

DOT KIDS IMPLEMENTATION AND EFFICIENCY ACT OF 2002

MAY 8, 2002.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. TAUZIN, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

[To accompany H.R. 3833]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3833) to facilitate the creation of a new, second-level Internet domain within the United States country code domain that will be a haven for material that promotes positive experiences for children and families using the Internet, provides a safe online environment for children, and helps to prevent children from being exposed to harmful material on the Internet, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Dot Kids Implementation and Efficiency Act of 2002”.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the World Wide Web presents a stimulating and entertaining opportunity for children to learn, grow, and develop educationally and intellectually;

(2) Internet technology also makes available an extensive amount of information that is harmful to children, as studies indicate that a significant portion of all material available on the Internet is related to pornography;

(3) young children, when trying to use the World Wide Web for positive purposes, are often presented—either mistakenly or intentionally—with material that is inappropriate for their age, which can be extremely frustrating for children, parents, and educators;

(4) exposure of children to material that is inappropriate for them, including pornography, can distort the education and development of the Nation’s youth and represents a serious harm to American families that can lead to a host of other problems for children, including inappropriate use of chat rooms, physical molestation, harassment, and legal and financial difficulties;

(5) young boys and girls, older teens, troubled youth, frequent Internet users, chat room participants, online risk takers, and those who communicate online with strangers are at greater risk for receiving unwanted sexual solicitation on the Internet;

(6) studies have shown that 19 percent of youth (ages 10 to 17) who used the Internet regularly were the targets of unwanted sexual solicitation, but less than 10 percent of the solicitations were reported to the police;

(7) children who come across illegal content should report it to the congressionally authorized CyberTipline, an online mechanism developed by the National Center for Missing and Exploited Children, for citizens to report sexual crimes against children;

(8) the CyberTipline has received more than 64,400 reports, including reports of child pornography, online enticement for sexual acts, child molestation (outside the family), and child prostitution;

(9) although the computer software and hardware industries, and other related industries, have developed innovative ways to help parents and educators restrict material that is harmful to minors through parental control protections and self-regulation, to date such efforts have not provided a national solution to the problem of minors accessing harmful material on the World Wide Web;

(10) the creation of a “green-light” area within the United States country code Internet domain, that will contain only content that is appropriate for children under the age of 13, is analogous to the creation of a children’s section within a library and will promote the positive experiences of children and families in the United States; and

(11) while custody, care, and nurture of the child reside first with the parent, the protection of the physical and psychological well-being of minors by shielding them from material that is harmful to them is a compelling governmental interest.

(b) PURPOSES.—The purposes of this Act are—

(1) to facilitate the creation of a second-level domain within the United States country code domain for the location of material that is suitable for minors and not harmful to minors; and

(2) to ensure that the National Telecommunications and Information Administration oversees the creation of such a second-level domain and ensures the effective and efficient establishment and operation of the new domain.

SEC. 3. NTIA AUTHORITY.

Section 103(b)(3) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 902(b)(3)) is amended—

(1) in subparagraph (A), by striking “and” at the end;

(2) in subparagraph (B), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following new subparagraph:

“(C) shall assign to the NTIA responsibility for providing for the establishment, and overseeing operation, of a second-level Internet domain within the United States country code domain in accordance with section 157.”.

SEC. 4. CHILD-FRIENDLY SECOND-LEVEL INTERNET DOMAIN.

The National Telecommunications and Information Administration Organization Act (47 U.S.C. 901 et seq.) is amended in part C by adding at the end the following new section:

“SEC. 157. CHILD-FRIENDLY SECOND-LEVEL INTERNET DOMAIN.

“(a) RESPONSIBILITIES.—The NTIA shall require the registry selected to operate and maintain the United States country code Internet domain to establish, operate, and maintain a second-level domain within the United States country code domain that provides access only to material that is suitable for minors and not harmful to minors (in this section referred to as the ‘new domain’).

