular standard is currently pending before the Supreme Court in the COPA case.

I am also concerned about the appropriateness of the Department of Commerce regulating online content. Traditionally, law enforcement agencies enforce the various prohibitions against illegal content.

I am pleased to say that some of the difficulties inherent in H.R. 2417 as introduced are eliminated in the manager's amendment. However, the manager's amendment, by requiring the creation of a second-level dot kids domain, seeks to do so under the dot U.S. top-level domain. While I believe focusing on dot U.S. is more likely to yield the successful realization of a kid-friendly space designed specially for American children, the manager's amendment still raises some policy and legal concerns.

Particularly, I note that the amendment continues to require content standards and enforcement by the Department of Commerce. It also alters the existing contractual obligations between the Department of Commerce and NeuStar that were established through the government procurement process, and it changes the company's expectations with respect to its opportunities under the award. As such, if passed, the amendment could raise questions about the validity of the recent procurement.

While the department supports the development of a dot kids-dot U.S. domain, I am concerned that the problems with this legislation could ultimately undermine this goal. I believe the development of a viable voluntary space in the dot U.S. domain for children's content can better and more quickly be achieved by focusing on implementation of the proposal put forth by NeuStar and the dot U.S. award. I would like to continue to work with the bill's sponsors to develop an approach that would ensure that the proposal is implemented in a timely and beneficial manner.

Again, thank you for this opportunity to testify. I would be happy to answer any questions you might have.

[The prepared statement of Hon. Nancy J. Victory follows:]

PREPARED STATEMENT OF HON. NANCY J. VICTORY, ASSISTANT SECRETARY OF COMMERCE FOR TELECOMMUNICATIONS AND INFORMATION

Chairman Upton, I would like to thank you and the members of the Subcommittee for inviting me here to testify today. Developing safe spaces on the Internet for children is certainly a worthwhile undertaking and I appreciate this opportunity to work with you to realize this goal.

I believe that the Internet should be a tool of electronic commerce, education, entertainment, and communications for all Americans. During my tenure at the National Telecommunications and Information Administration (NTIA), I intend to further policies that produce opportunities for all Americans to take greater part in the digital age. At the same time, I want to ensure that the Internet provides positive, safe online experiences for our children.

The Administration continues to support ongoing private sector efforts to address many of the concerns raised by our children's increasing access to the Internet. There have been many thoughtful and innovative approaches taken by industry, non-profit organizations, and public institutions to provide ready access to child-friendly, quality content on the Internet and to develop technological tools that help parents and guardians protect children from material they consider inappropriate. I commend them for these laudable efforts.

As you know, there are a number of excellent web sites specifically designed for children. Industry has also developed any number of innovative technology tools, in-

cluding filtering software and browser applications. Recently, the Internet Content Rating Association, a global non-profit organization backed by industry leaders such as AOL, the Microsoft Network and Yahoo!, announced that it has developed a new voluntary rating system that allows content providers to label web site content. And, just this week, EarthLink announced that it had teamed with SurfMonkey to offer a free, downloadable browser and new children's services designed to offer children a safer online experience. In addition, EarthLink will offer a $2.95 per month premium service that provides advanced parental controls on e-mail, instant messaging, videophone, bulletin boards and chatrooms and that includes a technology that enables children to communicate only with friends whom their parents have approved.

These efforts promise to empower parents to manage their children's online experiences consistent with their individual values. The Administration continues to believe that industry working with concerned parents and family organizations can make great strides in improving the quality of a child's experience on the Internet.

I am particularly pleased to report on two actions that the Department of Commerce announced this week that I believe will enhance opportunities for Americans, including children, on the Internet. First, the Department entered into a cooperative agreement with EDUCAUSE, a nonprofit organization representing the information technology needs of the U.S. higher education community, to better manage and expand the existing .edu domain. The .edu domain is one of the original seven top level domains created by the founders of the Internet for use by four-year colleges and universities in the United States for computer research purposes. This legacy domain has since been used by U.S. institutions of higher learning to provide college registration services, distance learning programs, curricula distribution, and a myriad of other educational purposes. The cooperative agreement with EDUCAUSE recognizes the importance of involving the higher education community in the policymaking related to .edu to ensure that it better serves education in America. I am also pleased to announce that, as one of its first actions, EDUCAUSE will be making the .edu domain available to approximately1,200 regionally accredited community colleges across the United States.

I am also pleased to report that the Department awarded a contract to NeuStar, Inc., for management of the existing .us domain. The .us domain is the country code top level domain created by Internet founders to be associated with the United States. It is currently used primarily by state and local governments, schools, libraries and other public institutions. Because of its cumbersome locality-based naming structure, the .us domain has been largely unused by American businesses and consumers.

However, we are hoping the NeuStar contract will change that by providing enhanced opportunities for all Americans—small businesses, industry, individuals, state and local governments, and schools and libraries—to have a presence on the Internet uniquely associated with the United States. NeuStar has committed to making substantial investments in the technical management of .us as well as developing a means for U.S. stakeholders to participate in policymaking. One of the interesting aspects of its proposal is to create "public resource" domains under .us to serve as common spaces to further various public interest and service objectives. Pertinent to today's hearing is that NeuStar specifically proposes for one such public resource domain a ".kids.us" space as a "safe" space on the Internet specifically tailored to the needs of children.

We at the Department of Commerce are looking forward to working with NeuStar to explore implementation of this aspect of their proposal in a manner consistent with our goal of empowering parents and respecting our nation's fundamental commitment to free expression. We will work with the Subcommittee as we move forward in this implementation to ensure that our mutual goals are achieved.

The Subcommittee has asked for my comments on H.R. 2417, the "Dot Kids Domain Name Act of 2001," and the manager's amendment. While the NeuStar proposal may obviate the need for such legislation, I appreciate the opportunity to share my thoughts. While I support the goal of the legislation, the mechanisms contemplated in both versions raise substantial policy and legal concerns.

The bill as introduced seeks to mandate the creation of a top level ".kids' domain by requiring the Internet Corporation for Assigned Names and Numbers (ICANN) to select a .kids domain operator. Such regulation of the management of the Internet domain name system is inconsistent with the established policy goal of privatization of that system, and particularly, private sector leadership with respect to the introduction of new top level domains.

Among other things, unilateral action by the United States to create an "international" .kids domain is at odds with the global nature of the Internet and its domain name system. International reaction to U.S. efforts to legislate in the area of

domain name management could hamper the United States' abilities to advance its foreign policy objectives, particularly critical telecommunications and information policy goals. Our international allies have a strongly held aversion to United States' efforts to assert its national will on the Internet, a global resource. In fact, some governments have already raised objections to the instant legislation and have suggested that this kind of U.S. action supports their position that Internet-related decisionmaking should more properly be decided through international governmental organizations.

I am also concerned about the mechanisms that the bill uses to mandate the creation of such a domain. The bill uses the memorandum of understanding between the Department of Commerce and ICANN to regulate its activities with respect to new top level domains. All activities under the memorandum of understanding, however, are by mutual agreement. The Department of Commerce does not "regulate" ICANN. The memorandum of understanding very clearly leaves the selection and introduction of new top level domains to the private sector-led process within ICANN. I continue to believe that the private sector is best able to make decisions about new top level domains that affect the global Internet.

The bill would also prohibit ICANN from considering, or the Department from approving, any new top level domain or country code top level domain until a .kids domain is established. I am very concerned about the potentially anti-competitive impact of this provision on U.S. stakeholders, including information technology companies, seeking to enter the domain name market. As Secretary of Commerce Evans wrote to Dr. Vinton Cerf, ICANN's Chairman, in May of this year, the Department supports ICANN's ongoing activities to select new top level domains. In particular, Secretary Evans noted the importance of competition in the top level domain market.

The bill also establishes a content standard for the .kids domain and requires ICANN and the Department to regulate online content based on this standard. Some courts have in the past found such government mandated standards to be problematic, and I understand this issue is currently pending before the Supreme Court in the COPA case. I am also concerned about the appropriateness of the Department of Commerce regulating online content. Traditionally, law enforcement agencies enforce the various prohibitions against illegal content (e.g., gambling, pornography, fraud).

I am pleased to say that some of the difficulties inherent in H.R. 2417 as introduced are eliminated in the manager's amendment by focusing instead on a domestic approach. The manager's amendment requires the creation of a second level ".kids" domain under the .us top level domain. While I believe focusing on .us is more likely to yield a successful realization of a "kid-friendly" space designed for American children, the manager's amendment still raises some policy and legal concerns. Particularly, I note that the amendment continues to require content standards and enforcement by the Department of Commerce. It also alters the existing contractual obligations between the Department of Commerce and NeuStar that were established through the government procurement process and it changes the company's expectations with respect to its opportunities under the award.

While the Department supports the development of a .kids.us domain, I am concerned that problems with this legislation could ultimately undermine that goal. I believe that development of a viable, voluntary space in the .us domain for children's content can better be achieved by focusing on implementation of the proposal put forth by NeuStar in the .us award. I would like to continue to work with the bill's sponsors to develop an approach that would ensure that the proposal is implemented in a timely and beneficial way. NTIA expects part of this effort to include working with our contractor to conduct outreach to interested family organizations and public interest groups and to consult with relevant government agencies, including the Departments of Education, Health and Human Services, and Justice. I look forward to reporting back to the Committee soon on the progress we have achieved.

Again, thank you for this opportunity to testify. I will be happy to answer any questions you may have.

Mr. UPTON. Thank you.

Mr. Hernand?

STATEMENT OF DAVID HERNAND

Mr. HERNAND. Good morning, Mr. Chairman and members of the subcommittee. I am David Hernand, CEO of New.net, a market-

based domain name registry business headquartered in Sherman Oaks and launched in March of this year.

New.net is a leading innovator in expanding the availability of domain names, with more descriptive and useful extensions that make it easier for users to navigate the Internet. We offer domain names with descriptive extensions such as dot shop, dot family, dot club and dot kids, among many others. These are extensions that supplement the more traditional top-level domains like dot com and dot net and others that are supported on the root servers administered by the Department of Commerce.

Unlike dot com names, however, Internet users access our names either by using one of our partner ISPs that have made a small change on their networks to recognize these names, or by using a small software application that enables individual users to see the names. Today, more than 71 Internet users have access to these names and we are growing that number by millions each month. With the support of five of the top seven ISPs in the U.S., more than 40 percent of U.S. Internet households already can use New.net domain names.

New.net is helping to satisfy the growing public demand for shorter, more descriptive domain names that have been left unmet by the increasing scarcity of names under dot com and dot net. This scarcity has been caused by the failure of existing structures to expand and improve how users access the Internet. Our market-based approach exists to answer this need and to increase the availability of better domain names generally.

We released the dot kids extension in March of this year when we launched, in partnership with .KIDS Domains, Inc., a San Diego-based company. We were impressed with .KIDS Domains' comprehensive policies for creating a kid-friendly environment on the Internet. And since our launch, we have seen the development of a community of dot kids web sites which we expect will grow dramatically as public awareness of the dot kids extension increases.

.KIDS Domains previously applied to ICANN for a dot kids extension, but its request was rejected. We see this rejection as a failing of the ICANN process to serve the interest of Internet users. New.net went ahead with enabling dot kids domains to make the dot kids extension available without harm to the integrity of the Internet infrastructure of the ICANN process. Given our positive dot kids experience, we agree with Congressmen Shimkus and Markey that establishment of a dot kids top-level domain would be extremely useful to consumers, and commend them for introducing H.R. 2417. This legislation highlights our concern that current ICANN procedures for selecting new top-level domains are far too slow and encumbered by vested interests that oppose expanding the supply of better domain names.

New.net already has plowed ahead with a real live dot kids extension, but we support any effort, government or otherwise, to make that resource available to Internet users everywhere. While we would prefer changes in the ICANN system to accelerate the selection of user-friendly TLDs such as dot kids, other methods may help to accelerate the availability in the short term. One option is to create a second-level domain for dot kids within the dot U.S.

country code TLD, provided that this is done in a way that complies with pro-competition and pro-consumer requirements. Absent these provisions, the expansion of the dot U.S. extension could result in unfair competition, artificial limitations on second-level domains, and unjust enrichment of some commercial entities over others. The origins of the dot U.S. domain as a public asset demand that its expansion accrue to the benefit of the general public, according to fair and competitive principles.

We have two recommendations if dot kids is established as a second-level domain within dot U.S. First, the NTIA should select a registry operator to manage it through a competitive application process. An explicit factor in that registry selection should be the demonstration of experience in operating services designed to protect children on the Internet. And second, existing domain name holders under dot kids should be able to take advantage of a sunrise period in which they have the first right to be registered under dot kids-dot U.S. For example, the entity that has registered and is operating Tutor.kids should have the first right to register as Tutor.kids.US. Otherwise, the establishment of a dot kids second-level domain would be unfair to existing customers of dot kids, equivalent to nationalizing a private American company that took the risk of introducing a good idea to the market, investing in it, and developing it.

Mr. Chairman, New.net supports legislative efforts to create a dot kids domain as a TLD or a second-level domain within dot US., because introducing such domain names will benefit consumers. New.net and kids domains have demonstrated these benefits with our market-based approach, proving that it can be done today. We welcome the help of our government leaders to make the dot kids domains available to Internet users everywhere.

Thank you.

[The prepared statement of David Hernand follows:]

PREPARED STATEMENT OF DAVID HERNAND ON BEHALF OF NEW.NET, INC.

Mr. Chairman and Members of the Subcommittee, my name is David Hernand. I am Chief Executive Officer of New.net, Inc., a market-driven domain name registry business headquartered in Sherman Oaks, California, and started in May 2000 by idealab!, the Internet incubator. New.net is building the Internet's leading market-driven domain name registry business by selling domain names with logical, easy-to-remember extensions to make the Internet easier to navigate for consumers and businesses alike. Our extensions include such user-friendly names as .shop, .family, .church, .club, .auction, and .movie. New.net believes that by allowing web addresses to end in more descriptive words, websites will be better able to communicate what they are offering, and consumers will be able to find things more easily. New.net is helping to satisfy the growing public demand for shorter, more descriptive domain names that has been left unmet by the increasing scarcity of names ending in .com and .net.

