

## ***The Child Online Protection Act***

• SEC. 1401. SHORT TITLE. ....	1
• SEC. 1402. CONGRESSIONAL FINDINGS. ....	1
• SEC. 1403. REQUIREMENT TO RESTRICT ACCESS BY MINORS TO MATERIALS COMMERCIALY DISTRIBUTED BY MEANS OF THE WORLD WIDE WEB THAT ARE HARMFUL TO MINORS. ....	2
• SEC. 1404. NOTICE REQUIREMENT. ....	4
• SEC. 1405. STUDY BY COMMISSION ON ONLINE CHILD PROTECTION. ....	5
• SEC. 1406. EFFECTIVE DATE. ....	7

H.R. 4328 - OMNIBUS APPROPRIATIONS BILL

TITLE XIV--CHILD ONLINE PROTECTION

### **SEC. 1401. SHORT TITLE.** ➡

This title may be cited as the ``Child Online Protection Act".

### **SEC. 1402. CONGRESSIONAL FINDINGS.** ➡

The Congress finds that--

(1) while custody, care, and nurture of the child resides first with the parent, the widespread availability of the Internet presents opportunities for minors to access materials through the World Wide Web in a manner that can frustrate parental supervision or control;

(2) the protection of the physical and psychological well- being of minors by shielding them from materials that are harmful to them is a compelling governmental interest;

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

(4) a prohibition on the distribution of material harmful to minors, combined with legitimate defenses, is currently the most effective and least restrictive means by which to satisfy the compelling government interest; and

(5) notwithstanding the existence of protections that limit the distribution over the World Wide Web of material that is harmful to minors, parents, educators, and industry must continue efforts to find ways to protect children from being exposed to harmful material found on the Internet.

**SEC. 1403. REQUIREMENT TO RESTRICT ACCESS BY MINORS TO MATERIALS COMMERCIALY DISTRIBUTED BY MEANS OF THE WORLD WIDE WEB THAT ARE HARMFUL TO MINORS. ➔**

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

“SEC. 231. RESTRICTION OF ACCESS BY MINORS TO MATERIALS COMMERCIALY DISTRIBUTED BY MEANS OF WORLD WIDE WEB THAT ARE HARMFUL TO MINORS.

“(a) Requirement To Restrict Access.--

“(1) Prohibited conduct.--Whoever knowingly and with knowledge of the character of the material, in interstate or foreign commerce by means of the World Wide Web, makes any communication for commercial purposes that is available to any minor and that includes any material that is harmful to minors shall be fined not more than \$50,000, imprisoned not more than 6 months, or both.

“(2) Intentional violations.--In addition to the penalties under paragraph (1), whoever intentionally violates such paragraph shall be subject to a fine of not more than \$50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

“(3) Civil penalty.--In addition to the penalties under paragraphs (1) and (2), whoever violates paragraph (1) shall be subject to a civil penalty of not more than \$50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

“(b) Inapplicability of Carriers and Other Service Providers.--For purposes of subsection (a), a person shall not be considered to make any communication for commercial purposes to the extent that such person is--

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

“(2) a person engaged in the business of providing an Internet access service;

“(3) a person engaged in the business of providing an Internet information location tool; or

“(4) similarly engaged in the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication made by another person, without selection or alteration of the content of the communication, except that such person's deletion of a particular communication or material made by another person in a manner consistent with subsection (c) or section 230 shall not constitute such selection or alteration of the content of the communication.

“(c) Affirmative Defense.--

“(1) Defense.--It is an affirmative defense to prosecution under this section that the defendant, in good faith, has restricted access by minors to material that is harmful to minors--

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

“(B) by accepting a digital certificate that verifies age; or

“(C) by any other reasonable measures that are feasible under available technology.

“(2) Protection for use of defenses.--No cause of action may be brought in any court or administrative agency against any person on account of any activity that is not in violation of any law punishable by criminal or civil penalty, and that the person has taken in good faith to implement a defense authorized under this subsection or otherwise to restrict or prevent the transmission of, or access to, a communication specified in this section.

“(d) Privacy Protection Requirements.--

“(1) Disclosure of information limited.--A person making a communication described in subsection (a)--

“(A) shall not disclose any information collected for the purposes of restricting access to such communications to individuals 17 years of age or older without the prior written or electronic consent of--

“(i) the individual concerned, if the individual is an adult; or

“(ii) the individual's parent or guardian, if the individual is under 17 years of age; and

“(B) shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the person making such communication and the recipient of such communication.

“(2) Exceptions.--A person making a communication described in subsection (a) may disclose such information if the disclosure is--

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

“(B) made pursuant to a court order authorizing such disclosure.

“(e) Definitions.--For purposes of this subsection, the following definitions shall apply:

“(1) By means of the world wide web.--The term `by means of the World Wide Web' means by placement of material in a computer server-based file archive so that it is publicly accessible, over the Internet, using hypertext transfer protocol or any successor protocol.

“(2) Commercial purposes; engaged in the business.--

“(A) Commercial purposes.--A person shall be considered to make a communication for commercial purposes only if such person is engaged in the business of making such communications.

“(B) Engaged in the business.--The term `engaged in the business' means that the person who makes a communication, or offers to make a communication, by means of the World

Wide Web, that includes any material that is harmful to minors, devotes time, attention, or labor to such activities, as a regular course of such person's trade or business, with the objective of earning a profit as a result of such activities (although it is not necessary that the person make a profit or that the making or offering to make such communications be the person's sole or principal business or source of income). A person may be considered to be engaged in the business of making, by means of the World Wide Web, communications for commercial purposes that include material that is harmful to minors, only if the person knowingly causes the material that is harmful to minors to be posted on the World Wide Web or knowingly solicits such material to be posted on the World Wide Web.