“(b) CONDITIONS OF CONTRACT RENEWAL.—The NTIA may not renew any contract to operate and maintain the domain with the initial registry, or enter into or renew any such contract with any successor registry, unless such registry enters into an agreement with the NTIA, during the 90-day period beginning upon the date of the enactment of the Dot Kids Implementation and Efficiency Act of 2002 in the case of the initial registry or during the 90-day period after selection in the case of any successor registry, as applicable, which provides for the registry to carry out, and the new domain operates pursuant to, the following requirements:

“(1) Written content standards for the new domain, except that the NTIA shall not have any authority to establish such standards.

“(2) Written agreements with each registrar for the new domain that ensure use of the new domain is in accordance with the standards and requirements of the registry.

“(3) Written agreements with registrars, which shall require registrars to enter into written agreements with registrants, to use the new domain in accordance with the standards and requirements of the registry.

“(4) Rules and procedures for enforcement and oversight that minimize the possibility that the new domain provides access to content that is not in accordance with the standards and requirements of the registry.

“(5) A process for removing from the new domain any content that is not in accordance with the standards and requirements of the registry.

“(6) A process to provide registrants to the new domain with an opportunity for a prompt, expeditious, and impartial dispute resolution process regarding any material of the registrant excluded from the new domain.

“(7) Continuous and uninterrupted service for the new domain during any transition to a new registry selected to operate and maintain the United States country code domain.

“(8) Procedures and mechanisms to promote the accuracy of contact information submitted by registrants and retained by registrars in the new domain.

“(9) Operationality of the new domain not later than one year after the date of the enactment of the Dot Kids Implementation and Efficiency Act of 2002.

“(10) Written agreements with registrars, which shall require registrars to enter into written agreements with registrants, to prohibit two-way and multiuser interactive services in the new domain, unless the registrant certifies to the registrar that such service will be offered in compliance with the content standards established pursuant to paragraph (1) and does not compromise the safety or security of minors.

“(11) Written agreements with registrars, which shall require registrars to enter into written agreements with registrants, to prohibit hyperlinks in the new domain that take new domain users outside of the new domain.

“(12) Any other action that the NTIA considers necessary to establish, operate, or maintain the new domain in accordance with the purposes of this section.

“(c) TREATMENT OF REGISTRY AND OTHER ENTITIES.—

“(1) IN GENERAL.—Only to the extent that such entities carry out functions under this section, the following entities are deemed to be interactive computer services for purposes of section 230(c) of the Communications Act of 1934 (47 U.S.C. 230(c)):

“(A) The registry that operates and maintains the new domain.

“(B) Any entity that contracts with such registry to carry out functions to ensure that content accessed through the new domain complies with the limitations applicable to the new domain.

“(C) Any registrar for the registry of the new domain that is operating in compliance with its agreement with the registry.

“(2) SAVINGS PROVISION.—Nothing in paragraph (1) shall be construed to affect the applicability of any other provision of title II of the Communications Act of 1934 to the entities covered by subparagraph (A), (B), or (C) of paragraph (1).

“(d) EDUCATION.—The NTIA shall carry out a program to publicize the availability of the new domain and to educate the parents of minors regarding the process for utilizing the new domain in combination and coordination with hardware and software technologies that provide for filtering or blocking. The program under this subsection shall be commenced not later than 30 days after the date that the new domain first becomes operational and accessible by the public.

“(e) COORDINATION WITH FEDERAL GOVERNMENT.—The registry selected to operate and maintain the new domain shall—

“(1) consult with appropriate agencies of the Federal Government regarding procedures and actions to prevent minors and families who use the new domain from being targeted by adults and other children for predatory behavior, exploitation, or illegal actions; and

“(2) establish such procedures and take such actions as may be necessary to prevent such targeting.

The consultations, procedures, and actions required under this subsection shall be commenced not later than 30 days after the date that the new domain first becomes operational and accessible by the public.