Currently, consumers can access New.net domain names in one of two ways-either through one of the Internet service providers (ISPs) around the world that provide access to New.net domain names through a simple network upgrade, or through a software application that New.net makes available directly to users from its website. Both of these methods work transparently for users within the existing Internet infrastructure and currently enable more than 71 million Internet users worldwide to view New.net's domain names.

The ".kids" extension is one of the first names we successfully released in the market. Since March 2001, New.net has operated the .kids' extension in partnership with .KIDS Domains, Inc. New.net has been the technical facilitator of the. kids extension, ensuring that it can be accessed by millions of parents and children in the U.S. At present, 44% of U.S. households can access .kids sites and the other

New.net extensions. .KIDS Domains has served as the registry for .kids; it has established rigorous Terms of Use and Content Guidelines that sites must adhere to in order to be included in the .kids space.

New.net agreed to work with .KIDS Domains because we were impressed with the well-conceived, comprehensive nature of .KIDS Domains' policies. We immediately appreciated the value and usefulness of a .kids space for parents and children. Releasing a ".kids" extension fit well with New.net's mission of giving consumers access to more descriptive and relevant domain name addresses than is allowed by the current ICANN system.

An example is Adopting.Kids which had the web address adoptanangel.org. Adopt An Angel International is a non-profit licensed adoption agency located in Jasper, Georgia. The Internet provides Adopt An Angel with a powerful tool to achieve its goal of helping homeless children across the world find a family and a home. The Internet is uniquely suited to Adopt An Angel's mission, and yet this group does not have a large advertising budget for promoting its services or its web address. An easy-to-find address is therefore critical to its success. The new address for the group—Adopting.kids—provides Adopt An Angel with the ability to reach parents far more easily with a descriptive and simple to remember name.

Another example is Heart.kids, a site dedicated to providing support for children with Hypoplastic Left Heart Syndrome, a serious congenital heart defect that affects approximately 1 in every 5,000 babies born. This organization had been using LeftHeart.org as its site, but the ability to use the more descriptive Heart.kids enables this group to clearly indicate that this site focuses on a medical condition that affects children.

A final example is an organization, Jumpstart, that pairs highly-trained college students with preschool children struggling in Head Start or other early learning programs. The name jumpstart.org was not available, having been taken by another organization, so the group was using jstart.org. With the opening of .kids, this organization was able to get a more descriptive name, jumpstart.kids, that is easy to remember and clearly indicates to users that it is a site focused on children.

As you know, .KIDS Domains applied to ICANN for adoption of a .kids extension but its request was rejected. While ICANN did not state explicitly why it did not approve .kids (and scores of other new TLD requests), in the case of .kids it appeared that ICANN was concerned that it would not be able to reach a broad, worldwide agreement on what was appropriate for "kid-friendly" content.

New.net's entry into the domain name business enabled .KIDS Domains to make the .kids extension available, without harm to the integrity of the Internet infrastructure or the ICANN system, and to the great benefit of parents and children. As a private company, New.net has been able to offer a much-needed and desired service free from the limitations of the current ICANN TLD selection process and in an open manner which empowers parents to make their own decisions about what is right for their families. We respectfully submit that the New.net and .KIDS Domains experience provides a model for, and proof of, how market forces can work effectively to prove the value of a domain name. As shown by our work with .KIDS Domains, we believe that the private sector can play a leading role in providing a "testbed" for the introduction of innovative and creative domain names that are valuable and useful to consumers and that should be widely accessible to Internet users.

Given our positive experience with releasing the ".kids" domain in partnership with .KIDS Domains, New.net is pleased to share with you our views regarding H.R. 2417 introduced by Congressman Shimkus and Congressman Markey. We also are pleased to address potential proposals to amend the legislation to establish .kids as a second level domain within the .us country code top level domain ("ccTLD").

New.net commends Congressmen Shimkus and Markey for introducing H.R. 2417 to highlight the benefits of establishing a ".kids" space on the Internet which will result in a community of kid-friendly, "safe" websites dedicated to children. In our view, the introduction of this measure also highlighted the broader concern that current ICANN processes and procedures for selecting new top level domains are far too limited and slow, and that American consumers and businesses are not getting the full convenience and benefits they could be getting from the Internet as a result. New.net believes that the consideration of this legislation puts a spotlight on the strong need to improve the system by which top level domain names are selected so that consumers benefit and marketplace competition and innovation are allowed to flourish. We fully agree with Congressmen Shimkus and Markey that establishment of a .kids top level domain would be extremely useful to consumers.

As noted above, the current system that ICANN uses for selecting TLDs has not successfully resulted in the establishment of the .kids TLD, despite the value it would add for Internet users wanting to use it. New.net therefore understands that

other, short-term options may be considered to accelerate the broader availability of a .kids site without having to confront the restrictions of the current ICANN system. One way that the artificial limitations of the ICANN selection process could be avoided is through an expanded use of the ".us" ccTLD involving the creation of second level domains on a competitive basis. New.net understands that the Subcommittee may consider a proposal to amend H.R. 2417 as introduced in order to establish ".kids" as a second level domain within ".us." New.net believes that this proposal has merit and has the potential to serve as a model for invigorating the ".us" top level domain effectively. For this proposal to be successful we underscore, however, the need for it to be carefully crafted with key pro-competition and pro-consumer requirements. Absent these provisions, the expansion of the ".us" extension could result in unfair competition, artificial limitations on second level domains and wholly unjust enrichment of certain commercial entities over others. Given the origins of the ".us" domain as a public asset, it is critical that the expansion of its uses, particularly with respect to second level domains, accrue to the benefit of the general public according to fair and competitive principles.

At a minimum, we have the following recommendations regarding the establishment of .kids as a second level domain within the .us ccTLD:

1. If .kids is established as a second level domain within the .us ccTLD, a registry operator must be selected to manage it. This entity should be selected by NTIA through a competitive application process, and one of the key and explicit factors in the selection of the entity should be the demonstration of experience in operating services designed to protect children on the Internet. In addition, the registry for the ".us" ccTLD should not be eligible to serve as the second level domain registry operator.
2. Existing domain name holders under ".kids" should be able to take advantage of a "sunrise" period in which they have the first right to be registered under ".kids.us" (e.g., for a reasonable "sunrise" period, the entity that has registered and is operating "tutor.kids" should have the first right to register as "tutor.kids.us", if this entity so desires.) Without this provision, the establishment of a .kids second level domain would be unfair to existing customers of ".kids" and would be tantamount to "nationalizing" a private American company (i.e. .KIDS Domains, Inc., through its partnership with New.net) that took the risk of introducing a good idea to the market, investing in it and developing it.

New.net further believes that taking this course of action with .kids will provide a crucial learning experience that could well be extended to other second-level domains under .us. Extension of these and other pro-competitive principles to other second level domains could provide additional opportunities for the American entrepreneurial spirit to flourish on the Internet and for consumers to benefit from a diversity of companies and organizations competing to provide needed services.

New.net firmly believes that the marketplace is a powerful consensus engine, providing a direct and immediate way for consumers to express their collective wisdom about which names they find most useful. In a very short time, the New.net business model has provided a "testbed" demonstrating the popularity and value of user-friendly domain names and highlighting the failures in the current domain name selection process that have denied Internet users these desired benefits and conveniences. With the proper safeguards in place, diversity, the American entrepreneurial spirit, and creativity can flourish through the competitive provision of second level domains within the ".us" ccTLD.

Mr. Chairman, thank you for the privilege of appearing before the Subcommittee today, and I would be pleased to answer any questions you may have.

Mr. UPTON. Thank you.

Mr. Howe?

STATEMENT OF H. PAGE HOWE

Mr. HOWE. Good morning, Mr. Chairman, and members of the committee. Thank you for inviting me to be here today.

I am pleased to speak on an issue of vital importance to parents and their children. More and more, we see parental anxieties and fears about the safety of the Internet. Widespread concern exists for parents equipped with extensive knowledge of technology, as well as those just discovering the Internet. As founder and chairman of KIDS Domains, I have personally overseen and funded our

initiative to establish dot kids as a restricted top-level domain name available to all Internet users.

To date, efforts to regulate the Internet have had to overcome hurdles of what is obscene or what is illegal, as well as how to implement those laws within a venue, the Internet, where many behaviors are legal for adults. The inherent lack of defined national boundaries, free speech issues, specific legal issues regarding control of existing content providers have been a barrier to what we believe is the sincere intent of this committee and the entire Congress to solve this issue.

Dot kids is a solution from the private sector, a voluntary space created first and foremost for kids and the parents of those kids who wish to limit the scope of their children's access on the Internet when they are not present and to protect and guide their child's experience. In addition, we believe dot kids will help libraries and schools to effectively meet the mandates set out to create publicly available, but kid-friendly access to the Internet.

Currently, it is a one-size-fits-all Internet. Entrusting the existing dot com space and its web site operators that they will deliver content to all audiences does not work. Web sites attempting to reach multiple audiences can be too complex, especially for kids, reducing the relevancy of the content they deliver to children. In addition, children are legally unable to enter into contracts, so web sites that desire to register users, have users join mailing lists, acknowledge policies, sign away rights, or in other words do business on a buyer beware basis, are not appropriate for interaction with kids. A registry of dot kids domain addresses will help those institutions and parents who want to and have the right to make choices for children.

In addition, by educating and building a community of content providers who are delivering content specifically for children, children are empowered to make their own choices at the keyboard level. Today's youth will become empowered to seek out the wonderful educational, entertainment-oriented and communication experiences the worldwide web has to offer.

Consider for a moment if some of today's more popular public venues operated without the benefit of segmentation. The Internet today would be like movie theaters, showing offerings of all movies, even the most vulgar, all day, with the doors open for free for people to enter; newsstands and bookstores with racist propaganda mixed in haphazardly next to comic books; casinos with no age restrictions; grocery stores with cigarettes on the candy rack; a police squad that when it finds a crime, may or may not know the true owner of the business and may have no jurisdiction over what is being done or shown.

We are positive on the possibilities and potential of the Internet to educate, communicate and bring knowledge and entertainment to kids worldwide. It is a dynamic, low-cost media that can deliver to any child the cumulative knowledge or experience of kids worldwide. We believe parents are most fearful because even a minimum safety level does not exist on the Internet. We do not propose to restrict content on the dot com net-or org-developed public spaces. When we say dot kids is restricted, mean it is restricted to those registrants who have agreed up front to operate kid-friendly web

sites; to enter into a binding agreement with the registry operator outlining the registrant's acknowledgement of the content guidelines; to an annual auditing process and reeducation each year of the laws, regulations and guidelines regarding dot kids.

So why are we here? We are here because we can and have created a dot kids, but we cannot get access to the one and only directory of web sites administered by ICANN. We did try, however. We submitted a comprehensive application to ICANN, along with a $50,000 fee, as part of last year's selection process. Our application to ICANN was the only application that met the threshold requirements and the only one which proposed a restricted space.

We believe introducing dot kids would go a long way to showing what can be done by opening up the A root to new TLDs which are not just duplicates of dot com, which create more confusion, but are intelligent choices for the segmentation of the DNS. The Commission on Online Child Protection studied a wide range of technologies. They concluded that a green space like dot kids would be most effective in reducing access to obscene material, while maintaining accessibility and minimizing adverse effects.

Since the time of the hearing, the bill has been amended and now concerns the allocation of a second-level domain name, kids dot U.S. To the degree which kids dot U.S. is the end result of attempts by this committee to create a safe haven on the Internet, .KIDS Domains intends to actively pursue becoming the registry operator. We believe we can create a positive, relevant, engaging and safe green space.

Thank you for your interest in dot kids, for your efforts surrounding this bill, and for the opportunity to address the committee today.

[The prepared statement of H. Page Howe follows:]

PREPARED STATEMENT OF H. PAGE HOWE, .KIDS DOMAINS, INC.

Introduction

Mr. Chairman and members of the Committee, thank you for inviting me to be here today. I am pleased to speak on an issue of vital importance to parents and their children. More and more, we see parental anxieties and fears about the safety of the internet. Widespread concerns exist in the cities and extend out into the country; they are shared within our nation as well as abroad; they touch parents equipped with extensive knowledge of technology as well as those just discovering the Internet.

As founder and Chairman of .KIDS Domains, Inc., I have personally overseen and funded an initiative to establish .kids as a restricted Top Level Domain accessible to all Internet users. I would like to acknowledge and thank Congressman Shimkus, and Congressman Markey and their staffs for their efforts in sponsoring H.R. 2417, as well as the staff of this committee. In addition, I also would like to thank and commend the other Representatives who have co-sponsored the Bill. I would like to acknowledge the work done prior to the introduction of this bill, including the sponsoring Representatives and Senators of the Child Online Protection Act, the Children's Online Privacy Protection Act of 1998, the Communications Decency Act of 1995, as well as the members of the COPA Commission, whose work over 1999 and 2000 has largely gone unnoticed and unimplemented. Finally, I would like to acknowledge additional groups operating to educate the public on child safety issues on the internet such as cyberangels.com, getnetwise.org, the Internet Content Rating Agency (ICRA), NetMom, and SafeKids; all have made strides in educating the public on how to best manage children's interaction with the Internet.

With my testimony, I will seek to illuminate for the Committee the need we perceive exists for .kids and the reasons this solution alone is optimal.

To date, efforts to regulate the internet have had to overcome hurdles of what is obscene or what is illegal, as well as how to implement those laws within in a

venue, the internet, where many behaviors are legal for adults. The inherent lack of defined national boundaries on the internet, free speech issues, and specific legal issues regarding control of existing content providers have been a barrier to what we believe is the sincere intent of this committee and the entire Congress to solve this issue.

