

110TH CONGRESS
1ST SESSION

S. 49

To amend the Communications Act of 1934 to prevent the carriage of child pornography by video service providers, to protect children from online predators, and to restrict the sale or purchase of children’s personal information in interstate commerce.

IN THE SENATE OF THE UNITED STATES

JANUARY 4, 2007

Mr. STEVENS introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Communications Act of 1934 to prevent the carriage of child pornography by video service providers, to protect children from online predators, and to restrict the sale or purchase of children’s personal information in interstate commerce.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Protecting Children in the 21st Century Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—PROTECTING CHILDREN

Sec. 101. Video transmission of child pornography.

Sec. 102. Additional child pornography amendments.

TITLE II—DELETING ONLINE PREDATORS

Sec. 201. Short title.

Sec. 202. Findings.

Sec. 203. Certifications to include protections against commercial social networking websites and chat rooms.

Sec. 204. FTC consumer alert on internet dangers to children.

TITLE III—CHILDREN’S LISTBROKER PRIVACY

Sec. 301. Short title.

Sec. 302. Restriction on sale or purchase of children’s personal information.

Sec. 303. Administration and enforcement.

Sec. 304. Actions by States.

Sec. 305. Definitions.

Sec. 306. Effective date.

1 **TITLE I—PROTECTING** 2 **CHILDREN**

3 **SEC. 101. VIDEO TRANSMISSION OF CHILD PORNOGRAPHY.**

4 Section 621 of the Communications Act of 1934 (47
5 U.S.C. 541) is amended by adding at the end the fol-
6 lowing:

7 “(g) CHILD PORNOGRAPHY.—

8 “(1) IN GENERAL.—A video service provider au-
9 thORIZED to provide video service in a local franchise
10 area shall comply with the regulations on child por-
11 nography promulgated pursuant to paragraph (2).

12 “(2) REGULATIONS.—Not later than 180 days
13 after the date of enactment of the Protecting Chil-
14 dren in the 21st Century Act, the Commission shall
15 promulgate regulations to require a video service to

1 prevent the offering of child pornography (as such
2 term is defined in section 254(h)(7)(F)).”.

3 **SEC. 102. ADDITIONAL CHILD PORNOGRAPHY AMEND-**
4 **MENTS.**

5 (a) INCREASE IN FINE FOR FAILURE TO REPORT.—

6 Section 227(b)(4) of the Crime Control Act of 1990 (42
7 U.S.C. 13032(b)(4)) is amended—

8 (1) by striking “\$50,000;” in subparagraph (A)
9 and inserting “\$150,000;”; and

10 (2) by striking “\$100,000.” in subparagraph
11 (B) and inserting “\$300,000.”.

12 (b) WARNING LABELS FOR WEBSITES DEPICTING

13 SEXUALLY EXPLICIT MATERIAL.—

14 (1) IN GENERAL.—

15 (A) NOTICE REQUIREMENT.—It is unlaw-
16 ful for the operator of a website that is pri-
17 marily operated for commercial purposes know-
18 ingly, and with knowledge of the character of
19 the material, to place sexually explicit material
20 on the website unless—

21 (i) the first page of the website
22 viewable on the Internet does not include
23 any sexually explicit material; and

24 (ii) each page or screen of the website
25 that does contain sexually explicit material

1 also displays the matter prescribed by the
2 Federal Trade Commission under para-
3 graph (2).

4 (B) EXCEPTION FOR RESTRICTED ACCESS
5 WEBSITES.—Subparagraph (A)(ii) does not
6 apply to any website access to which is re-
7 stricted to a specific set of individuals through
8 a password or other access restriction mecha-
9 nism.

10 (2) MARKS OR NOTICES.—Within 90 days after
11 the date of enactment of this Act, the Federal Trade
12 Commission shall, in consultation with the Attorney
13 General, promulgate regulations establishing clearly
14 identifiable marks or notices to be included in the
15 code, if technologically feasible, or on the pages or
16 screens of a website that contains sexually explicit
17 material to inform any person who accesses that
18 website of the nature of the material and to facili-
19 tate the filtering of such pages or screens.

20 (3) INAPPLICABILITY TO CARRIERS AND OTHER
21 SERVICE PROVIDERS.—Subsection (a) does not apply
22 to a person to the extent that the person is—

23 (A) a telecommunications carrier (as de-
24 fined in section 3(44) of the Communications
25 Act of 1934 (47 U.S.C. 153(44));

1 (B) engaged in the business of providing
2 an Internet access service; or

3 (C) engaged in the transmission, storage,
4 retrieval, hosting, formatting, or translation of
5 a communication made by another person, with-
6 out selection or alteration of the content (other
7 than by translation or by lawful selection or de-
8 letion of matter).