“(f) COMPLIANCE REPORT.—The registry shall prepare, on an annual basis, a report on the registry’s monitoring and enforcement procedures. The registry shall submit each such report, setting forth the results of the review of its monitoring and enforcement procedures, to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

“(g) SELECTION OF REGISTRY.—

“(1) WITHDRAWAL OF REGISTRY.—

“(A) IN GENERAL.—Upon a good faith showing by the registry of the new domain to the NTIA of extreme financial hardship in the operation of the new domain, the registry may elect to relinquish the right to operate and maintain the new domain. If the registry elects to relinquish such right, the NTIA shall select a subcontractor to operate and maintain the new domain under the competitive bidding process established pursuant to paragraph (2). The subcontractor shall have all of the rights and duties specified under this Act, except that such duties shall not include the technical maintenance of the new domain.

“(B) EXTREME FINANCIAL HARDSHIP.—For purposes of this paragraph, the term ‘extreme financial hardship’ means that the costs of operating and maintaining the new domain exceed the revenues generated from registrants by more than 25 percent for a period of more than 6 consecutive quarters, following the first year of operation.

“(2) COMPETITIVE BID SELECTION PROCESS.—The NTIA shall establish a process for soliciting applications and choosing a subcontractor to operate and maintain the new domain pursuant to paragraph (1), which process shall comply with the following requirements:

“(A) TIMING.—The selection process shall commence and complete not later than 120 days after the registry elects to relinquish the new domain for extreme financial hardship.

“(B) NOTICE.—The selection process shall provide adequate notice to prospective applicants of—

“(i) the opportunity to submit such an application; and

“(ii) the criteria for selection under subparagraph (C).

“(C) CRITERIA.—The selection shall be made pursuant to written, objective criteria designed to ensure—

“(i) that the new domain is operated and maintained in accordance with the requirements under subsection (b); and

“(ii) that the subcontractor selected to operate and maintain the new domain is the applicant most capable and qualified to do so.

“(D) REVIEW.—Not more than 60 days after the conclusion of the period established for submission of applications, the NTIA shall—

“(i) review and apply the selection criteria established under subparagraph (C) to each application submitted; and

“(ii) based upon such criteria and subject to submission of an application meeting such criteria, select an application and award to the applicant a subcontract for the operation and maintenance of the new domain.

“(E) FAILURE TO FIND SUBCONTRACTOR.—If the NTIA fails to find a suitable subcontractor pursuant to the process under this paragraph, the NTIA shall permit the registry to cease operation of the new domain.

“(h) SUSPENSION OF NEW DOMAIN.—If the NTIA finds, pursuant to its own review or upon a good faith petition by the registry, that the new domain is not serving its intended purpose, the NTIA shall instruct the registry to suspend operation of the new domain until such time as the NTIA determines that the new domain can be operated as intended.

“(i) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

“(1) HARMFUL TO MINORS.—The term ‘harmful to minors’ means, with respect to material, that—

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

“(B) the material 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, the material lacks serious, literary, artistic, political, or scientific value for minors.

“(2) MINOR.—the term ‘minor’ means any person under 13 years of age.

“(3) SUITABLE FOR MINORS.—The term ‘suitable for minors’ means, with respect to material, that it—

“(A) is not psychologically or intellectually inappropriate for minors; and

“(B) serves—

“(i) the educational, informational, intellectual, or cognitive needs of minors; or

“(ii) the social, emotional, or entertainment needs of minors.”.

PURPOSE AND SUMMARY

The purpose of H.R. 3833 is to facilitate the creation of a new, second-level Internet domain within the United States country code domain that will be a haven for material that promotes positive experiences for children and families using the Internet, provides a safe online environment for children, and helps to prevent children from being exposed to harmful material on the Internet, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

For all of the benefits the Internet and the World Wide Web have brought to business, communication, and information sharing, one of the biggest complaints the Internet faces is the easy accessibility of “adult” content by children. Increasingly, children find themselves in front of a computer screen bombarded with images and other content that are totally inappropriate for their years, and parents feel increasingly powerless to prevent it.