.Kids is a solution from the private sector, a voluntary space created first and foremost for kids and the parents of those kids who wish to limit the scope of their children's access on the internet when they are not present to protect and guide their child's experience. In addition, we believe .kids will help libraries and schools to effectively meet the mandates set out to create publicly available but kid-friendly access to the internet.

The Internet today, One-Size Doesn't Fit All

Currently it's a one-size-fits-all Internet and trusting that the existing ".com" space and its website operators will deliver content to all audiences does not work. Websites attempting to reach multiple audiences are too complex, especially for kids, reducing the relevancy of the content they deliver to children. In addition, children are legally unable to enter into contracts, so websites that desire to register users, have users join mailing lists, acknowledge policies and rules, sign away rights; or in other words to generally do business on a "buyer beware" basis, are not appropriate for interaction with kids.

A registry of .kids domain addresses will help those institutions and parents who want to, and have the right to, make choices for children. In addition, by educating and building a community of content providers who are delivering content specifically for children, *children are empowered to make their own choices at the keyboard level.* Today's youth will become empowered to seek out the wonderful educational, entertainment oriented, and communication experiences the World Wide Web has to offer.

Consider for a moment if some of today's more popular public venues operated without the benefit of segmentation of content and objects on the basis of age . . .

The Internet today is like:

Movie theatres offering showings of all movies, even the most vulgar, all day with the doors open for all to enter or explore, free.

Newsstands and bookstores with racist propaganda mixed in haphazardly next to comic books and Teen magazines.

Casinos with no age restrictions

Sporting Goods stores with guns and rifles displayed and available at eye level next to swim fins and basketballs.

Grocery Stores with cigarettes on the candy rack.

A police squad than when it finds a crime, may or may not know the true owner of the business, and may have no jurisdiction over what is being done or shown.

We are positive on the possibilities and potential of the Internet to educate, communicate and bring knowledge and entertainment to kids worldwide. It is a dynamic, low cost media that can deliver to any child the cumulative knowledge or experience of kids worldwide. Unfortunately, between the unclear and evolving beginnings of the internet, the "dot-com'" era of the past three years, the absence any controls whatsoever, and techniques and tactics designed to trap users, the internet today is made up of companies pursuing dominating, monopolistic, business models surrounded by abandoned sites and domain names, domain names without content, websites containing tools to provide revenue, unclear authority, and generally an environment where even adults who are used to being on their guard can have trouble navigating through the junk.

We believe parents are most fearful because even a minimum safety level does not exist. In the debate over .kids and whether certain content is kid-friendly or appropriate, at least we will have moved the argument to the difference between G and PG13, not G and X.. And most importantly, sites within the .kids network cannot simply rely on a claim that the content is meant for adults.

.KIDS is for kids

So what is .kids? At the DNS level the top level domain acts as the beginning of the internet's directory system. For instance, when an internet user types in www.congress.gov, the first thing their computer does is to query the internet's directory system to find out what the numeric address of the computer is that is "hosting" the US Congress website. In the same way, the .kids initiative will allow only those websites which have agreed to the Content Guidelines to have .kids domain names that resolve for internet users. By the same token, that resolution can be instantly blocked if a website violates the Guidelines and publishes inappropriate content.

We don't think it makes sense to unleash kids into the current internet environment. We support the creation of a .kids top level domain, a community of website owners who agree up front to abide by the clearly defined and delineated "Content Guidelines" (established by an Independent Content Policy Board) of the .kids network.

We do not propose to restrict any content on the .com, .net and .org developed public spaces. When we say .kids is a restricted domain name, we mean it is restricted to those registrants and a community of website owners who themselves have agreed:

To operate kid-friendly websites,
To have their websites in a safe and monitored "greenspace",
To enter into a binding agreement with the registry outlining the registrant's acknowledgement of the Content Guidelines and Terms of Use,
To supporting a systematic protocol for swift attention to those sites and URLs which may be in violation of the Content Guidelines,
To an Annual Auditing Process and reeducation each year of the laws, regulations, and guidelines regarding kids,
To the education of registrants, users, and the Internet Community at large on child safety and protection issues on the Internet,
And, to an emphasis on providing child safety, children's infrastructure, and child empowerment non-profit organizations with meaningful charitable funding.

Parents and kids can then trust that a domain name owner and registrant are accountable, and websites and content within the .kids network are kid-friendly. Parents always have the choice of letting their kids browse the whole internet and Congress will still need to fight to possibly reign in the excesses of the .com world.

So why are we here?

We are here because we can and have created this .kids community, but we can't get access to the one and only directory of website addresses administered by ICANN.

We did try however.

In November of last year we submitted a comprehensive application to ICANN, along with $50,000, as part of the TLD selection process. Our application to ICANN was the only application for a .kids TLD which met ICANN's "Threshold" requirements, and the only one which proposes a restricted sponsored name space.

Today, a full year later, ICANN continues to wrestle with the implementation of the TLD process. As was discussed earlier this year in this committee and others, the ICANN application process originally envisioned a formal application, in person interviews, a board decision process and implementation by January of 2001.

In our case, our proposal for .kids was thrown in with others who wanted the name .kids, but who offered no controls over any of the content. It was even included in the same category with .xxx,—an adult only proposal which also wanted to administer a .kids. I have not been asked to give my testimony about the ICANN application process or about the role of ICANN in general, and so I will simply characterize our experience of the TLD application process as frustrating and disappointing.

We believe introducing .kids would go a long way in showing what can be done by opening up the A Root to new TLDs which are not simply duplicates of .com (which creates more confusion), but are intelligent choices for the segmentation of the DNS.

Since the time of the initially scheduled hearing, the Bill has been amended significantly and now concerns the allocation of the second level domain, kids.us. To the degree to which kids.us is the end result of attempts by the legislature to create a safe haven on the Internet for children, .KIDS Domains intends to actively pursue becoming the registry operator for kids.us .

We believe a .kids TLD can effectively create a positive, relevant, engaging, and safe "greenspace" on the Internet for kids. In addition, creating a .kids space will increase the potential effectiveness of existing filtering and child-safety software tools. The only barrier to the operation of such a safe-haven for children is an action by an authority so empowered that would change the root zone to allow for the inclusion of a .kids.

Conclusion

COPA, the Commission on Online Child Protection, has studied a wide range of child-protective technologies and methods. They concluded that a "greenspace'" (a restricted .kids) would be most effective in reducing access to obscene material while maintaining accessibility and minimizing adverse effects. The only negative that the Commission outlined regarding a .kids extension was that one did not yet exist.

Thank you for your interest in .kids, for your efforts surrounding this bill, and for the opportunity to address this committee today. I would be pleased to answer any of your questions.

Mr. UPTON. Well, thank you. You all heard the buzzers. We have a vote on, and I think for us to hear the testimony fully that I think we will take a brief recess and go over and vote. And when we return, we will start with Mr. Taylor. So we will take about a 15 minute recess.

[Brief recess.]

Mr. UPTON. The other members will come back. I saw Mr. Shimkus go in the back and others. We are expecting more votes in about an hour to an hour and a half, they are saying.

So Mr. Taylor, again thank you for submitting your testimony in advance and we will proceed.

STATEMENT OF BRUCE A. TAYLOR

Mr. TAYLOR. Mr. Chairman and members of the committee, I am not going to try to repeat what I said in my statement. I did make several recommendations. Probably the primary one I am concerned about is to add the other types or classes of pornography that should be excluded from this site. That is partly a lesson we learned in the Communications Decency Act, and in COPA to some extent. I think the Communications Decency Act chose to say we will enact indecency as the standard. If they had said indecency or anything above it-obscenity, harmful to minors, and child pornography, we would still have those other classes in effect under the Communications Decency Act, even though the Supreme Court said we couldn't enforce it, only against indecency.

If the web had been regulated under the structure created by the CDA against obscenity and child pornography and maybe even material harmful to minors, we would have a lot less pornography on the web intruding on our children, being able to be accessed by our children like it or not, for this Congress to every year have to deal with. And it is true that the industry wants total control over the Internet. But the United States government built this, gave it away, put a lot of money into it every year. One of the things that they are concerned about is that everybody should be able to use it, and our kids are being used by it, more than they are allowed to use it.

And by creating a dot kids domain, you may at least give them one place to go, and originally I was not so much in favor of it as I was in favor of law enforcement. I would like to see the FBI and the unit I used to work at the Justice Department prosecute the pornographers so they would not be there for us to have to deal with. A couple years ago when this committee had a hearing on the Child Online Protection Act, on COPA, we ran one word searches on several search engines, boy, girl, toys, cheerleaders, just to see what would come up on various search engines. They all came up with pornography links. If a kid clicks on any of those, they get to see hardcore unrestricted porn sites.

There is a red light on the Internet that our kids are going to go to because they are drawn to it, and they get it when they are not even looking for that. If kids tried to download the Mars pictures on NASA.gov and they typed in "NASA," they got taken to

NASA.com, which is a porn site. If they type in "White House," they get taken to WhiteHouse.com, which is a porn site.

There is a good reason for us to be worried, and if this domain is properly administered to say we are going to make a place that doesn't keep adults from doing whatever they are going to do elsewhere, and they should be prosecuted when they break the law elsewhere, but on this domain, even the Supreme Court's decision in Reno versus ACLU that said well, the Communications Decency Act was a little too broad for adults on the rest of the Internet, they cannot say the same thing about a dot kids. That is why I went through some of the citations of cases where the courts have said you cannot do to the rest of the Internet what you could do to protect children. It is exactly the same thing you are trying to do with dot kids that eliminates all those arguments.

So I do think that it is a fair thing for Congress to be concerned about and to try to do something about it. I do not think it is a fair criticism to say ICANN or any other root or domain registration agency should be able to take away the right of people to have an Internet that everybody can use. So I think that the dot kids domain is a better idea now than it should have had to be a couple of years ago.

I also think there are some concerns with it. It will be challenged. They will not challenge the creation of the domain. They will take that. But they will challenge the right of who has to go there or what restrictions you can put on people, and you cannot exclude me. And so there is going to be a fight over that, and I think keeping "harmful to minors," and adding "indecency" and putting "obscenity" and child porn is important, so you will still have an enforceable set of standards on this domain while they are fighting whether you can have "harmful to minors," whether you could have "indecency."

So those are concerns that this Congress I think should address. And I also think some of the other suggestions about picking an administrator who is willing to or has to use filters to monitor it, to report to Congress—that those reports of people who violate the standards and conditions of the dot kids should be reported not only to the Department of Justice and FBI and local police departments, but there should be some follow-up and accountability to Congress.

What are they doing about it? We have cyber-tip lines. We have people committing thousands of felonies of obscenity and child pornography. They are not being prosecuted. And after 9-11, we are going to have a lot of terrorism enforcement that has to take a priority, but this, you know, the priority of the Internet for our kids to learn how to use it and share information, rather than being stalked by pedophiles and supplied by pornographers, is a legitimate concern that I am glad to see this committee take up.

And I think this domain can do a lot of good things that this committee intends it to do. It may take a little more supervision and diligence to make it work and to force those to whom you entrust it to do what you ask them, but I think it is worth a try. And so to the extent that I think it is constitutional, that there are existing cases that can support it, that there is a compelling governmental interest to attempt it, I think those are arguments, at least

if I can add my voice as someone who has been prosecuting obscenity cases since 1973, to my efforts to help you do that, that is my primary purpose in being here. And if there is more that we could submit to the record in legal opinion or factual as this bill progresses, we are here to do that.

[The pepared statement of Bruce A. Taylor follows:]

PREPARED STATEMENT OF BRUCE A. TAYLOR, PRESIDENT & CHIEF COUNSEL, NATIONAL LAW CENTER FOR CHILDREN AND FAMILIES

Mr. Chairman and Members of the Committee: Thank you for the opportunity to provide testimony on H.R. 2417. As President and Chief Counsel of the National Law Center for Children and Families, it is my primary function to provide advice and assistance to legislators, law enforcement agencies, and public officials on the enforcement and improvement of federal and state laws prohibiting the unlawful traffic in child pornography, obscenity, pornography that is obscene for minors, and indecency, as well as on racketeering, prostitution, and the regulation of sexually oriented businesses. I have been prosecuting obscenity and vice offenses under state and federal laws since 1973, when I was an Assistant Prosecutor for the City of Cleveland, including over five years as a federal prosecutor with the Justice Department's Child Exploitation and Obscenity Section. I think I have prosecuted more obscenity cases than any attorney in this Country's history, amounting to about a hundred jury trials and a couple hundred appeal briefs on First Amendment related issues in such cases. Since joining the National Law Center's staff six years ago, I have been constantly involved in advising Congressional sponsors on several Internet related bills to restrict or control the unlawful or harmful traffic in pornography, especially in its accessibility to minor children. I have been a strong proponent of improving laws and legal remedies in this area, but have also supported immunities to enable Good Samaritan efforts by the Internet industry to voluntarily restrict access to pornography, hate sites, controlled substances and weapons, and other objectionable materials, as well as encouraged increased diligence and involvement by parents, educators, and others who share a role in safeguarding and educating our children and grand-children in their online experiences. In this latter regard, I served on the Steering Committee for the Internet-Online Summit a couple years ago to assist and encourage the Industry to formulate methods of supplying appropriate content and better safety for children and to provide and enable real protections for minors and tools for adult and parental supervision and protection of minor children while online.

In support of the creation of a Dot Kids domain for the World Wide Web, I'd like to offer some thoughts on why such a domain could help children, what legislative and constitutional issues should be addressed, and how Congress can better assure that the new domain will accomplish its purpose of being a safe and educational online place for our kids to learn and play.

The first statement I will make, therefore, shall be in support of the intent and purpose of this proposed act: to provide an Internet accessed WWW domain that will contain content, services, and facilities for use by minor children that is free of harmful and pornographic materials; that safeguards the privacy and safety of such adolescent users; and which provides a forum where minors have access to information and entertainment that is safe, lawful, and appropriate, while giving content providers access to children under conditions of agreement to comply with the prerequisites mandated and intended by Congress for these purposes.