9 (4) DEFINITIONS.—In this subsection:

10 (A) WEBSITE.—The term “website” means
11 any collection of material placed in a computer
12 server-based file archive so that it is publicly
13 accessible over the Internet using hypertext
14 transfer protocol, or any successor protocol.

15 (B) SEXUALLY EXPLICIT MATERIAL.—The
16 term “sexually explicit material” means mate-
17 rial that depicts sexually explicit conduct (as
18 defined in section 2256(2)(A) of section 2256
19 of title 18, United States Code), unless that de-
20 piction constitutes a small and insignificant
21 part of the whole, the remainder of which is not
22 primarily devoted to sexual matters.

23 (C) INTERNET.—The term “Internet”
24 means the combination of computer facilities
25 and electromagnetic transmission media, and

1 related equipment and software, comprising the
 2 interconnected worldwide network of computer
 3 networks that employ the Internet protocol or
 4 any successor protocol to transmit information.

5 (D) INTERNET ACCESS SERVICE.—The
 6 term “Internet access service” means a service
 7 that enables users to access content, informa-
 8 tion, electronic mail, or other services offered
 9 over the Internet and may also include access
 10 to proprietary content, information, and other
 11 services as part of a package of services offered
 12 to the public other than telecommunications
 13 service (as defined in section 3(46) of the Com-
 14 munications Act of 1934 (47 U.S.C. 153(46))).

15 (5) PENALTY.—Violation of this subsection is
 16 punishable by a fine under title 18, United States
 17 Code, or imprisonment for not more than 5 years,
 18 or both.

19 **TITLE II—DELETING ONLINE** 20 **PREDATORS**

21 **SEC. 201. SHORT TITLE.**

22 This title may be cited as the “Deleting Online Pred-
 23 ators Act of 2007”.

24 **SEC. 202. FINDINGS.**

25 The Congress finds that—

1 (1) sexual predators approach minors on the
 2 Internet using chat rooms and social networking
 3 websites, and, according to the United States Attor-
 4 ney General, one in five children has been ap-
 5 proached sexually on the Internet;

6 (2) sexual predators can use these chat rooms
 7 and websites to locate, learn about, befriend, and
 8 eventually prey on children by engaging them in sex-
 9 ually explicit conversations, asking for photographs,
 10 and attempting to lure children into a face to face
 11 meeting; and

12 (3) with the explosive growth of trendy chat
 13 rooms and social networking websites, it is becoming
 14 more and more difficult to monitor and protect mi-
 15 nors from those with devious intentions, particularly
 16 when children are away from parental supervision.

17 **SEC. 203. CERTIFICATIONS TO INCLUDE PROTECTIONS**
 18 **AGAINST COMMERCIAL SOCIAL NETWORKING**
 19 **WEBSITES AND CHAT ROOMS.**

20 (a) CERTIFICATION BY SCHOOLS.—Section
 21 254(h)(5)(B) of the Communications Act of 1934 (47
 22 U.S.C. 254(h)(5)(B)) is amended by striking clause (i)
 23 and inserting the following:

24 “(i) is enforcing a policy of Internet
 25 safety for minors that prevents

1 cyberbullying and includes monitoring the
 2 online activities of minors and the oper-
 3 ation of a technology protection measure
 4 with respect to any of its computers with
 5 Internet access that—

6 “(I) protects against access
 7 through such computers to visual de-
 8 pictions that are—

9 “(aa) obscene;

10 “(bb) child pornography; or

11 “(cc) harmful to minors;

12 and

13 “(II) protects against access to a
 14 commercial social networking website
 15 or chat room unless used for an edu-
 16 cational purpose with adult super-
 17 vision; and”.

18 (b) CERTIFICATION BY LIBRARIES.—Section
 19 254(h)(6)(B) of such Act (47 U.S.C. 254(h)(6)(B)) is
 20 amended by striking clause (i) and inserting the following:

21 “(i) is enforcing a policy of Internet
 22 safety that prevents cyberbullying and in-
 23 cludes the operation of a technology pro-
 24 tection measure with respect to any of its
 25 computers with Internet access that—

1 “(I) protects against access
2 through such computers to visual de-
3 pications that are—

4 “(aa) obscene;

5 “(bb) child pornography; or

6 “(cc) harmful to minors;

7 and

8 “(II) protects against access by
9 minors without parental authorization
10 to a commercial social networking
11 website or chat room, and informs
12 parents that sexual predators can use
13 these websites and chat rooms to prey
14 on children; and”.