“(3) Internet.--The term ‘Internet’ means the combination of computer facilities and electromagnetic transmission media, and related equipment and software, comprising the interconnected worldwide network of computer networks that employ the Transmission Control Protocol/Internet Protocol or any successor protocol to transmit information.

“(4) Internet access service.--The term ‘Internet access service’ means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. Such term does not include telecommunications services.

“(5) Internet information location tool.--The term ‘Internet information location tool’ means a service that refers or links users to an online location on the World Wide Web. Such term includes directories, indices, references, pointers, and hypertext links.

“(6) Material that is harmful to minors.--The term ‘material that is harmful to minors’ means any communication, picture, image, graphic image file, article, recording, writing, or other matter of any kind that is obscene or that--

“(A) the average person, applying contemporary community standards, would find, taking the material as a whole and with respect to minors, is designed to appeal to, or is designed to pander to, the prurient interest;

“(B) depicts, describes, or represents, in a manner patently offensive with respect to minors, an actual or simulated sexual act or sexual contact, an actual or simulated normal or perverted sexual act, or a lewd exhibition of the genitals or post-pubescent female breast; and

“(C) taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

“(7) Minor.--The term ‘minor’ means any person under 17 years of age.”.

#### **SEC. 1404. NOTICE REQUIREMENT. ➡**

(a) Notice.--Section 230 of the Communications Act of 1934 (47 U.S.C. 230) is amended--

(1) in subsection (d)(1), by inserting “or 231” after “section 223”;

(2) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(3) by inserting after subsection (c) the following new subsection:

“(d) Obligations of Interactive Computer Service.--A provider of interactive computer service shall, at the time of entering an agreement with a customer for the provision of interactive computer service and in a manner deemed appropriate by the provider, notify such customer that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist the customer in limiting access to material that is harmful to minors. Such notice shall identify, or provide the customer with access to information identifying, current providers of such protections.”.

(b) Conforming Amendment.--Section 223(h)(2) of the Communications Act of 1934 (47 U.S.C. 223(h)(2)) is amended by striking “230(e)(2)” and inserting “230(f)(2)”.

### **SEC. 1405. STUDY BY COMMISSION ON ONLINE CHILD PROTECTION.**



(a) Establishment.--There is hereby established a temporary Commission to be known as the Commission on Online Child Protection (in this section referred to as the “Commission”) for the purpose of conducting a study under this section regarding methods to help reduce access by minors to material that is harmful to minors on the Internet.

(b) Membership.--The Commission shall be composed of 19 members, as follows:

(1) Industry members.--The Commission shall include--

(A) 2 members who are engaged in the business of providing Internet filtering or blocking services or software;

(B) 2 members who are engaged in the business of providing Internet access services;

(C) 2 members who are engaged in the business of providing labeling or ratings services;

(D) 2 members who are engaged in the business of providing Internet portal or search services;

(E) 2 members who are engaged in the business of providing domain name registration services;

(F) 2 members who are academic experts in the field of technology; and

(G) 4 members who are engaged in the business of making content available over the Internet.

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

(2) Ex officio members.--The Commission shall include the following officials:

(A) The Assistant Secretary (or the Assistant Secretary's designee).

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

(C) The Chairman of the Federal Trade Commission (or the Chairman's designee).

(c) Study.--

(1) In general.--The Commission shall conduct a study to identify technological or other methods that--

(A) will help reduce access by minors to material that is harmful to minors on the Internet; and

(B) may meet the requirements for use as affirmative defenses for purposes of section 231(c) of the Communications Act of 1934 (as added by this title).

Any methods so identified shall be used as the basis for making legislative recommendations to the Congress under subsection (d)(3).

(2) Specific methods.--In carrying out the study, the Commission shall identify and analyze various technological tools and methods for protecting minors from material that is harmful to minors, which shall include (without limitation)--

(A) a common resource for parents to use to help protect minors (such as a "one-click-away" resource);

(B) filtering or blocking software or services;

(C) labeling or rating systems;

(D) age verification systems;

(E) the establishment of a domain name for posting of any material that is harmful to minors; and

(F) any other existing or proposed technologies or methods for reducing access by minors to such material.

(3) Analysis.--In analyzing technologies and other methods identified pursuant to paragraph (2), the Commission shall examine--

(A) the cost of such technologies and methods;

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

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

(D) the extent to which material that is harmful to minors is globally distributed and the effect of such technologies and methods on such distribution;

(E) the accessibility of such technologies and methods to parents; and

(F) such other factors and issues as the Commission considers relevant and appropriate.

(d) Report.--Not later than 1 year after the enactment of this Act, the Commission shall submit a report to the Congress containing the results of the study under this section, which shall include--

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

(2) the conclusions and recommendations of the Commission regarding each such technology or method;

(3) recommendations for legislative or administrative actions to implement the conclusions of the committee; and

(4) a description of the technologies or methods identified by the study that may meet the requirements for use as affirmative defenses for purposes of section 231(c) of the Communications Act of 1934 (as added by this title).

(e) Staff and Resources.--The Assistant Secretary for Communication and Information of the Department of Commerce shall provide to the Commission such staff and resources as the Assistant Secretary determines necessary for the Commission to perform its duty efficiently and in accordance with this section.

(f) Termination.--The Commission shall terminate 30 days after the submission of the report under subsection (d).

(g) Inapplicability of Federal Advisory Committee Act.--The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

### **SEC. 1406. EFFECTIVE DATE.** ➔

This title and the amendments made by this title shall take effect 30 days after the date of enactment of this Act.