In short, I submit that a Dot Kids domain can be a great service to our youth, is a constitutional means of accomplishing this result, and can be achieved with proper guidance from the Congress.

I. A DOT KIDS DOMAIN FURTHERS A SUBSTANTIAL GOVERNMENTAL PURPOSE:

This act will help solve the problem we face today of giving our children and grand-children access to an Internet, WWWeb, and Usenet that have inordinate amounts of "adult" and pornographic and inappropriate materials, while balancing the ability of adults to use interactive computer services for lawful purposes without endangering such younger users. Among all the beneficial and potential means of balancing the means for making the Internet safe for children and/or providing a safe haven on the Internet for children, a separate and safeguarded Kids domain could provide an online playground, school, and library that real kids could enjoy and learn from without interfering with the content on the rest of the domains of the World Wide Web or other online services for adults or children. Building kids

their own space in cyberspace is the least we can do for them amid the vast universe of information and services that the rest of us need or desire for ourselves. Whatever we adults do with our space, under the law or outside the law, need not and should not pollute the computer environment for those younger ones who need us for their protection, nurturing, education, and entertainment.

Whatever success or frustration there may be to make "the Internet more safe for children", whether through laws, law enforcement, voluntary Good Samaritan efforts, or parental supervision, a Dot Kids domain can be that safe-haven for the kids to go until we adults achieve more success in giving them safe-access to the public areas of cyberspace or until, if we continue to fail, they are old enough to fend for themselves as adults in the electronic adult world they will inherit.

For these reasons, I support efforts to create a children's domain on the Web where the rules are written for their protection and the adults who build and supply that domain are bound by those rules. I adamantly oppose the creation of a "dot porn" or "dot sex" domain, because I don't think we should elevate the pornography syndicates to a seat at the World Wide Web consortium or legitimize their ill-gotten gains and because I don't trust them to stay on their own vice domain and get off the cash-cow of the dot com domain. They'll take the red-light district and fill it with porn and prostitution, but they'll never leave our children and families alone in the rest of cyberspace anymore than they do today. The pornography industry, by its very nature and purpose, has no respect for public morality and no respect for human dignity. Their nature is to exploit and their purpose is to seduce customers into continual addiction in pursuit of profit. Those are clear battle lines, on opposite sides of the law, and no one should expect more clarity or compromise than that. On the other hand, I do not oppose a Dot Kids domain, if created and operated for their benefit instead of ours. There are practical problems to face and solve, but I do not believe there should be serious constitutional problems with carving out a safe-zone for children, even though we don't surrender a vice-zone for adults.

Constitutionally, the creation of a domain for minor children that is limited to information and images that are lawful and appropriate for them should be found by the courts to be within the surpassing governmental interest in protecting and educating our children. There will surely be challenges to the act, similar to those lodged against the Communications Decency Act of 1996 (CDA), Child Online Protection Act of 1998 (COPA), and the Children's Internet Protection Act of 2000 (CIPA). Such challenges will not likely oppose the creation of the Kids zone, but will seek to enjoin the rules set by Congress to restrict the presence of pornography and other harmful or objectionable content within the zone. There is even a probable likelihood that a judge will enjoin the restrictive conditions for the Kids domain during the years of litigation over the legal objections raised to those conditions. Congress should consider, therefore, making the existence of the domain conditional on the application of the conditions for the domain, so that the domain will not remain online as a "combat zone" for kids if the courts strike down the restrictions against unprotected and inappropriate materials. Instead of adopting a "severability" clause that could separate the domain from its child-safety conditions, the act could require or allow the domain to be closed in the event the protective conditions are taken away.

II. A CHILD-SAFE DOT KIDS DOMAIN IS CONSTITUTIONAL:

A separate domain for minor children can and should be governed by the constitutional principles of what is lawful and appropriate for minors, rather than adults, and the ability or effort to service and protect children in their own zone would not affect the ability of adults to engage in protected activities on any other domain. In a children's zone, there would be no constitutional violation in prohibiting the display or dissemination of sex or nudity that is "indecent", soft-core adult pornography that is "harmful to minors" or "obscene for minors", hard-core adult pornography that is "obscene" even for adults, or "child pornography" that sexually depicts children. Children have no constitutional right to any of those types of materials and adults have no constitutional right to display or disseminate such materials to minors.

My first suggestion is to amend Section 2 of the act, subsection (b)(2), to expand the "Green Light Approach" to exclude not just that which is legally "harmful to minors", but all unprotected materials from which minors may be protected, to wit:

> "The new domain shall be available for voluntary use as a location only of material that is considered suitable for minors and shall not be available for use as a location of any material that is harmful to minors *or obscene for minors (as used in 47 U.S.C.* § 231 and explained in the Report to accompany H.R. 3783, the Child Online Protection Act of 1998, H. Rept. No. 105-775); indecent (as

used in 47 U.S.C. § 223 and explained in the Joint Explanatory Statement of the Committee of Conference, Report for Pub. L. No. 104-104, the Communications Decency Act of 1996, 1996 U.S.C.C.A.N. Leg. Hist. 200-11); obscene (as used in 18 U.S.C. §§ 1460-1470); or child pornography (as used in 18 U.S.C. §§ 2251, 2252, 2252A, and 2256).

Restricting such materials from minors in a designated minors' facility would not infringe any rights of adults or minors, since none of those materials are lawful or protected for minors. The Supreme Court has discussed the impropriety of removing materials from a school library because of the ideas, message, politics, or religious views expressed, even though materials may be restricted if found to be "pervasively vulgar" or lacking "educational suitability". See: *Board of Education v. Pico,* 457 U.S. 853, 870-72 (1982). The Court has also ruled that "indecent" materials may be prohibited from certain public media in order to protect minors and unconsenting adults, even the broadcast indecency prohibited from radio and television by 18 U.S.C. § 1464 and interpreted by the FCC and the Court in *FCC v. Pacifica Foundation,* 438 U.S. 726, 741-50 (1978). The Court has continued to recognize that minors are not entitled to indecent depictions or descriptions of sexual subject matter, even though minors may have a right to obtain non-indecent information about such subject matter. It is not the message or issue that is restricted, only the indecent way of conveying the message or illustrating the issue. The Court has, therefore, upheld the indecency standard when limited to minors, even when striking down the use of that standard when the restrictions would extend it to adults outside of the broadcast mediums, such as in certain attempted dial-porn, cable TV, or Internet indecency restrictions. See: *Sable Communications of Cal., Inc. v. FCC,* 492 U.S. 115, 126 (1989) (indecent dial-porn); *Denver Area Ed. Tel. Consortium v. FCC,* 518 U.S. 727 (1996) (cable-casting indecency), and *United States v. Playboy Entertainment Group,* Inc., 529 U.S. 803 (2000) (scrambling indecency on cable TV); and *Reno v. American Civil Liberties Union,* 521 U.S. 844 (1997) (CDA's indecency provisions for Internet and other interactive computer services).

Unlike the reasons accepted by the courts for declaring the indecency-display provisions of the CDA unconstitutional, that the indecency standard was overbroad when applied to public services of the Internet because they supposedly lacked technically feasible ways to restrict minors from the indecency without restricting it to adults, a Dot Kids domain can be avoided by adults themselves and its safe-harbor protections are not imposed on the rest of the Internet, Web, or Usenet so adults are not restricted from any indecency or "harmful to minors" materials to which they may be entitled. The reasonings adopted by the courts in the CDA and COPA litigations would not apply to a children's domain, since adults would not be restricted from any protected information on the rest of the Net. Restricting indecency and harmful to minors pornography, as well as obscenity and child pornography, from minors' areas would be consistent with the limited venue restrictions against less-than-obscene pornography in other contexts, such as prison-porn restrictions, *Thornburgh v. Abbott,* 490 U.S. 401 (1989), and *Amatel v. Reno,* 156 F.3d 192 (D.C. Cir. 1998); restricting porn on military installations, *General Media Communications, Inc. v. Cohen,* 131 F.3d 273 (2d Cir. 1997); restricting arts funding by considerations that include indecency, *National Endowment for the Arts v. Finley,* 524 U.S. 569 (1998); permitting private indecency restrictions by cable TV operators, *Loce v. Time Warner,* 191 F.3d 256 (2d Cir. 1999); and permitting state governments to restrict pornography access on state-owned or funded computers, *Urofsky v. Gilmore,* 216 F.3d 401 (4th Cir. 2000). The Dot Kids domain would also be consistent with the intent of Congress to provide filtered access by minors to federally subsidized Internet access in public schools and libraries through the Children's Internet Protection Act of 2000. Due to the separate and designated nature of the Kids-Friendly Domain to be created by this act, the constitutionality of this act can and should be secure regardless of the eventual result of the challenges to the COPA, CIPA, or other laws placing restrictions for pornography on public areas of the Net. A Kids domain makes a kid-safe part of the Internet, rather than attempting to make other parts of the Internet safe for kids. All classes of materials that are unprotected for minors may be restricted from minors on the minors' domain without restricting any such material for adults. Therefore, it is my opinion that this act is constitutionally valid and enforceable.

III. FURTHER CLARIFICATIONS AND SUGGESTIONS SHOULD BE CONSIDERED:

Congress can anticipate certain probable and potential challenges and issues and I submit a few such areas of consideration:

(a) As suggested above, the act can and should prohibit from the Kids domain, under Sub-section (b)(2), not just pornography that is "harmful to minors", but also

the other unlawful and unprotected classes of pornography for minors and adults, including child pornography, obscenity, and indecency (which could be both the broadcast indecency material used for radio, TV, and cable, as well as the "online indecency" material intended for interactive computer services, as discussed in the Conference Report on the CDA and in the Brief of Members of Congress . . . as *Amici Curiae* in *Reno v. ACLU, supra;*

(b) Consider a statement of legislative intent to create the Kids domain for the age group(s) of minors of either or both grade school or high school levels;

(c) Consider requiring that the domain managers and site operators filter the domain with software and server-based content filters (as required by the Children's Internet Protection Act, CIPA), require mandatory use of content ratings (such as those of the Internet Content Rating Association, ICRA's PICS-compliant rating system), and privacy protection measures to prevent minors from being targeted by direct marketing that uses or discloses personal identification information about or by the minors (as required by the Children's Privacy Protection Act). Employing these Congressional and industry measures in an actual domain would provide a real-world test environment within which to make use of and demonstrate the effectiveness of Congressional protections intended by those acts and enabled by the Good Samaritan immunities and defenses granted to industry as part of the CDA in 47 U.S.C. § .223 (b) and (c);

(d) Consider mandating that domain managers and site operators monitor compliance and provide automatic reporting and tiplines to law enforcement agencies, both state and federal, as well as to Congress for re-evaluation and enforcement of the act's purposes and guidelines;

(e) Consider preference to or involvement of filtering companies in structure and operation of the domain, to insure that domain managers will give effect to Congressional intent, instead of entrusting such an important function and public asset to managers or operators who would frustrate the purposes of the domain;

(f) Consider having only filtered portals, if any, for safe access or links to information on other domains, online services, and Usenet newsgroups;

(g) Consider prohibiting interactive and un-moderated chat rooms and instant message boards;

(h) Consider prohibiting Sexually Oriented Advertisements ("SOA"), as that term is used to restrict mailings for pornographic materials in the Postal codes under 39 U.S.C. §§ 3008, 3010 and 18 U.S.C. §§ 1735, 1737, including banner or pop-up ads containing any obscene, harmful to minors, or indecent material or giving information on how or where to obtain such information, as prohibited from the mails by 18 U.S.C. § 1461;

(i) Consider restricting unsolicited or unapproved advertisements and spamming, especially for products or services that are unlawful for or restricted from minors, such as alcohol, drugs, weapons, tobacco products, for pornography that is obscene for adults, obscene for minors (HTM), or indecent, or even for sexual masturbation or abuse devices (such as defined by Georgia, Texas, and Alabama state statutes which have been upheld).

For all these reasons, the Dot Kids Domain Name Act of 2001 is a good and wise effort to protect minor children and allow them to share in using the Internet as it was meant to be used and as it was created by the Congress for the benefit of all the world.

Mr. UPTON. Thank you. Thank you very much.

Ms. Hughes? Welcome.

STATEMENT OF DONNA RICE HUGHES

Ms. HUGHES. Thank you.

Thank you, Mr. Chairman, and members of the subcommittee. I appreciate the opportunity to come before you today to discuss the merits and the issues around the Dot Kids Domain Name Act.

I have worked in various capacities for the past 8 years, and just recently last year served on the COPA Commission and will be referring to our report, and also had the opportunity to co-chair our hearings last summer on filtering and monitoring.

I respectfully request that the entirety of my prepared slide presentation and the executive summary of the COPA Commission's re-

port to Congress be included as part of the record of today's hearing.

Mr. UPTON. Without objection.

Ms. HUGHES. Thank you.

I would like to draw your attention to a slide presentation that I put together, and I am going to try to flip through this and stay within my 5 minutes, hopefully. Because we are not clicking through on an actual powerpoint, it might be a little more cumbersome, so if you could please bear with me.

If you go to page one, and we will just flip through this very quickly, I am setting up here again the online dangers to kids. Kids' access to all kinds of material, not just pornography, obscenity and child pornography, but other kinds of objectionable material, such as gambling, hate sites, violence, bomb-making—you name it; also, the fact that predators have easy access to children.

Next page—91 percent of kids coming across any of this objectionable material are doing so accidentally. The cyber-porn industry is very aggressive and deceptive and they are getting worse. Kids, like Bruce said, can type in any kind of innocent word like boys, toys; there are stealth sites. I have listed some of them here—coffee bean supply, water sports dot com.

If you go to the next page, I have given you two statistics on the pornographers' use of brand names targeted to children—names like Pokemon that have links to hardcore porn sites. This is one of the reasons that filtering and technological supplication is going to be an important part of the utilization of this green space.

The following slide—child pornography and obscenity—you can see in misleading sites like water sports dot com, the kinds of free pictures that are there—urination pornography; stuff that ought to be prosecuted; boys dot com. There has been a 345 percent increase in child pornography sites just since February of this year—again, a tremendous need to enforce the laws that we already have on the books.