15 (c) DEFINITIONS.—Section 254(h)(7) of such Act
16 (47 U.S.C. 254(h)(7)) is amended by adding at the end
17 the following new subparagraph:

18 “(J) COMMERCIAL SOCIAL NETWORKING
19 WEBSITES; CHAT ROOMS.—Within 120 days
20 after the date of enactment of the Deleting On-
21 line Predators Act of 2006, the Commission
22 shall by rule define the terms ‘social networking
23 website’ and ‘chat room’ for purposes of this
24 subsection. In determining the definition of a
25 social networking website, the Commission shall

1 take into consideration the extent to which a
2 website—

3 “(i) is offered by a commercial entity;

4 “(ii) permits registered users to create
5 an on-line profile that includes detailed
6 personal information;

7 “(iii) permits registered users to cre-
8 ate an on-line journal and share such a
9 journal with other users;

10 “(iv) elicits highly-personalized infor-
11 mation from users; and

12 “(v) enables communication among
13 users.”.

14 (d) DISABLING DURING ADULT OR EDUCATIONAL
15 USE.—Section 254(h)(5)(D) of such Act (47 U.S.C.
16 254(h)(5)(D)) is amended—

17 (1) by inserting “OR EDUCATIONAL” after
18 “DURING ADULT” in the heading; and

19 (2) by inserting before the period at the end the
20 following: “or during use by an adult or by minors
21 with adult supervision to enable access for edu-
22 cational purposes pursuant to subparagraph
23 (B)(i)(II)” .

1 **SEC. 204. FTC CONSUMER ALERT ON INTERNET DANGERS**
2 **TO CHILDREN.**

3 (a) INFORMATION REGARDING CHILD PREDATORS
4 AND THE INTERNET.—Not later than 180 days after the
5 date of enactment of this Act, the Federal Trade Commis-
6 sion shall—

7 (1) issue a consumer alert regarding the poten-
8 tial dangers to children of Internet child predators,
9 including the potential danger of commercial social
10 networking websites and chat rooms through which
11 personal information about child users of such
12 websites may be accessed by child predators; and

13 (2) establish a website to serve as a resource
14 for information for parents, teachers and school ad-
15 ministrators, and others regarding the potential dan-
16 gers posed by the use of the Internet by children, in-
17 cluding information about commercial social net-
18 working websites and chat rooms through which per-
19 sonal information about child users of such websites
20 may be accessed by child predators.

21 (b) COMMERCIAL SOCIAL NETWORKING
22 WEBSITES.—In subsection (a), the terms “commercial so-
23 cial networking website” and “chat room” have the mean-
24 ings given such terms pursuant to section 254(h)(7)(J)
25 of the Communications Act of 1934 (47 U.S.C.
26 254(h)(7)(J)).

1 **TITLE III—CHILDREN’S**
2 **LISTBROKER PRIVACY**

3 **SEC. 301. SHORT TITLE.**

4 This title may be cited as the “Children’s Listbroker
5 Privacy Act”.

6 **SEC. 302. RESTRICTION ON SALE OR PURCHASE OF CHIL-**
7 **DREN’S PERSONAL INFORMATION.**

8 (a) IN GENERAL.—It is unlawful—

9 (1) to sell personal information about an indi-
10 vidual the seller knows to be a child;

11 (2) to purchase personal information about an
12 individual identified by the seller as a child, for the
13 purpose of marketing to that child; or

14 (3) for a person who has provided a certifi-
15 cation pursuant to subsection (b)(2), in connection
16 with the purchase of personal information about an
17 individual identified by the seller as a child, to en-
18 gage in any practice that violates the terms of the
19 certification.

20 (b) EXCEPTIONS.—

21 (1) PARENTAL CONSENT.—Subsection (a) does
22 not apply to any sale, purchase, or use of personal
23 information about a child if the parent of the child
24 has granted express consent to that sale, purchase,
25 or use of the information.

1 (2) CERTIFICATION.—Subsection (a)(1) shall
2 not apply to the sale of personal information about
3 a child if the purchaser certifies to the seller, elec-
4 tronically or in writing, before the sale is com-
5 pleted—

6 (A) the purpose for which the information
7 will be used by the purchaser; and

8 (B) that the purchaser will neither—

9 (i) use the information for marketing
10 that child; nor

11 (ii) permit the information to be used
12 by others for the purpose of marketing to
13 that child.

14 **SEC. 303. ADMINISTRATION AND ENFORCEMENT.**

15 (a) IN GENERAL.—Except as provided in subsection
16 (b), this title shall be enforced by the Commission as if
17 the violation of section 302 of this title were an unfair
18 or deceptive act or practice proscribed under section
19 18(a)(1)(B) of the Federal Trade Commission Act (15
20 U.S.C. 57a(a)(1)(B)).