By just navigating the World Wide Web, children can intentionally, or unintentionally, access sexually explicit, excessively violent, and other inappropriate material. There are innumerable pornographic sites on the Internet using “copycat URLs” to take advantage of innocent typographical mistakes of young Internet users.

Similarly, many children and adults are surprised when a domain name registration has expired or if a website owner forgets to renew. Often these domain names are quickly snapped up by speculators who make a living trafficking in expired domain names. These names, owned by church groups, nonprofit organizations, and municipalities, are then sold by speculators to pornographers who use the innocent sounding names for explicit material.

However, the harm to which children can be exposed on the Internet goes far beyond just stumbling upon inappropriate images. A June 2000 study done by the National Center for Missing and Exploited Children, the Crimes Against Children Research Center, and the Department of Justice's Office of Juvenile Justice and Delinquency Prevention, shows the harm posed to minors online also can involve predation and sexual solicitation. Based on interviews with a nationally representative sample of 1,501 youth ages 10 to 17 who use the Internet on a regular basis, approximately one in five received a sexual solicitation or approach over the Internet in the last year, one in 33 received an aggressive sexual solicitation (i.e., a solicitor who asked to meet them somewhere, called them on the telephone, sent them regular mail, money or gifts), one in four had an unwanted exposure to pictures of naked people or people having sex in the last year, and one in 17 was threatened or harassed. In homes with Internet access, only one third of parents said they had filtering or blocking software on their computers.

The technology industry and the federal government have tried to respond to the concerns of parents, educators and children. Software companies continue to offer new and improved Internet filters to help sift through harmful content. However, as noted above, parental acceptance of such filtering and blocking technologies is not widespread, and Internet filters are not completely effective.

Congress has also undertaken a number of efforts to protect children from harmful material on the Internet. As part of the Telecommunications Act of 1996, Congress passed the Communications Decency Act (CDA) that prohibited Internet users from using the Internet to communicate material that, under contemporary community standards, would be deemed patently offensive to minors under 18. The U.S. Supreme Court found the CDA to be unconstitutional and in violation to the First Amendment of the U.S. Constitution.

In 1998, Congress passed the Child Online Protection Act (COPA). COPA requires web publishers that distribute material deemed "harmful to minors" to ensure that minors do not access such material. COPA has been subject to litigation since enactment and, in November 2001, the case was heard by the U.S. Supreme Court and a decision should be forthcoming. During the 106th Congress, Congress enacted the Children's Internet Protection Act (CIPA), which requires entities that receive federal funding under the section 254(h) of the Communications Act of 1934 (known as the "E-rate program") and two other federal programs to annually certify that they are employing an Internet safety policy and employing a technology protection measure (defined to include filtering and blocking technologies). Parts of CIPA are currently being challenged in the court system. The Committee's efforts to pass H.R. 3833 should not be interpreted to undermine the efforts undertaken by previous Congresses or as a response to previous efforts.

On November 1, 2001, the Subcommittee on Telecommunications and the Internet held a hearing on H.R. 2417, the Dot Kids Domain Act of 2001. H.R. 2417 would have established a ".kids" generic top-level domain (similar to a .com or .org) through the Internet Corporation for Assigned Names and Numbers (ICANN), the organization that coordinates the domain name system internation-

ally. Because ICANN had continually been unwilling to adopt a “.kids” generic top-level domain, the private sector took matters into its own hands. Although outside the authoritative Internet root, businesses such as KIDS Domain, operated through New.net, entered the market to provide child-friendly content to children. These pioneers were some of the first to recognize the importance and value of giving children a way to find content on the Internet that is specifically geared toward children and their interests. These sites with “.kids” names currently reach over 100 million Internet users. The Committee encourages these type of private sector initiatives and hopes that such companies will continue to create more Internet sites and content for children.

During the hearing, some witnesses expressed concerns about creating a new “.kids” generic top level-domain through ICANN. To assuage those concerns, H.R. 3833 was introduced. Instead of creating a generic top-level domain through ICANN, H.R. 3833 utilizes the “.us” country-code to create “.kids.us”.