The following slide—even Yahoo is engaging in allowing child pornography and obscenity on their site. I have just given you a couple of examples of clubs that anyone, any child can find on Yahoo—the Yahoo's Young Girl and Boy Club that contains child pornography.

Okay. Now to the solutions. For years, we have been working to promote a three-prong approach—the need for the public, the technology industry and the legal community to partner with each other. And I see the dot com act that is being presented here as a part of a combination of these three prongs, if you will.

The following page, the Dot Kids Domain Name Act would provide easy access to kid-friendly content, and would empower parents and would be an important part of a total solution. However, the criteria for the content I believe must be clearly defined.

The next slide—it would effectively shield children from HTM content if the children were restricted to that zone, and we actually found that in the COPA hearings last summer.

The following page deals with the domain operator. I believe that this operator should be a trusted and experienced entity in the following: the aggregation of children's content; online child safety and safety technology solutions. I have included here a client of

mine on the bottom slide, Family Click, and I think this is a good model for you to consider, or for the operator of this domain to consider. If you look down here at the most restrictive area, play click, that is a restricted green space. If a parent chooses that, they get only pre-approved sites, and they cannot get out of that. The between play click and full click, you have different levels of different kinds of inappropriate content being blocked by real-time filters. Okay? It is not until you get up to the full click that you are actually just blocking pornography, hate, violence and gambling.

All right? The following slide are recommendations. I do believe that this domain should exclude chat rooms and instant messaging. Eighty-nine percent of sexual solicitations were made in either chat rooms or instant messaging, and I have some stats here for you. Also exclude e-mail—30 percent of spam was pornographic or is pornographic. Also considering marketing issues to children and COPA compliance is very important.

This bottom slide is very important. If you say only children can go there, recognize that children themselves are perpetrators. One in five children last year received a sexual solicitation on the Internet. Of those solicitations, 48 percent of them were by juveniles. All right? And of online harassment, 63 percent were juveniles harassing other people, other children primarily.

The following slide is technology supplementation. It is very important in my opinion for there to be real-time monitoring to ensure that the content and the dot kids domain continually meets the criteria with which it has agreed. There is monitoring that will allow this to happen in real time. The example that I am using here is an Ernst and Young financial site for kids. Last week, they did not re-up their dot org domain. It was bought by a pornographer and is now operating as a porn site. If you do not have these monitoring features in place, you can have names change that quickly and parents who thought they had their kids in a trusted green space will have a false sense of security. Also, monitoring will guard against inappropriate links or changes.

Additionally, filtering technology as a safety net is very, very key. Any savvy kid can reconfigure a browser. Just ask your own. Also, filtering technology will allow access to material that has not—that is appropriate for kids, but has not gotten to dot kids domain or has not registered in that area. And it also allows a great deal of flexibility.

The next slide is the importance of safety education. We know that about half the parents are not using the tools that are available to them. They are not as savvy as we wish they were. We must have a major public awareness campaign, not only around this domain and the advertising of it, but of all the tools that are available. In fact, the COPA Commission recommended that government and private sector undertake a major campaign along the lines of Smokey the Bear, AIDS awareness; I mean, big dollars, big campaign, because parents are not using the tools that are available to them. And if they do not use this tool effectively, again, they could have a false sense of security.

The COPA Commission report found that the establishment of a top-level domain could be an effective way to shield kids from harmful to minors content if the kids were restricted to the zone,

and I have exactly our wording as far as what we found in our report. The next pages, again, we looked at First Amendment issues, effectiveness, accessibility, and all of our comments are here for the record.

Finally, there is a scattergram of all the technologies and methods that we looked at, on the following page 11. And then last is again the importance of prosecuting the laws that we have. Parents cannot put criminals behind bars and government cannot parent. We all have to work together.

Thank you.

[The prepared statement of Donna Rice Hughes follows:]

H.R. 2417, THE DOT KIDS DOMAIN NAME ACT OF 2001

Testimony of Donna Rice Hughes

Before

The Subcommittee on Telecommunications and the Internet of the House Committee On Energy and Commerce

November 1, 2001

Donna Rice Hughes Biography

- FamilyClick Advisor and Spokesperson
- Author, Kids Online: Protecting Your Children In Cyberspace (Revell, 1998)
- Child Online Protection (COPA) Commissioner (1998-2000)
- Enough Is Enough Vice President-(1994-99)
- Founder - www.protectkids.com
- Phoenix Advisory Services- Co-founder and Principal (1999-present)

ONLINE DANGERS TO CHILDREN

1. Free and easy access to inappropriate and illegal content in homes, schools, libraries, businesses and churches:
   - -Pornography (child porn, obscenity, harmful to minors)
   - -Violence & Bomb-making
   - -Hate speech
2. Predators have easy and anonymous access to unsuspecting kids

(77 million children expected to be online by 2005 (eMarketer)

Accidental Access

- 1 in 4 youth ages 10-17 had unwanted exposure to porn in the last year (Online Victimization, National Center for Missing and Exploited Children, June 2000)
- 91% of children accessing objectionable sites do so accidentally (Yankelovich Partner Survey, 9/30/99)
- 62% of parents are unaware that their children had accessed objectionable sites (Yankelovich Partner Survey, 9/30/99)

Cyber-Porn Aggression and Deception

- Misspelled Words- (shareware vs. sharware)
- Innocent Searches- (toys, boys, pets, etc)
- Stealth Sites- (whitehouse.com; coffeebeansupply.com; teenagershideout.com; watersports.com)
- Unsolicited E-mail
- Instant Messages
- Chat Rooms

Pornographers' Use of Brand Names

- 26 popular children's characters, such as Pokemon, My Little Pony & Action Man revealed thousands of links to porn sites - 30% were hard-core (Cyveillance 2000)
- 25% of porn sites are estimated to use popular brand names in search engine magnets, metatags and links - Disney, Nintendo, and Barbie (Cyveillance Survey, 1999)

Child Pornography and Obscenity

- Watersports.com
  - Free images of women urinating
  - Live streaming video
- Boys.com
  - Hijacks to "Man Alert: Leading Gay Content Site"
  - Free images of sexually-explicit homosexual activity
- Child Pornography
  - 345% increase in child pornography sites between February and July 2001 [illegible]

YAHOO! and PORNOGRAPHY

- Yahoo! Clubs, Member Directories and Geocities sites host child porn and encourage child sex abusers
- Yahoo! "Young Girl and Boy Club" (600 members)
- Yahoo! "Slutty Teens for Older Men Club" (3200 members)
- Yahoo! "Preteens in Silk Bras and Panties" (2000 members)

(American Family Association Press Release, October 23, 2001)

PREVENTION: THREE- PRONG SOLUTION

- A shared responsibility between the:

  Public - Parents, Schools & Libraries

  Technology Industry

  Legal Community - Law Enforcement & Public Policy

- Each provides an essential layer of protection

Dot Kids Domain Name Act

- Easy to access "Kids-Friendly" content
- Empowers parents to help safeguard children online
- Important part of total solution
- Criteria for content to qualify for domain should be clearly defined

Dot Kids Content

- The Dot Kids domain would effectively shield children from HTM content if children restricted to zone
- Content suitable for minor children (under 13 years old) which may exclude:
  - Violent content
  - Hate speech
  - Gambling sites
  - Revealing attire
  - Sex education

  – Consider tiered access levels

Domain Operator

- Domain Operator should be trusted and experienced entity in:
  - Aggregation of children's content
  - Online child safety
  - Safety technology applications

  Example: The FamilyClick Model
  - From the creators of The Family Channel
  - Aggregators of child content
  - Superior server-side filtering - (Two-step filtering including real-time filter)

FAMILYCLICK (FamilyClick.com)

FullClick	18+ Blocks sites receiving a rating beyond PG13, including porn, hate, violence, gambling
TeenClick	12-17. Blocks unmoderated chat and e-mail, pornsites, free e-mail
PreTeenClick	Kids 8-12. All above including revealing attire, advanced sex ed., weapons, gamer inappropriate for pre-teens
KidzClick	Kids 5 and under. All the above including basic sex ed.
PlayClick	Limited library of FamilyClick preapproved sites
FamilyClick Unplugged	Full, unfiltered Internet access

Recommended Exclusions

1. Chat Rooms and Instant Messaging
   - 89 % of sexual solicitations were made in either Chat Rooms or Instant Messages (Pew Study, 2000, 6/01)
   - 1 in 4 kids participate in Real Time Chat (FamilyPC Survey, 2000)
   - 13 million youths use Instant Messaging (Pew Study, 2000, 6/01)
2. Email - 30% of all spam is from pornographers
3. Marketing to children (COPPA Compliance)

Children are also perpetrators

- Eliminating chat rooms, instant messaging and email also guards against inappropriate behavior by minor children
- 1 in 5 children received a sexual solicitation or approach in last year
- 1 in 33 received an aggressive sexual solicitation
- Juveniles - 48% of overall solicitations
  48% of aggressive solicitations
- Juveniles - 63% of online harassments
- (Juveniles -Younger than 18 years; Sample of 1,501 youths ages 10-17. Online Victimization Report, National Center for Missing and Exploited Children, June 2000)

Technology Supplementation

- Real-time monitoring to ensure content criteria compliance
  - Moneyopolis.org - Ernst & Young financial site for kids. Expired domain registration bought by pornographer (Source: New York Times, 10/26/2000)
  - 5 million new or renamed web site additions/week
  - Protect against inappropriate links or changes
  - Monitoring technology should be utilized at the server level

Filtering Technology as Safety Net

- Savvy kids can re-configure browser settings
- Protect against inappropriate links or changes
- Allows access to appropriate content outside Dot Kids Domain
- Greater flexibility, safety and content access
- Server-side filtering superior and highly effective
  - Allows filtering of multiple categories of inappropriate content
  - Consider server side filtering as an added value service by Dot Kids operator

Internet Safety Education Is Essential

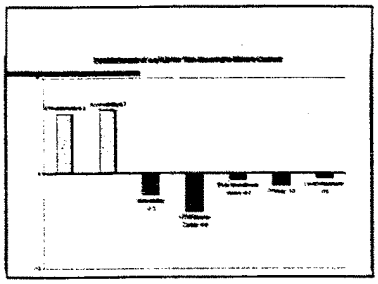
- 1 in 2 parents don't use protective software (FamilyPC, 2000)
- 58% prefer parental guidance instead of protective software (Cybertelephone/Pew Internet, 2001)
- COPA Commission Recommendation - Government and private sector should undertake a major education campaign to promote awareness of technologies and methods to protect kids online

COPA Commission Report

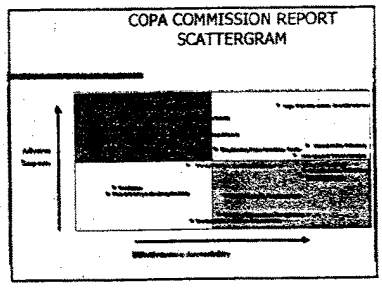
(Please include COPA Commission Report Executive Summary for the record of today's hearing at www.copacommission.org)

Report found establishment of a Top Level Domain for non-harmful to minors content:

- Effective way to protect children from htm content
- More effective if children restricted to such a zone
- More visible than multiple green spaces
- Not effective in addressing content in chat, newsgroups or instant messaging
- Not included in the Commission's recommendations to Congress due to ICANN considerations.
- A lower level domain could be established without ICANN involvement



COPA COMMISSION REPORT SCATTERGRAM



LEGAL PRONG

GOVERNMENT & LAW ENFORCEMENT

- Aggressive enforcement of current laws to curb the online sexual exploitation of children
- "Government at all levels should fund, with significant new money, aggressive programs to investigate, prosecute, and report violations of federal & state obscenity laws" (COPA Commission Report, Law Enforcement Recommendation Summary)
- Government can't parent and parents can't enforce the law.
- A "Kids-Friendly" Domain can help equip parents to better protect their children on the Internet.

Mr. UPTON. Well, thank you very much, all of you, and sorry again for the interruption with that vote. We will now proceed to members to ask questions. We will use the 5-minute rule and we will go to a second round if we need to.

Again, I want to compliment Mr. Markey and Mr. Shimkus, the authors of this bill. It is my intention, I will say right from the start, that we are intending to mark this up in subcommittee as soon as we can get a date. We are looking for your thoughtful and constructive comments so that we can make it an even stronger bill. And again, as I look at my own, just examples in my own home, I look at my daughter who turned 14 this morning, ever since she saw the movie "Babe," she has had a great love of pigs. And she does not eat pork anymore—no bacon or sausage at our house—and lots of little signs, "Pigs Rule" and everything else that she has in her locker at school.

But when she plugged that into the computer, she found something else, very innocently a couple of years ago. And the examples, Mr. Taylor, that you use, it is really very troubling when that kind of garbage comes into a household, particularly if it is unwanted, as it is in ours. And that is why I feel so strongly that we have to move this legislation.

And I guess, Ms. Victory, as we began to look at the contract that was signed this last weekend, and the reference that literally—I mean, this is the material that was supplemented as part of the contract, fairly thick—at least, and I am not a lawyer, but I do not see that there is a promise by NeuStar to do this. I do not see that there is a requirement for NeuStar to come up with a dot kids. I do not see a timeframe for them to implement.

In fact, a number of the other dots that they reserve—but I mean, there are probably about 30 on here from apnic, to coop, to park and zip and whitehouse and veterans—you know, all good things, many of them we raised in our ICANN hearing last, I guess it was early this year, one of the very first hearings that we had, and there was a lot of frustration on this panel. And I, again, I thought we ought to have a dot travel. And we were all very frustrated with the ICANN folks who we would like to, you know, shake them in terms of their responsiveness to the needs of the consumer.