21 (b) ENFORCEMENT BY CERTAIN OTHER AGEN-
22 CIES.—Compliance with this title shall be enforced
23 under—

24 (1) section 8 of the Federal Deposit Insurance
25 Act (12 U.S.C. 1818), in the case of—

1 (A) national banks, and Federal branches
2 and Federal agencies of foreign banks, by the
3 Office of the Comptroller of the Currency;

4 (B) member banks of the Federal Reserve
5 System (other than national banks), branches
6 and agencies of foreign banks (other than Fed-
7 eral branches, Federal agencies, and insured
8 State branches of foreign banks), commercial
9 lending companies owned or controlled by for-
10 eign banks, and organizations operating under
11 section 25 or 25A of the Federal Reserve Act
12 (12 U.S.C. 601 and 611), by the Board; and

13 (C) banks insured by the Federal Deposit
14 Insurance Corporation (other than members of
15 the Federal Reserve System) and insured State
16 branches of foreign banks, by the Board of Di-
17 rectors of the Federal Deposit Insurance Cor-
18 poration;

19 (2) section 8 of the Federal Deposit Insurance
20 Act (12 U.S.C. 1818), by the Director of the Office
21 of Thrift Supervision, in the case of a savings asso-
22 ciation the deposits of which are insured by the Fed-
23 eral Deposit Insurance Corporation;

24 (3) the Federal Credit Union Act (12 U.S.C.
25 1751 et seq.) by the National Credit Union Adminis-

1 tration Board with respect to any Federal credit
2 union;

3 (4) part A of subtitle VII of title 49, United
4 States Code, by the Secretary of Transportation
5 with respect to any air carrier or foreign air carrier
6 subject to that part;

7 (5) the Packers and Stockyards Act, 1921 (7
8 U.S.C. 181 et seq.) (except as provided in section
9 406 of that Act (7 U.S.C. 226, 227)), by the Sec-
10 retary of Agriculture with respect to any activities
11 subject to that Act; and

12 (6) the Farm Credit Act of 1971 (12 U.S.C.
13 2001 et seq.) by the Farm Credit Administration
14 with respect to any Federal land bank, Federal land
15 bank association, Federal intermediate credit bank,
16 or production credit association.

17 (c) EXERCISE OF CERTAIN POWERS.—For the pur-
18 pose of the exercise by any agency referred to in sub-
19 section (b) of its powers under any Act referred to in that
20 subsection, a violation of section 302 of this title is deemed
21 to be a violation of a requirement imposed under that Act.
22 In addition to its powers under any provision of law spe-
23 cifically referred to in subsection (b), each of the agencies
24 referred to in that subsection may exercise, for the pur-
25 pose of enforcing compliance with any requirement im-

1 posed under section 302 of this title, any other authority
2 conferred on it by law.

3 (d) ACTIONS BY THE COMMISSION.—The Commis-
4 sion shall prevent any person from violating section 302
5 of this title in the same manner, by the same means, and
6 with the same jurisdiction, powers, and duties as though
7 all applicable terms and provisions of the Federal Trade
8 Commission Act (15 U.S.C. 41 et seq.) were incorporated
9 into and made a part of this title. Any entity that violates
10 any provision of that section is subject to the penalties
11 and entitled to the privileges and immunities provided in
12 the Federal Trade Commission Act in the same manner,
13 by the same means, and with the same jurisdiction, power,
14 and duties as though all applicable terms and provisions
15 of the Federal Trade Commission Act were incorporated
16 into and made a part of that section.

17 (e) PRESERVATION OF COMMISSION AUTHORITY.—
18 Nothing contained in this section shall be construed to
19 limit the authority of the Commission under any other
20 provision of law.

21 **SEC. 304. ACTIONS BY STATES.**

22 (a) IN GENERAL.—

23 (1) CIVIL ACTIONS.—In any case in which the
24 attorney general of a State has reason to believe
25 that an interest of the residents of that State has

1 been or is threatened or adversely affected by the
2 engagement of any person in a practice that section
3 302 of this title, the State, as *parens patriae*, may
4 bring a civil action on behalf of the residents of the
5 State in a district court of the United States of ap-
6 propriate jurisdiction—

7 (A) to enjoin that practice;

8 (B) to enforce compliance with the rule;

9 (C) to obtain damage, restitution, or other
10 compensation on behalf of residents of the
11 State; or

12 (D) to obtain such other relief as the court
13 may consider to be appropriate.