Every nation has a two-letter country code top-level domain (ccTLD) for use by that country. The ccTLD for the United States is “.us”. However, the “.us” ccTLD was originally organized with a locality-based structure, used primarily by states, localities and municipalities (i.e., “washington.dc.us”). Because of this cumbersome and hierarchical structure, the usTLD has not been widely used.

On October 29, 2001, the U.S. Department of Commerce’s National Telecommunications and Information Administration (NTIA) announced that it had entered into a contract with NeuStar, Inc. (NeuStar) to act as the registry, or operator, of the “.us” ccTLD. The term of the contract runs four years with two optional one-year extensions that are to be exercised at the sole discretion of the NTIA. NeuStar received this contract at no cost, and is allowed to finance the operation of the domain by establishing and collecting fees for registration in the “.us” space. The contract obligated NeuStar to enhance and improve the “.us” space and reserved the exclusive right to—but did not obligate—NeuStar to use the second-level domain “.kids” within the “.us” space (i.e., “.kids.us”). Moreover, the contract offered no detail as to how NeuStar would establish, operate, or maintain “.kids.us”, if it chose to do so.

Notwithstanding the fact that the NTIA contract does not obligate NeuStar to launch a “.kids.us”, recognizing the interest the Committee has in creating a safe space on the Internet for children, both NTIA and NeuStar committed to Members of the Committee to expeditiously launch “.kids.us”. H.R. 3833 is the enabling legislation to effectuate that commitment.

Under the bill, the domain will be filled only with material that is appropriate for children under 13 years of age. Specifically, the content on “.kids.us” must be “suitable for minors” and “not harmful to minors.” These two standards represent the range of child-friendly content that will be allowed in the new domain. On one side of the content spectrum, the domain should house material that is “suitable for minors,” meaning wholesome, educational, informational and entertaining material. On the other side of the content spectrum, the domain should not lodge material that is “harmful to minors,” as that phrase is defined in the bill and interpreted by the courts.

Although the new domain is a content-based restriction, the Committee believes, based on current Supreme Court precedent, that H.R. 3833 is Constitutionally sound. This bill is narrowly tailored to meet a compelling government interest and is the least restrictive of protected speech. Supreme Court precedent is clear in establishing the government's compelling interest in protecting children from exposure to sexually explicit material (See *Ginsberg v. New York*, 390 U.S. 629 (1968); *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978); and *Sable Communications of Cal. v. FCC*, 492 U.S. 115 (1989)). For instance, laws that require pornography to be sold behind the counter or in shrink wrap at a newsstand, or laws and regulations that limit the broadcast of certain content between certain hours of the night, are in place in order to protect children from material that is not appropriate for their age.

Importantly, H.R. 3833 recognizes and protects the First Amendment rights of adults and is carefully drafted not to impose any unnecessary burden on those rights. Indeed, the bill is no different than creating a children's section of a public library. The use of this child-friendly domain is completely voluntary—parents may chose to use it, and website operators may opt to be located within it. Should adults want to express certain views that are not "suitable for minors" or are deemed "harmful to minors," the bill does nothing to prevent an adult from utilizing the vast remainder of the ".us" domain or the entirety of the World Wide Web to express and share those views.

HEARINGS

The Subcommittee on Telecommunications and the Internet held a legislative hearing on November 1, 2001 on H.R. 2417, the "Dot Kids Domain Name Act of 2001" and an amendment in the nature of a substitute which would have created a ".kids" space within the ".us" ccTLD. The Committee received testimony from: Nancy Victory, Administrator, National Telecommunications and Information Administration; David Hernand, Chief Executive Officer, New.net; Page Howe, President and Chief Executive Officer, KIDS Domain, Inc.; Bruce A. Taylor, President and Chief Counsel, The National Law Center for Children and Families; and Donna Rice Hughes, Children's Internet Advocate.

COMMITTEE CONSIDERATION

On Thursday, March 7, 2002, the Subcommittee on Telecommunications and the Internet met in open markup session and approved H.R. 3833 for Full Committee consideration, without amendment, by a voice vote. On Wednesday, April 10, 2002, the Committee on Energy and Commerce met in open markup session and favorably ordered reported H.R. 3833, as amended, by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 3833 reported.

