

Communications Decency Act of 1995

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TITLE V -- BROADCAST OBSCENITY AND VIOLENCE

Subtitle A Obscene, Harassing, and Wrongful Utilization of

Telecommunications Facilities

SEC. 501. SHORT TITLE. ➡

This title may be cited as the "Communications Decency Act of 1995".

SEC. 502. OBSCENE OR HARASSING USE OF TELECOMMUNICATIONS FACILITIES UNDER THE COMMUNICATIONS ACT OF 1934. ➡

Section 223 (47 U.S.C. 223) is amended -

(1) by striking subsection (a) and inserting in lieu thereof:

"(a) Whoever --

"(1) in interstate or foreign communications -

"(A) by means of a telecommunications device knowingly -

"(i) makes, creates, or solicits, and

"(ii) initiates the transmission of, any comment, request,

suggestion, proposal, image, or other communication which is obscene,

lewd, lascivious, filthy, or indecent, with intent to annoy, abuse,

threaten, or harass an other person;

"(B) by means of a telecommunications device knowingly -

"(i) makes, creates, or solicits, and

"(ii) initiates the transmission of, any comment, request,

suggestion, proposal, image, or other communication which is obscene

or indecent knowing that the recipient of the communication is under

18 years of age regard less of whether the maker of such communication

placed the call or initiated the communication;

"(C) makes a telephone call or utilizes a telecommunications

device, whether or not conversation or communication ensues, without

disclosing his identity and with intent to annoy, abuse, threaten, or

harass any person at the called number or who receives the

communication;

"(D) makes or causes the telephone of another repeatedly or

continuously to ring, with intent to harass a person at the called

number; or

"(E) makes repeated telephone calls or repeatedly initiates

communication with a telecommunications device, during which

conversation or communication ensues, solely to harass any person at

the called number or who receives the communication;

"(2) knowingly permits a telecommunications facility under his control

to be used for any activity prohibited by paragraph (1) with the
intent that it be used for such activity,

shall be fined under title 18, United States Code, or imprisoned not
more than two years, or both."; and

(2) by adding at the end the following new sub sections:

"(d) Whoever --

"(1) in interstate or foreign communications knowingly -

"(A) uses an interactive computer service to send to a specific
person or persons under 18 years of age, or

"(B) uses any interactive computer service to display in a manner
available to a person under 18 years of age,

any comment, request suggestion, proposal, image, or other

communication that, in context, depicts or describes, in terms patently

offensive as measured by contemporary community standards, sexual or

excretory activities or organs, regardless of whether the user of such

service placed the call or initiated the communication; or

"(2) knowingly permits any telecommunications facility under such

person's control to be used for an activity prohibited by

paragraph (1) with the intent that it be used for such activity,

shall be fined under title 18, United States Code, or imprisoned not
more than two years, or both.

"(e) In addition to any other defenses available by law:

"(1) No person shall be held to have violated subsection (a) or (d)

solely for providing access or connection to or from a facility,

system, or network not under that person's control, including

transmission, downloading, intermediate storage, access software, or other related capabilities that are incidental to providing such access or connection that does not include the creation of the content of the communication.

"(2) The defenses provided by paragraph (1) of this subsection shall not be applicable to a person who is a conspirator with an entity actively involved in the creation or knowing distribution of communications that violate this section, or who knowingly advertises the availability of such communications.

"(3) The defenses provided in paragraph (1) of this subsection shall not be applicable to a person who provides access or connection to a facility, system, or network engaged in the violation of this section that is owned or controlled by such person.

"(4) No employer shall be held liable under this section for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of his employment or agency and the employer (A) having knowledge of such conduct, authorizes or ratifies such conduct, or (B) recklessly disregards such conduct.

"(5) It is a defense to a prosecution under sub section (a) or (d) that a person -

"(A) has taken in good faith, reasonable, effective, and appropriate actions under the circumstances to restrict or prevent access by minors to a communication specified in such subsections, which may involve any appropriate measures to restrict minors from such communications, including any method which is feasible under

available technology; or

"(B) has restricted access to such communication by requiring use of a verified credit card, debit account, adult access code, or adult personal identification number.

"(6) The Commission may describe measures which are reasonable, effective, and appropriate to restrict access to prohibited communications under subsection (d). Nothing in this section authorizes the Commission to enforce, or is intended to provide the Commission with the authority to approve, sanction, or permit, the use of such measures. The Commission has no enforcement authority over the failure to utilize such measures. The Commission shall not endorse specific products relating to such measures. The use of such measures shall be admitted as evidence of good faith efforts for purposes of this paragraph in any action arising under subsection (d). Nothing in this section shall be construed to treat interactive computer services as comm. on carriers or telecommunications carriers.