And when I do not see a requirement or a timeframe—you know, maybe they start with dot park or maybe they go to dot PSO, or you know, some of these others, it may be, I do not know, 25, 30 years before they get to dot kids, though I think there is a lot of emphasis here on that. And our bill, the way that we are looking at doing it, particularly with the amendment, the chairman's amendment at the beginning that has been worked out with both sides—Mr. Markey supports it; Mr. Shimkus has been instrumental in pursuing it as well—says guess what? The game is up. We are going to do this. And we are going to do it as fast as we can because it might, in my view, it is the most important addition, first off, that we can do of all the ones that are out there, particularly for those of us parents.

And I would like you to—and I do not know if they put on the table that there was going to be a requirement, or a timeframe or a promise that they would do it, but I sure do not find it in the

stuff that we have looked at, and I welcome your thoughts, comments.

Ms. VICTORY. Sure. When the procurement was initiated, there was at the time, since this was done a while back, no specific request on the part of the Department of Commerce that there must be a dot kids, dot U.S., nor was there a reservation of dot kids, dot U.S. out of the dot U.S. top-level domain that would be procured.

NeuStar was one of the applicants that did propose use of certain second-level domains for various public purposes. Dot kids, you are right, is one example. They do not make a commitment to do it, but they do——

Mr. UPTON. Right. There is no guarantee that they are going to do it. And that is what our bill does. Our bill directs it to happen. I should say their bill, but it is our product in this committee.

Ms. VICTORY. That is correct. The bill would direct it to happen. The problem is since the procurement was started many, many months ago, the bill would essentially change the procurement that was offered by the United States. And therefore it would subject the contract and the whole procurement process to challenges because all of a sudden instead of getting all of dot U.S., NeuStar would be getting dot U.S. minus dot kids. So not only could NeuStar——

Mr. UPTON. Let me ask—my time is expiring—let me just politely just stop just for 1 second and just say, you know, as a parent, I am not interested in excuses. I want it done. And it would seem to me that if we can direct this to happen, whether trying to open up the bidding process and use, I think, very legitimate firms that have a track record on this and let someone oversee to make sure that independent it gets done, is the right road to take. And if it means—and I know this contract took some time to negotiate, many months, started before you were sworn-in, that is for sure. But it seems to me that if we can get a legislative product to go around the track here on a pretty quick basis, that that would be something that this administration, particularly your office, would support as you could no longer say "our hands are tied" because of this bulky contract that started before my watch. Is that not right?

Ms. VICTORY. If you pass the legislation, it is possible that the contract would be subject to legal challenges or it is possible that NeuStar would agree that this was a good idea and proceed. But that is not to say that others who were not successful in the procurement might now challenge it and say that they would have stood a better chance had they had the ability to pursue dot kids, or dot kids, dot U.S.

Mr. UPTON. My time has expired, but I will yield to Mr. Markey first, for 5 minutes.

Mr. MARKEY. Thank you, Mr. Chairman, very much.

Ms. Victory, I want to ask a quick question about the competitive implication of the dot U.S. contract that NTIA is pursuing with NeuStar. In telecommunications policy, we have a set policy of ensuring that telephone numbers are extended to citizens and competitors in a neutral way. That is a vitally important consideration in order to maintain the proverbial level playing field.

Now, as we move toward new technology, and specifically technology such as Internet telephony, NTIA, in my opinion must think

through these issues in its contract with NeuStar. The NeuStar proposal reserves all series of numbers over five digits, including telephone numbers. I want NTIA to look closely at the competitive and privacy implications of how those telephone numbers are treated.

For example, my office telephone number is 202 225-2836. How will we treat the use of 202 225-2836.US for use as a web phone for Internet telephony? Do I get first dibs on my number for the last 25 years?

Ms. VICTORY. I think that is a very valid question. That will be something that will need to be addressed with respect to those types of addresses.

Mr. MARKEY. Do you think I should have first dibs on it?

Ms. VICTORY. At this point, I do not have an opinion, but I could see why you would want first dibs to it, and I could see where there might be confusion if you did not have first dibs to it.

Mr. MARKEY. Can you see why every American would want first dibs on the phone number they have had for their entire lives, and that they would not have to purchase it from one company or someplace that went out and started speculating on our phone numbers.

Ms. VICTORY. This is sort of the idea of the number portability extension to your Internet address, essentially.

Mr. MARKEY. Do you think that makes sense?

Ms. VICTORY. I definitely see where that is something that folks might want, and that would definitely be an issue that would need to be addressed in giving out those types of addresses.

Mr. MARKEY. I can tell you with absolute certitude that you do not even have to have a hearing on it. Just call your mother, call everyone else in your family, they will all tell you that they want their phone number protected, and they do not want any private company with control over it. Okay, I promise you it does not require anything more than that.

I want to note that dot U.S. is the only country code America gets. It is all we have. NTIA has proposed commercializing the dot U.S. domain and granting a contract to NeuStar to run that domain. Now, in our previous ICANN hearing that Chairman Upton held in February, many members voiced consternation at the ICANN process because the creation of new top-level domains such as dot biz and dot pro were quasi-public assets with significant implications for Internet commerce.

When looking at dot U.S., however, we are not talking about quasi-public assets, but rather a straightforward resource which belongs to the American people collectively. It is our national cyberspace domain. So you have announced giving NeuStar a contract to administer this national resource, and the opportunity to reap millions of dollars of profit for free. The United States government, in my opinion, should be long past the point where we give away public resources for free.

I do not mind NeuStar making money, yet we only have one country code domain and we can give only one company the opportunity to profit from it. We auction off the spectrum. We license timber, natural gas, coal, oil rights on public lands. We do want those natural resources utilized for the benefit of the American people. But on the other hand, those companies pay the Federal

Government and then the Federal Government can use that money to educate children, to have inoculation programs for children across the country with the money those companies pay out of their profits.

We do not have that in the construct of this licensing as it is presently proposed by NTIA. Why wouldn't the NTIA support having all qualified applicants bid for the right to run our national domain? Or at least have our taxpayers reap fees from the sole commercial interest granted the right to make money off of this? What do the taxpayers receive from the NeuStar contract?

Ms. VICTORY. The NeuStar contract was awarded pursuant to a procurement of management services. So what the U.S. taxpayer receives is management of the dot U.S. domain, as well as investment in the underlying technology that is used to manage the dot U.S. domain. NeuStar has committed, and indeed would need, to make a substantial technological investment in order to upgrade the top-level domain. In addition, they are going to be providing the management services for a period of 4 years. At that time, the contract is subject to two 1-year extensions. During that time, I would presume that NTIA might be looking at additional procurement for management of that space for an additional period of time.

But right now, when this procurement was accomplished, NTIA does not have the authority to auction off top-level domain names. That is not in our statutory authority.

Mr. MARKEY. Do you want that authority? We could give it to you. Would you like it?

Mr. UPTON. OMB is not in the room, I don't think.

Mr. MARKEY. Would you like us to give that to you?

Ms. VICTORY. Actually, at this point, I have not thought about the question—what my answer to that question would be before, but certainly in procurement——

Mr. MARKEY. You know, there is a kind of—do you know Harry Houdini?

Ms. VICTORY. Yes.

Mr. MARKEY. He used to get tied up by other people. As a result, you know, he just could not move. A reverse Houdini is when you tie yourself up and then you say, look it, I would like to help you, but see my hands are tied. So what we are saying to you in this reverse Houdini of the Commerce Department saying it is impossible for us to do this. And then we say to you, how would you like us to untie your hands? And you say, well, we are not sure we want our hands untied because we are not sure we actually want to do that. That is a different question altogether.

But in terms of our ability to be able to proceed in a way which extracts the maximum amount of public benefit for the taxpayers of our country using a competitive model, we think that what NTIA is doing is really going into kind of a time machine, going into a way-back machine where in the old days we actually used to give away the spectrum to the telephone companies. We would just give it to them.

But then beginning in 1993, we said, well, that is stupid. And we instituted an auction whereby we said to all these companies, we know that the American people will be benefited by having compa-

nies make a profit from investing in new cell phone companies. But at the same time, they should have to pay for that because it is going to be beneficial to the company. What you have done here—not you personally; I know that this was something that was already in place before you got there—but what the Commerce Department is doing is going back to an old model, a discredited model where we handed over for free to companies, and the taxpayers do not derive any benefit from it beyond just the fact that a company now has a service contract, if that is how you want to view it.

And what we need to have is some way in which this, quote "burden"—the Commerce Department I think is viewing this as a burden on the agency—and therefore you have to contract with someone to relieve the agency of the burden to administer this domain area. And the way we view it is, it is not a burden, it is a tremendous opportunity in the same way that spectrum and timber and oil and gas are, and you should look for companies that view it that way, and then want to conduct it in the way in which the government would like to see it conducted, including putting a dot kids in place, okay, instead of hoping that they would.

So it is kind of a different model that I think is going to be very troubling to this committee because it runs totally contrary to the modern history of this committee and its expectations for the Department of Commerce in terms of how you administer these programs.

Ms. VICTORY. I think you make some good points. I would like to address your analogy with the spectrum. First of all, the reason we did not auction this is we do not have the authority. If we would have the authority, the question is whether it would make sense to auction management of the dot U.S. phase.

I think, unlike where you are auctioning spectrum that a company is going to use for a commercial system they provide on a fee basis to subscribers, here you are talking about management of the dot U.S. space, management on behalf of the U.S. Government, as opposed to providing spectrum carte blanche to a company to create whatever system—to create the system they want to have, and then go ahead and have customers or subscribers who would pay for that system.

Mr. MARKEY. Well, let me ask it a different way.

Ms. VICTORY. I think the public interest justifications are a little different.

Mr. MARKEY. And I appreciate your indulgence, Mr. Chairman, just one final question. How much is NeuStar going to pay the Commerce Department?

Ms. VICTORY. NeuStar is not going to pay the Commerce Department, but the Commerce Department will be getting in return from them the management services of the dot U.S.——

Mr. MARKEY. So they are not going to pay you anything. How much do you think it is worth to have this contract?

Ms. VICTORY. I have no idea.

Mr. MARKEY. Right. I think that is the problem. I would rather have had, if not a permanently leasing at all, just a bidding process to get the contract from you, and assuming they are all qualified bidders, then the taxpayers would have extracted something from

it, and meanwhile you could have had all the other constraints upon it in terms of coming back every 4 years or 6 years, whatever. But this way, I do not see the taxpayer receiving a benefit.

Ms. VICTORY. And one of the concerns with the bidding process is are you going to—are all the bidders equally qualified and are you going to be able to——

Mr. MARKEY. But you could establish that.

I apologize, Mr. Chairman.

Mr. UPTON. Mr. Shimkus?

Mr. SHIMKUS. It is always very helpful when you can get Congressman Markey on your side, so I want to—it is a mixed blessing, though, and I appreciate him and I appreciate his work on this.

I want to just start with a short statement to the assistant secretary. Our frustration in the ICANN hearing is bubbling up here. Congress, through legislation signed by the president, we enact public policy. We do the public policy. Federal agencies implement the Federal policy. And that needs to be understood.

So when Federal agencies say "we cannot do it," well, that is why we do what we are doing today. Federal agencies also understand that we are the authorizing committees, and Federal agencies also have to understand that we are the funding agency. All appropriations by the Constitution go through the House.

So we would like your help in moving this legislation forward because I think you will find out from the subcommittee and the full committee that this is a train that is going down the track, and we want to make it so that you can help us implement this to the best interest of our country and our kids. And the worst thing you could do is tell us you cannot do it. What you need to do is come to us and say, "let's look at this and make it work." And that is just my speech. We get very frustrated when we hear "we cannot do" or other——

I want to address this issue of the marketplace because I am a big marketplace individual. We just went through a hearing yesterday, though, on the Price-Anderson Act, which because some of us believe that nuclear power is essential to the Federal Government, we give them some liability protection—is that correct, Mr. Markey?—because we think that that is important for our energy security. There are some who disagree, and I have great respect for those who do.

What kind of liability protections are there for the private corporation that you have contractual obligations for? Were there any liability protections?

Ms. VICTORY. I am sorry. Liability protections for—?

Mr. SHIMKUS. Why would people get sued—maybe a kid is allowed to get on the Internet, steal or use parental credit cards, go to offsite locations, run up gambling bills. There is a conflict created between corporations and companies and Internet service providers, and how are those resolved? How are conflicts resolved in our system?

Ms. VICTORY. So you are asking whether or not in the dot U.S. contract with NeuStar, are there——

Mr. SHIMKUS. I am asking, in a private corporate setting, is there liability protections for those people who are contracting and doing

business on a contractual basis that you may have assigned with NeuStar?

Ms. VICTORY. I am sorry. If you could repeat the question. I am not getting——

Mr. SHIMKUS. Okay. Let me ask it a different way. Since we are trying to set up a kid-friendly space and since that space might prohibit the use of things, and I know a lot of my colleagues may address, like purchasing of children over the Internet, a limitation of banners, no instant messaging, no chat rooms, that makes that site probably less profitable for someone to sell out, contract out, however that is done. But we think as a country that it is so important to protect our kids that we are willing to do that. We promote that by giving someone a monopoly, in essence, with agreed upon oversight. With that could be liability protection.

We do it, again, in other areas if we feel that it is as important, which would help offset some of the maybe costs that would occur to a business. You know, there is revenue that comes in for doing a business; there are expenses. If we are limiting the amount of revenue, then through liability protection, because we are empowering this through legislation, that there may be less of a cost of doing business because you have some protections that you do not have to hire lawyers for, and you do not have to be afraid of being sued out and actually sued to where you have to leave the business.

So I see that as a benefit of the government involvement in this in a dot kids with the U.S. country code domain. And I would ask your comments based upon that whole long premise.

Ms. VICTORY. Sure. Just to say first, Congressman Shimkus, we would like to work with you and your staff and we think this is a very worthwhile goal. We think that with the NeuStar contract there may be ways of accomplishing this more quickly than through legislation.

Mr. SHIMKUS. And we respectfully disagree.

Ms. VICTORY. Okay. What I tried to do today is just raise some concerns about what is currently in the manager's amendment.