14 (2) NOTICE.—

15 (A) IN GENERAL.—Before filing an action
16 under paragraph (1), the attorney general of
17 the State involved shall provide to the Commis-
18 sion—

19 (i) written notice of that action; and

20 (ii) a copy of the complaint for that
21 action.

22 (B) EXEMPTION.—

23 (i) IN GENERAL.—Subparagraph (A)
24 shall not apply with respect to the filing of
25 an action by an attorney general of a State

1 under this subsection, if the attorney gen-
2 eral determines that it is not feasible to
3 provide the notice described in that sub-
4 paragraph before the filing of the action.

5 (ii) NOTIFICATION.—In an action de-
6 scribed in clause (i), the attorney general
7 of a State shall provide notice and a copy
8 of the complaint to the Commission at the
9 same time as the attorney general files the
10 action.

11 (b) INTERVENTION.—

12 (1) IN GENERAL.—On receiving notice under
13 subsection (a)(2), the Commission shall have the
14 right to intervene in the action that is the subject
15 of the notice.

16 (2) EFFECT OF INTERVENTION.—If the Com-
17 mission intervenes in an action under subsection (a),
18 it shall have the right—

19 (A) to be heard with respect to any matter
20 that arises in that action; and

21 (B) to file a petition for appeal.

22 (c) CONSTRUCTION.—For purposes of bringing any
23 civil action under subsection (a), nothing in this title shall
24 be construed to prevent an attorney general of a State

1 from exercising the powers conferred on the attorney gen-
 2 eral by the laws of that State to—

- 3 (1) conduct investigations;
- 4 (2) administer oaths or affirmations; or
- 5 (3) compel the attendance of witnesses or the
 6 production of documentary and other evidence.

7 (d) ACTIONS BY THE COMMISSION.—In any case in
 8 which an action is instituted by or on behalf of the Com-
 9 mission for violation of section 302 of this title, no State
 10 may, during the pendency of that action, institute an ac-
 11 tion under subsection (a) against any defendant named
 12 in the complaint in that action for violation of that section.

13 (e) VENUE; SERVICE OF PROCESS.—

14 (1) VENUE.—Any action brought under sub-
 15 section (a) may be brought in the district court of
 16 the United States that meets applicable require-
 17 ments relating to venue under section 1391 of title
 18 28, United States Code.

19 (2) SERVICE OF PROCESS.—In an action
 20 brought under subsection (a), process may be served
 21 in any district in which the defendant—

- 22 (A) is an inhabitant; or
- 23 (B) may be found.

24 **SEC. 305. DEFINITIONS.**

25 In this title:

1 (1) CHILD.—The term “child” means an indi-
2 vidual under the age of 16.

3 (2) COMMISSION.—The term “Commission”
4 means the Federal Trade Commission.

5 (3) EXPRESS CONSENT.—

6 (A) IN GENERAL.—The term “express con-
7 sent” means an affirmative indication of per-
8 mission in writing or electronic form. The term
9 “express consent” does not include consent in-
10 ferred from a failure to indicate affirmatively
11 that consent is denied or withheld.

12 (B) PREREQUISITES.—Express consent is
13 not valid unless—

14 (i) before granting the consent the in-
15 dividual granting the consent was informed
16 of the purpose for which the information
17 would be sold, purchased, or used; and

18 (ii) consent was not granted as a con-
19 dition for making a product, service, or
20 warranty available to the individual or the
21 child to which the information pertains.

22 (4) MARKETING.—The term “marketing”
23 means making a communication to encourage the
24 purchase or use of a commercial product or service.
25 For purposes of this paragraph, a product or service

1 shall be considered to be commercial if some or all
2 of the proceeds from the sale inure to the benefit of
3 an enterprise conducted for profit.

4 (5) PARENT.—The term “parent” includes a
5 legal guardian.

6 (6) PERSONAL INFORMATION.—The term “per-
7 sonal information” means identifiable information
8 about an individual, including—

9 (A) a name;

10 (B) a home or other physical address in-
11 cluding street name and name of a city or town;

12 (C) an e-mail address or online username;

13 (D) a telephone number;

14 (E) a Social Security number; or

15 (F) any other information that permits a
16 specific individual to be identified.

17 (7) PURCHASE; SELL; SALE.—In section 303,
18 the terms “purchase”, “sell”, and “sale” include the
19 purchase and sale of the right to use personal infor-
20 mation, without regard to whether—

21 (A) the right is limited or unlimited;

22 (B) the transaction is characterized as a
23 purchase, sale, lease, or otherwise; and

24 (C) the consideration for the transaction is
25 monetary, goods, or services.

1 **SEC. 306. EFFECTIVE DATE.**

2 This title takes effect 6 months after the date of en-
3 actment.

○