"(f)(1) 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 section or otherwise to restrict or prevent the transmission of, or access to, a communication specified in this section.

"(2) No State or local government may impose ant liability for

commercial activities or actions by commercial entities, nonprofit libraries, or institutions of higher education in connection with an activity or action described in subsection (a)(2) or (d) that is inconsistent with the treatment of those activities or actions under this section: Provided, however, That nothing herein shall preclude any State or local government from enacting and enforcing complementary oversight, liability, and regulatory systems, procedures, and requirements, so long as such systems, procedures, and requirements govern only intrastate services and do not result in the imposition of inconsistent rights. duties or obligations on the provision of interstate services. nothing in this subsection shall preclude any State or local government from governing conduct not covered by this section.

"(g) nothing in subsection (a), (d), (e), or (f) or in the defenses to prosecution under (a) or (d) shall be construed to affect or limit the application or enforcement of any other Federal law.

"(h) For purposes of this section

"(1) The use of the term 'telecommunications device' in this section

"(A) shall not impose new obligations on broadcasting station licensees and cable operators covered by obscenity and indecency provisions elsewhere in this .Act; and

"(B) does not include the use of an inter active computer service.

"(2) The term 'interactive computer service' has the meaning provided in section 230(f)(2)

"(3) The term 'access software' means software (including client or

server software) or enabling tools that do not create or provide the content of the communication but that allow a user to do any one or more of the following:

"(A) filter, screen, allow, or disallow content;

"(B) pick, choose, analyze, or digest content; or

"(C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

"(4) The term 'institution of higher education' has the meaning provided in section 1201 of the Higher Education Act of 1965 (20 U.S.C. 1141).

"(5) The term 'library means a library eligible for participation in State-based plans for funds under title III of the Library Services and Construction Act (20 U.S.C. 355e et seq.).".

SEC. 503. OBSCENE PROGRAMMING ON CABLE TELEVISION. ➡

Section 639 (47 U.S.C. 559) is amended by striking "not more than \$10,000" and inserting "under title 18, United States Code,".

SEC. 504. SCRAMBLING OF CABLE CHANNELS FOR NONSUBSCRIBERS. ➡

Part IV of title VI (47 U.S.C. 551 et seq.) is amended by adding at the end the following:

"SEC. 640. SCRAMBLING OF, CABLE CHANNELS FOR NONSUBSCRIBERS.

"(a) SUBSCRIBER REQUEST. Upon request by a cable service subscriber, a cable operator shall, without charge, fully- scramble or otherwise fully block the audio and video portion of each channel carrying such programming so that one not a subscriber does not receive it.

"(b) DEFINITION. As used in this section, the term 'scramble' means.
to rearrange the content of the signal of the programming so that the
program cannot be viewed or heard in an understandable manner."

SEC. 505. SCRAMBLING OF SEXUALLY EXPLICIT ADULT VIDEO SERVICE PROGRAMMING. ➡

(a) REQUIREMENT. Part IV of title I (47 U.S.C. 551 et seq.), as
amended by this Act, is further amended by adding at the end the
following:

"SEC. 641. SCRAMBLING OF SEXUALLY EXPLICIT ADULT VIDEO SERVICE
PROGRAMMING.

"(a) REQUIREMENT. In providing sexually explicit adult programming or
other programming that is indecent on any channel of its service
primarily dedicated to sexually-oriented programming, a multichannel
video programming distributor shall fully scramble or otherwise fully
block the video and audio portion of such channel so that one not a
subscriber to such channel or programming does not receive it.

"(b) IMPLEMENTATION. Until a multichannel video programming
distributor complies with the requirement set forth in subsection (a),
the distributor shall limit the access of children to the programming
referred to in that subsection by not providing such program during the
hours of the day (as determined by the Commission) when a significant
number of children are likely to view it.

"(c) DEFINITION. As used in this section, the term 'scramble' means
to rearrange the content of the signal of the programming so that the
programming cannot be viewed or heard in an understandable manner."

"(b) EFFECTIVE DATE. The amendment made b-y subsection (a) shall take effect 30 days after the date of the enactment of this Act.

SEC. 506. CABLE OPERATOR REFUSAL TO CARRY CERTAIN PROGRAMS. ➡

(a) PUBLIC, EDUCATION, AND GOVERNMENTAL CHANNELS. Section 611(e) (47

U.S.C. 531(e)) is amended by inserting before the period the following:

", except a cable operator may refuse to transmit any public access program or portion of a public access program which contains obscenity, indecency, or nudity".

(b) CABLE CHANNELS FOR COMMERCIAL USE. Section 612(c)(2) (47 U.S.C.