The question that you ask, would liability protection help in certain circumstances, probably it would, but it depends on what sort of shielding you are giving. Obviously, if you are trying to create a dot kids space or a child-friendly space somewhere on the Internet, there probably do need to be some rules of the road as to how people conduct themselves. And whether you do this through legislation or whether NeuStar does this or some other company does this through how it manages a dot kids-dot U.S. space, presumably there need to be some rules of the road for the providers that launch a web site in that area.

And so in terms of where you have the liability protection, you probably do not want to protect from liability the companies that are establishing a web site who have committed to provide a child-friendly space. Would you want to provide some liability protection to the domain name operator who is enforcing the contract, but yet cannot control what the web site owner puts on their web site? you know, that may make sense.

Mr. SHIMKUS. But can you do that without government involvement?

Ms. VICTORY. Probably not.

Mr. SHIMKUS. So then that—okay. So that answers the question of why it is important for maybe some legislation.

Mr. HOWE. I think the way that the bill has been written shows an understanding of the complex nature of what we are trying to do. And giving that helps us, because our enemies in the ICANN process, where thoughts such as "one might object and sue sometimes." ICANN asked us to indemnify them against a lawsuit that may ever come to us to them, whereas the legislation from this committee, making a decision by a consensus body to say this is what we want to do, does help us as a registry operator not have to face the problem of one might do something, one might do something, or there might be some expectations that we would be shielded from. And the answer I would look forward to hearing as to whether that can be done, and leave it up to——

Mr. SHIMKUS. Thank you, Mr. Chairman. And just for a yes or no answer from Mr. Howe, based upon what service you provide, do you allow chat rooms, instant messaging, cookies or banner ads on the service you provide right now?

Mr. HOWE. Cookies policy is unclear. We do not allow chat rooms. We have said to our registrants, to the extent that we can come with real-time monitoring and procedures that meet the needs that this committee and other people and bodies such as Ms. Hughes have suggested, we will then allow chat. But right now, there is no unmonitored chat on our dot——

Mr. SHIMKUS. Instant messaging?

Mr. HOWE. We do not control the kids' access to other parts of what they do. Instant messaging is not always a domain issue. It happens on the browser. But right now we would not—a site that had unrestricted instant messaging as their goal we would say runs counter to what is kid-friendly.

Mr. SHIMKUS. Thank you, Mr. Chairman. Thank you for allowing me to extend my time.

Mr. UPTON. Mr. Terry?

Mr. TERRY. Let me just follow up. I am kind of piqued—a more specific question that is in general discussion, and I think one of the ways is not only to protect kids from the content, but trying to receive or obtain information about families, and specifically kids. And so I appreciate the efforts that you have made to reduce the type of information obtained from kids, and I think that is extremely important.

There are overt and covert ways to obtain information, though. Simply, you know, having to register when we put Disney's up, you know, the type of family information they are asking just to register to get to use their games was amazing to me. So I would like to reduce the type of information they obtain simply to access the games.

But what I fear is not what I am overtly being asked, but what is covert in the way of cookies and other mechanisms out there to obtain that type of information of where you are going. Do you think we should go so far in this act to ban cookies? And I will ask Mr. Howe, and then Mr. Taylor and Ms. Hughes.

Mr. HOWE. I think, to date, the industry has tried to segment levels of cookies, tying of the information that you put in that al-

lows them to do something with having that information and being able to potentially sell it, or what happens to that implementation after it goes. When we look at a site that comes up on .KIDS initially, we look at everything they do. And we try, and to the extent that we manage any dot kids or dog kids U.S., want to be just as start as they are. And we want to head-off those things that we see in practice right away, before they are able to have any success.

I think there will always be cookie issues that seem to be able to operate within the bounds of what is kid-friendly. But again, to say all cookies are allowed opens up the process to be manipulated, in our opinion.

Mr. TERRY. Okay. Mr. Taylor, do you have input?

Mr. TAYLOR. A little bit. I mean, cookies are a danger, and that was one of the focuses of Congress when they passed the Children's Internet Privacy Protection Act. I left out one of the initials in my paper, but a cookie that is given to you by the companies whose site you visit for the purposes of going onto that site at that time uses the information only to service your visit at that time and to keep that information private, so they do not sell it to other people, it does not get—and then if they do not follow you to the next site.

There are different kinds of cookies—a cookie that if you visit Disney or CNET, and they give you their cookie and then they do not follow you when you close out and go someplace else, that is a different kind of cookie than the kinds that are capable of, when you sign off from MSN and you go to Yahoo and then you go to Disney, and that first cookie reports back to the mother ship that you went to all these other places. Now it knows that you go look at baseball and football, and maybe you looked at something your mom told you not to, and maybe you looked at something—whatever.

So there are kinds of cookies that Congress should be concerned about on a dot kids domain that is something that the operator should be made aware of and has to monitor and report to Congress. I think you raise a good issue. The bad cookies should have to be restricted from this domain, even though you may not be able to stop it on——

Mr. MARKEY. Would the gentleman yield briefly?

Mr. TERRY. Sure. I yield.

Mr. MARKEY. In the Children's Online Privacy Act, it actually is made illegal for any site that gathers information about children to reuse that information for any other purpose other than that for which it was originally intended, without getting the explicit permission of the parents of those children. So under existing law, if it was used for any other purpose, then it would already be illegal, no matter what any of these sites might do now.

Mr. HOWE. The part of it we have attempted to do, and we have actually applied to some of the work the FTC is doing to educate more sites, because we do not see that reality as much as we think we should in the marketplace, the reality of that.

The thing to answer you also is we do expect in our proposal for dot kids and the way we would run dot kids, advertising is a big part of it, and we hold our registrants accountable for the advertising that they allow on their site, and we would expect as dot

kids develops that we would have technologies where you could only have dot kids-safe ads on this type of network.

Ms. HUGHES. I just wanted to add to that that, you know, I agree with what Mr. Taylor said, that you should restrict certain types of cookies, but to make the broader point, the reason that it is so important for Congress to have oversight to actually set the parameters of how this domain operates. Because it is not just cookies, it is again the monitoring features. There is monitoring. If somebody adds a link, like you saw about 25 percent of the links from kids' sites are to hardcore porn sites. You can catch that in real-time if you have the monitoring in place, and the same thing with filtering.

So to just throw this over to somebody who has already got this monopoly and how they are going to run it however they want to run it, I think would be a very big problem. And to put this out to a bid process to where a company who could actually implement what you all have lined up would be very important, I think, and if that is not done, that we could again have a bit of a Trojan horse on our hands.

Mr. UPTON. Thank you.

Mr. Cox?

Mr. COX. Thank you.

Ms. Victory, I would like to attempt to begin by rehabilitating you. You have stated on page four of your testimony, I believe the quote is, "I support the goal of the legislation."

Ms. VICTORY. Very much.

Mr. COX. So the administration and you support what this legislation is seeking to do. Is that correct?

Ms. VICTORY. Very much so, yes.

Mr. COX. Okay. So we are not actually that far apart.

Second, you have stated that, on page 5, that multiple governments have objected to this legislation. Can you tell me what governments we are talking about?

Ms. VICTORY. My understanding is some members of the EU have objected.

Mr. COX. Do you know which ones?

Ms. VICTORY. I will have to get back to you on that.

Mr. COX. Do you know any government that has objected?

Ms. VICTORY. China, and Japan as well.

Mr. COX. China. Alright.

Mr. SHIMKUS. If the gentleman would yield, I will just say as a sponsor, we have not heard from anybody as far as internationally that has been objecting to this.

Ms. VICTORY. Well, here is the concern, and it is with the bill as originally dropped in, rather than the manager's amendment. If dot kids is a top-level domain, it is a global domain. And it is not one that is U.S.-centric, that is under U.S. auspices. It is a global domain. To the extent that the U.S. wants to impose certain policy restrictions on dot kids, there is nothing stopping the government of Japan, the government of the UK, the government of France, of Australia, from also going forward and doing that.

Mr. COX. None of this applies to dot U.S.

Ms. VICTORY. It does not apply to dot U.S.

Mr. COX. And the managers amendment that we are looking at here has transcended that difficulty.

Ms. VICTORY. That eliminates that concern. That is correct.

Mr. COX. So whatever problems we have, they are different than that one.

Ms. VICTORY. Correct.

Mr. COX. Have the objections of any government that you are aware of extended to a domain within dot U.S.?

Ms. VICTORY. No.

Mr. COX. So there are in fact no international objections that you are aware of.

Ms. VICTORY. None that I am aware of. No.

Mr. COX. Okay. So we are making further progress.

Mr. MARKEY. You are going to be so rehabilitated.

Ms. VICTORY. Oh, well, thank you.

Mr. MARKEY. You are going to out and be an honorary member of this committee.

Mr. COX. Well, in fact I think it is important to know that some of those principal objections that the department is advancing are in fact objections that we are taking cognizance of and that we are going to deal with here. We do not want to run over the international nature of the Internet and presume with the imposition of our own sovereign concerns to crowd out everyone else, the PRC included.

I would add, however, I cannot say PRC and Internet in the same sentence without adding that it would be awfully nice if they would open up the intra-net that they maintain in their country to the rest of the world.

Mr. Howe, I want to ask you, because you raise a fundamental point about the age of majority and the right to contract in this country, whether or not you think we can take advantage of the fact that we are dealing with kids under 13 here, and impose some especially unique strictures on this base that would not fly anywhere else on the web, making it truly value-added.

For example, it follows in the imagination, if not in logic, that we might want to prevent the collection of data from kids in this space. Is that something you would support?

Mr. HOWE. Yes.

Mr. COX. As a parent, I know it would make me feel good to know that when my kids are on the Internet they are not giving out their name and address to everybody that might ask for it. We have already a law that applies to the Internet at large, as you know, that requires parental consent. It is a sort of Rube Goldberg mechanism, and it is probably the best we can do on the Internet at large. But it seems to me we could take advantage of this opportunity to do a whole lot more, and then there would be some value-added.

Likewise, I think you were suggesting or stating clearly that we ought not to have any opportunities for kids to contract for anything. And I think that would be useful—those both I think would be useful additions to the kinds of things we are talking about in this legislation.

I am sorry. Would you like to add?

Mr. HOWE. I do not want to interrupt, but to the extent that as the operator we can take decisions that have already been made by consensus bodies such as the U.S. Congress, that have worked through the issues, received input and simply implement those, that is why the creation of dot kids allows the opportunity to do that, without the barriers of this might be something that is intended for something else.

Mr. COX. Now, the two of you, Ms. Victory and Mr. Howe, had some repartee going here about liability. And I am not sure I understood it and I am not sure I understand what respectively you think is advisable. But I note that in the managers amendment that is provision that, not quite word for word, but certainly from a policy standpoint, tracks exactly language that I wrote with Senator Wyden into the Internet Freedom and Family Empowerment Act—language that was upheld by the Supreme Court when the rest of CDA got struck down, that I think is the right way to go here.

It seems to me that even, or especially if we are looking at this as a private sector function and we want the private sector and voluntary behavior to be dominant in these choices, that we have to carve out what is the role for government. And government's role, rather clearly, is describing liability. Private people cannot write our criminals laws for us. They cannot write our libel laws. All of that stuff is government. And so that is surely it seems to me an appropriate area for us to legislate in to augment and supplement what you are doing privately through agreement.

And I wonder, Ms. Victory, if I misunderstood you, or whether you were in agreement with Mr. Howe or whether I misunderstood Mr. Howe. But what, if you wouldn't mind stating them more fully, are your respective positions about what Congress might do to circumscribe liability?

Ms. VICTORY. Sure. I will try to be clear on this.

I think if you are setting up a safe space for kids on the Internet, in order to try to figure out, well, where should liability protection fall and where should it not fall, clearly if you are opening a web site in that space, I think that the web site operator should be responsible for the content that it puts forth.

Mr. COX. And Mr. Howe, I think you agreed with that.

Mr. HOWE. Yes.

Mr. COX. Okay. So, so far, so good.

Ms. VICTORY. But in terms of the manager of the domain, for example, you have to make a judgment as to whether or not it would be reasonable for the manager of the domain to be able to monitor all of the things that each web site owner puts on its web site. I think what the manager of the domain should be responsible for is setting forth standards that it would ask the web site owners who come into its domain to agree to. And as long as it is asking them to agree to those standards, I think that is about the most you can expect out of the domain name manager.

I do not think that you can reasonably expect that they are able to monitor every communication on every web site within their domain. So to the extent there is liability protection, it probably appropriately falls to the domain name manager so long as they have

a suitable contractual relationship with suitable standards for the space to begin with.

Mr. COX. It sounds to me, then, that you are comfortable with section 4 of the managers amendment the way it is written, or are you suggesting it be made even more broad?

While we are waiting, Ms. Hughes?

Ms. HUGHES. Yes, I would agree with what she just said. However, I do think that as part of the language of this that the manager of this domain should implement monitoring technologies—not human monitors—monitoring technologies that can hold, that can tell if someone is not in compliance; if a web site operator is not in compliance. This technology is available in real-time. Also filtering technology is available that can catch things—changes or anything within the sites. Say, for instance, 100 pages down, there is something that is not in compliance.

The web site owner should be the one that is liable, but to not have the technologies that are available and very inexpensive—not utilized by the web site manager I think would really be a disservice to the parents who are trusting this space to be a safe place for their children, because it is available and it is not expensive.

Ms. VICTORY. And just to get back to you, yes, I think that those provisions are fine in setting forth that type of relationship. And just to go Ms. Hughes' comment, I think there are technologies that are available that it would be great to implement, but I think you would agree they are probably not 100 percent fool-proof, or they would not cover every single type of communication or picture or paragraph that might appear on a web site. So again, to hold the domain name owner liable in case something slipped through the filtering technology probably would not be appropriate.

Ms. HUGHES. Well, I would agree that you should not hold the domain name manager liable, but the technology is quite sophisticated and does work in instant messaging, chat rooms, pictures and others. And so to utilize the technologies would again help make this space and guard against anyone who would not be adhering to the policies set forth by the manager.