532(c)(2)) is amended by striking "an operator" and inserting "a cable operator may refuse to transmit any leased access program or portion of a leased access program which contains obscenity, indecency, or nudity and".

SEC. 507. CLARIFICATION OF CURRENT LAWS REGARDING COMMUNICATION OF OBSCENE MATERIALS THROUGH THE USE OF COMPUTERS. ➡

(a) IMPORTATION OR TRANSPORTATION. Section 1462 of title 18, United States Code, is amended

(1) in the first undesignated paragraph, by inserting "or interactive computer service (as defined in section 230(f)(2) of the Communications Act of 1934)" after "carrier"; and

(2) in the second undesignated paragraph

(A) by inserting "or receives," after "takes";

(B) by inserting "or interactive computer service (as defined in

section 230(f)(2) of the Communications Act of 1934)" after "common carrier"; and

(C) by inserting "or importation" after "carriage".

(b) TRANSPORTATION FOR PURPOSES OF SALE OR DISTRIBUTION. The first undesignated paragraph of section 1465 of title 18, United States Code, is amended -

(1) by striking "transports in" and inserting "transports or travels in, or uses a facility or means of,";

(2) by inserting "or an interactive computer service (as defined in section '230(f)(2) of the Communications Act of 1934) in or affecting such commerce" after "foreign commerce" the first place it appears;

(3) by striking ", or knowingly travels in" and all that follows through "obscene material in inter state or foreign commerce," and inserting "of".

(c) INTERPRETATION. The amendments made by this section are clarifying and shall not be interpreted to limit or repeal any prohibition contained in sections 1462 and 1465 of title 18, United States Code, before such amendment, under the rule established in *United States v. Alpers*, 338 U.S. 680 (1950).

SEC. 508. COERCION AND ENTICEMENT OF MINORS. ➡

Section 2422 of title 18, United States Code, is amended

(1) by inserting "(a)" before "Whoever knowingly"; and

(2) by adding at. the end the following

"(b) Whoever, using any facility or means of inter state or foreign

commerce, including the mail, or within the special maritime and territorial jurisdiction of the United States, knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years to engage in prostitution or any sexual act for which person may be criminally prosecuted, or attempts to do so shall be fined under this title or imprisoned not more than 10 years, or both."

SEC. 509. ONLINE FAMILY EMPOWERMENT. ➡

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. 230. PROTECTION FOR PRIVATE BLOCKING AND SCREENING OF OFFENSIVE MATERIAL

"(a) FINDINGS. The Congress finds the following:

"(1) The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens.

"(2) These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops.

"(3) The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.

"(4) The Internet and other interactive computer services have flourished, to the benefit of all Americans. with a minimum of government regulation.

"(5) Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.

"(b) POLICY. It is the policy of the United States

"(1) to promote the continued development of the Internet and other interactive computer services and other interactive media;

"(2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;

"(3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;

"(4) to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material; and

"(5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.

"(c) PROTECTION FOR 'GOOD SAMARITAN BLOCKING AND SCREENING OF OFFENSIVE

MATERIAL.

"(1) TREATMENT OF PUBLISHER OR SPEAKER. No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content

provider.

"(2) CIVIL LIABILITY. No provider or user of an interactive computer service shall be held liable on account of

"(A) any- action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

"(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).

"(d) EFFECT ON OTHER LAWS.

"(1) NO EFFECT ON CRIMINAL. LAW. Nothing in this section shall be construed to impair the enforcement of section 223 of this Act, chapter 71 (relating to obscenity) or 110 (relating to exploitation of children) of title 18, United States Code, or any other Federal criminal statute.

"(2) NO EFFECT ON INTELLECTUAL PROPERTY LAW. Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

"(3) STATE LAW. Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is in consistent with this section.

"(4) NO EFFECT ON COMMUNICATIONS PRIVACY LAW. Nothing in this section shall be construed to limit the application of the Electronic Communications Privacy Act of 1986 or any of the amendments made by such Act, or any similar State law.

"(f) DEFINITIONS. As used in this section:

"(1) INTERNET. The term 'Internet' means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

"(2) INTERACTIVE COMPUTER SERVICE. The term 'interactive computer service' means an information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

"(3) INFORMATION CONTENT PROVIDER. The term 'information content provider' means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

"(4) ACCESS SOFTWARE PROVIDER. The term 'access software provider' means a provider of software (including client or server software), or enabling tools that do any one or more of the following

"(A) filter, screen, allow, or disallow content;

"(B) pick, choose, analyze, or digest content; or

"(C) transmit, receive, display, forward cache, search, subset, organize, reorganize, or translate content."