Mr. HOWE. I think all the applicants using the technology would aspire to 99.91, 91.92, 91.93 percent. We could get better and better always at reducing what that leftover percent is that may come through, to the extent that the liability protection would help us for that more minute as we get better percents, yes, as an operator that would help us. And it would also—the sophistication of the bill to date, we really appreciate the work that the staffs from the committee have done, because it gets into these deep issues that are specific and have been the objections raised during the ICANN process.

Of this, one might think, and to the extent that this legislation I can tell from, this means that it is so important that we are saying let's head them off at the pass. Let's head off the possible objections right now, because people want a solution right now.

Mr. COX. Mr. Chairman, I realize that time has long since expired, but I certainly did not want to interrupt the witnesses when they are complimenting the staff.

I will just say that the conjunction of liability protections that we can offer legislatively and that we can offer uniquely legislatively

with the benefits that a contractor might get under the dot U.S. domain might well provide the kind of quid pro quo for agreement that you are seeking, and make sure that we can go forward with this idea without breaking any china.

Mr. UPTON. Thank you for making that point.

Mr. COX. No pun intended.

Mr. UPTON. Did you say something good about China?

Mr. COX. I like China very much, just not their government.

Mr. UPTON. Mr. Largent?

Mr. LARGENT. Thank you, Mr. Chairman.

I just have a couple of questions of my concern of this effort, and Mr. Taylor I would like to address these to you.

What happens if a porn company creates a web site at dot kids, dot U.S. or whatever it might be?

Mr. TAYLOR. Well, they obviously could be prosecuted. Almost everything—I would say 95 percent of the pornography on hardcore triple-X dot com web sites is prosecutable as a felony under Federal law. I did it when I was at the Justice Department. They could have been doing it for the last 5 years. They could do it in the future, and they can do it under most State law. So they should be prosecuted.

So the operators should have tip lines that kids and parents can complain about those sites that they have found that have got porn or they have links back to porn, so that the tips or the complaints or the snitching goes back to the operator and its goes to the FBI and it goes to local police. So those are the things that could be done.

The operator should have the right—Congress can give the right of the operator and NTIA to withdraw or suspend or revoke the right of anybody to do business and list themselves on this domain if they do not obey the rules. And I think that is one of the things that Congress has to insist on is that you do not just hope somebody does a good job doing what you want dot kids to do. You have to give them the authority to throw out the people who do not want to put kid friendly and comply with the rules for this domain. If it is going to be created for that purpose, I think you have got to hold them to the agreement that says you are going to come on this domain with those conditions, and if you do not live up to them, we can throw you off.

Mr. LARGENT. Let me see if I understand what you are saying. Does creating these particular safe havens for children to be online, does that create more incentive for the Justice Department to prosecute illegal obscenity online than not having it?

Mr. TAYLOR. I think that it would be a more attractive prosecution if you found someone on the dot kids domain or linking to it or putting ads somewhere into the domain where they could get to the kids, because it would be a little harder for the FBI or the Justice Department to say, well, we do not want to do that case, even though they solicited kids or even though they showed hardcore porn to kids. They do not do a lot of those cases for the last 5 years, and the new attorney general has said he is going to begin enforcing the obscenity laws again. We trust that he is going to do that. We are going to try to help him do that.

So I think there is more willingness to enforce existing Federal laws now than there has been in the past. But I also think that it is a crime that would be committed not only on the dot kids domain, but elsewhere. And if the government did prosecute more of the pornography syndicate people who put that pornography up on dot com and dot edu and dot mil and dot other places where it does not belong, we would not have so much of it to worry about on the dot kids. But we certainly should be able to police the dot kids domain much less controversially.

Mr. LARGENT. Well, I guess my point is this, is that this has been an issue that I have been trying to lend voice to for many years in Congress. And the fact is that the Justice Department has not prosecuted what is out there today no matter where it is found. And my point is is that creating a dot kids domain that supposedly is safe for kids does not really ensure the fact that this would be safe.

I mean, the fact is is that porn folks could put the same web sites that they are putting on the Internet today at whatever the domain is, and they could put it on this domain. And if the Justice Department does not show a willingness to prosecute at some point, all illegal pornography that is out there, and I agree with you, I think 95 percent of it is illegal today. It is not being prosecuted, with the small exception of some child pornography where there has been a limited effort on——

Mr. TAYLOR. One of the things, Congressman, that you have done is keep the pressure on them to use the existing laws. One of the things that could be done if this domain is created, this bill passes, then maybe Congress, this committee could consider—drafting a law would have to go to Judiciary I know—that would make it a crime for someone to distribute or display certain kinds of this pornography defined in this bill on the dot kids domain. Make it a separate crime that is tested separately.

You also then could pass a provision in that bill that allows the states and encourages them to pass a similar law and allows them to keep any of the proceeds or forfeitures or fines that they collect. So that if a woman calls up and says my kid got this hardcore picture on a dot kids site, and the Justice Department did not take the case, she can go down to the local county prosecutor's and they can prosecute this web site, and then they could get that incentive to enforce the law.

So it might end up being the need for cooperation between local and Federal prosecutors, because I think even with the best of intentions it is going to take a while for the Justice Department to get up to speed on this.

Mr. SHIMKUS. Would the gentleman yield for 1 second?

Mr. LARGENT. Sure.

Mr. SHIMKUS. But the point that I want to add to this debate is that the registered operator can identify him and pull him down. That is the benefit of this bill is that the registry operator—you are on the prosecution side. I am trying to stop it as soon as it hits. And so they can identify, as we heard in the conversations, and maybe we need to beef that up, I do not know. And then the registry provider can pull that site off, so there is a positive aspect, too, and I appreciate the going after the——

Mr. LARGENT. Sort of like the servers are supposed to pull off the pornography that is available——

Mr. SHIMKUS. But it is more difficult to do when it is dot com. It is a commercial site. It is dot org. It is not defined as a kid-friendly site. So I think that that is what the constitutional issue is also that we are fighting.

I yield back.

Mr. UPTON. This underscores that, as I understand it.

Mr. LARGENT. Mr. Chairman, if I could just ask one other question, because this is also a concern that I have. Not that I am opposed to this, but the concern that I have is that could creation of a dot kids—Ms. Hughes, I would ask you this question—could the creation of this particular domain be seen as throwing in the white flag on the effort to prosecute illegal obscenity, or even weaken what little effort there is already in the prosecution of illegal obscenity?

Ms. HUGHES. I sure hope not. I do not know that it would weaken the prosecution. I really do not see how it would, to be quite——

Mr. LARGENT. How it would is that just psychologically, even at a subconscious level, people would say, well, we have created this safe haven for children and so we do not need to really worry about this other stuff over here because we have got a place that is safe for kids.

Ms. HUGHES. Yes, that is right. Well, hopefully that would not occur, and again this has got to be a priority of the Justice Department. And we appreciate all the efforts that you have put forth over all these years. Because you are right, we have not had one obscenity prosecution that I know of on the Internet. And I would just like to draw your attention because the COPA Commission did not have the opportunity to come before Congress, but I have included in my report that one of our major recommendations to Congress, and maybe there is something that could be done here about this, is for Congress—I am just going to read exactly what we said—for government at all levels to fund with significant new money aggressive programs to investigate, prosecute and report violations of Federal and State obscenity law.

And you know, it has not been done. It is not being done. Hopefully, we will see it being done in the future, but we need more money. And my concern is that, you know, the pornographers probably will try to tap into this market. Look, we know 25 percent of them are deliberately targeting kids. Why wouldn't they go in and try to take advantage of this domain? I think that they probably would, and again we have got to have these laws enforced.

Mr. LARGENT. Thank you.

Thank you, Mr. Chairman.

Mr. UPTON. Thank you.

We have three votes. I am going to ask one quick question and we will try to finish by the time we leave. And Mr. Shimkus, you might have one quick question, too.

Ms. Victory, I just want to know, if NeuStar, for whatever reason, says we signed this contract; we have all these other things; our focus is going to be on dot parks and a variety of other things; we are not going to do it. Could anyone else—anybody else—Mr. Howe's group or anybody else come back and say, we are here; we

are going to it on our own; we are going to put up a dot kids, dot U.S., and there we go. Is there a group like Mr. Howe or somebody else—would they be prohibited from jumping in if NeuStar says it ain't going to be us? What is your read?

Ms. VICTORY. My hope is that——

Mr. UPTON. I do not want your hope.

Ms. VICTORY. Okay. My read is——

Mr. UPTON. They just say flat out sorry.

Ms. VICTORY. Under dot kids-dot U.S., no. But as——

Mr. UPTON. You can't get in.

Ms. VICTORY [continuing]. But as Mr. Hernand testified, his operation is looking at providing a dot kids space as well. So there may be other opportunities.

Mr. UPTON. I listened to Mr. Hernand's testimony. I happen to believe that it ought to be competitive out there. We ought to look at everybody waving their hand and see who has the best proposal and it ought to be made objectively and it ought to be under the parameters that we have established with this legislation with dot U.S., so we do not get China and all who else opposing it. But I am worried that if NeuStar says forget it, it ain't going to be us, it is not going to be anybody.

Mr. HERNAND. If I can just point out, not only are we proposing it, but it is something that we are already doing. It is something that 70 million Internet users today have access to and they are live. There are several thousand live dot kids web sites that are being used. So we hope that that will continue and that if the governmental efforts are not successful in making a dot kids, TLD or under dot U.S., that private enterprise will step up and continue to do what we are doing.

Mr. UPTON. Okay. Thank you.

We are going to wrap up soon. Mr. Markey has got two questions. Mr. Shimkus has got one. We will finish.

Mr. Markey?

Mr. MARKEY. Two quick questions for Secretary Victory. In your view, is the situation currently with NeuStar one where NTIA has a final contract with NeuStar? Or have you simply accepted NeuStar's proposal with contract details still to be worked out and finalized?

Ms. VICTORY. I believe it is a final contract. However, there is oversight from NTIA and we do have the ability to direct them to do certain things. I would have to go back and see if we specifically have the authority to direct them to provide immediately a dot kids-dot U.S. sub-level domain. I do not think we have the authority to direct them specifically as to what the standard should be or exactly how they are going to do that. But we do have the opportunity through the contract to provide certain direction.

Mr. MARKEY. Could you send us the contract?

Ms. VICTORY. I would be happy to.

Mr. MARKEY. And finally, in the post-September 11 environment, has NTIA thought further about the security implications of American control over key assets of the Internet infrastructure? Is relinquishing further control of root servers to ICANN in the national security interests of the United States in your view?

Ms. VICTORY. Certainly after September 11 and even before, we were very focused on the security of the root servers. There were a number of steps taken in the wake of September 11 to make them more secure, and I know ICANN is devoting its November board meeting to security issues, focusing on that. But yes, this is something that we are very much aware of.

Mr. MARKEY. What is the Department of Commerce doing in terms of their request to ICANN to ensure that there is a higher level of security?

Ms. VICTORY. The Department of Commerce will be at the ICANN board meeting in November, and in fact I believe that we are going to be sending some members of the administration who are focused on the homeland security effort to provide information and also to answer questions for the ICANN board.

Mr. MARKEY. Have you asked them to do anything specific since September 11? Has Commerce asked ICANN to do anything specific since September 11 to enhance the security?

Ms. VICTORY. We have not asked them to do anything specific, although we have been working with VeriSign who has the contract for the root server. They have taken a number of specific steps, and we had requested prior to September 11 for them to do a study as to the security of the root server.

Mr. MARKEY. Should NTIA relinquish control of the root server, in your opinion?

Ms. VICTORY. At this time, we have not made any decisions in that regard.

Mr. MARKEY. I do not think you should relinquish control of the root server.

Mr. UPTON. We may have a hearing on that.

Mr. MARKEY. Thank you, Mr. Chairman.

Mr. UPTON. Mr. Shimkus?

Mr. SHIMKUS. Thank you, Mr. Chairman, and I will be quick.

We did not really talk very much today about transparency and due process issues on applications to ICANN. That was a big beef. I would encourage those of you at the panel to look through the legislation. We did not change a lot of the transparency provisions and the due process provisions, and especially those who have tried to break through the doors of ICANN, I encourage your look.

And I ask, Mr. Hernand, I appreciate your being here. I am sorry we did not get a lot of questions. Let me ask one question to you, though, about should the dot U.S., the second-level domains within dot U.S., should they be competitively bid?

Mr. HERNAND. I think that they should definitely be competitively bid. When you talk about creating a kid-friendly environment, you want a company selected as the operator that is passionate about these issues; that has a history of working in these issue. And I am sure that NeuStar could do a great job technologically in running a registry, but there is more than just the technical implementation involved here. And I would encourage, if we go down this route, that you open up the process and create a subregistry within what NeuStar is running.

Mr. SHIMKUS. Do you all know what we have to do to encourage that legislatively? Mr. Howe? I now it is two, but it is a follow-up. We have plenty of time.

Mr. HOWE. I know we spoke as if the NeuStar-U.S. agreement is final, and am also not a lawyer, but I know the rest of the country codes that exist with ICANN are in a process of signing agreements with ICANN called the ccTLD agreements. I would expect that the U.S. operator and the Department of Commerce are going to be in a situation where they are having to sign an agreement with ICANN talking about how to operate the dot U.S.

And to the extent that we are saying that some changes may come from that process, it seems to me as an outsider that there should be some idea that there might be changes to that contract, and what is done now cannot really be the final one because it still needs to undergo this ICANN hurdle. And if it needs to have the U.S. Government negotiating with ICANN, it seems like we should open it up for some other possible changes.

Mr. SHIMKUS. Thank you, Mr. Chairman. I yield back.

Mr. UPTON. Thank you.

Again, I want to thank all of you. I am sorry we have these votes and we are running out of her very quickly. Thank you for your testimony and for your answers. We look forward to working with you as this legislation moves down the pike.

Thank you.

[Whereupon, at 12:30 p.m., the subcommittee was adjourned.]