A motion by Mr. Tauzin to order H.R. 3833 reported to the House, with an amendment, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has not held oversight or legislative hearings on this legislation.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of H.R. 3833 is to create a safe space for children on the Internet within the United States country code.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 3833, the Dot Kids Implementation and Efficiency Act, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 23, 2002.

Hon. W.J. "BILLY" TAUZIN,
*Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3833, the Dot Kids Implementation and Efficiency Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contracts are Ken Johnson (for federal costs), and Jean Talarcio (for the private-sector impact).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 3833—Dot Kids Implementation and Efficiency Act of 2002

H.R. 3833 would require that the contractor that administers the U.S. Internet domain establish a second-level domain that would contain only material suitable for minors. The bill also would require the National Telecommunications and Information Adminis-

tration (NTIA) within the Department of Commerce to publicize the new domain and educate parents on its use.

Based on information from the Department of Commerce, CBO estimates that launching a publicity and education campaign for the new domain would cost less than \$500,000 per year, subject to the availability of appropriated funds. H.R. 3833 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

H.R. 3833 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. H.R. 3833 would outline conditions of a new agreement between the NTIA and the registry currently under contract with the NTIA to manage the U.S. country code Internet domain. The new agreement would require the registry to establish, operate, and maintain a second level domain that provides access only to material that is suitable for and not harmful to children under 13 years of age. Any costs resulting from the agreement would be incurred voluntarily by the registry as a party to that agreement.

The CBO staff contacts for this estimate are Ken Johnson (for federal costs), and Jean Talarico (for the private-sector impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 establishes the short title of the bill as the “Dot Kids Implementation and Efficiency Act of 2002.”

Section 2. Findings and purposes

Section 2 makes certain Congressional findings and describes the purposes of the bill.

Section 3. NTIA authority

Section 3 amends the National Telecommunications and Information Administration Organization Act (47 U.S.C. §901 et seq.) (NTIA Act) to specifically provide NTIA with responsibility to establish and oversee the “.kids.us” domain consistent with the requirements of the new section 157 of the NTIA Act, as added by this bill.

Section 4. Child-friendly second-level internet domain

Section 4 of the bill adds a new section 157 to the NTIA Organization Act. New section 157(a) mandates NTIA to require the registry, or operator, selected to operate and maintain the United States country code “.us”) to establish, operate, and maintain a second-level domain “.kids.us” or “new domain”) that provides access only to material that is “suitable for minors” and “not harmful to minors.”

New section 157(b) provides that the NTIA shall not renew the “.us” registry contract with the initial registry unless the initial registry enters into an agreement with the NTIA, within 90 days of enactment of the bill, to provide the “.kids.us” domain consistent with the duties in new section 157(b)(1)–(12). Additionally, new section 157(b) makes the same requirement of any successor registry within 90 days of selection by NTIA. Under the terms of the current contract between NeuStar and the NTIA, after the four-year term of the contract, the NTIA has the sole discretion to exercise two one-year options. These duties outlined in new section 157(b)(1)–(12) are not requirements the registry must perform pursuant to the terms of the contract. However, should NeuStar, or any successor registry, opt not to enter into an agreement with the NTIA to undertake the duties outlined in new section 157(b)(1)–(12), then the NTIA shall exercise its existing contractual right not to renew the registry of the “.us” contract for the two one-year options.

Pursuant to new section 157(b)(1), the registry must draft written content standards for the new domain (NTIA has no authority to establish such standards). These content standards must be consistent with the “suitable for minors” and “not harmful to minors” standards in the bill. Under new section 157(b)(2), the registry must enter into written agreements with registrars to ensure that use of the new domain is in accordance with the standards of the registry and require registrars to enter into written agreements with registrants to use the domain in accordance with the standards of the registry. New section 157(b)(3) requires agreements with registrars that require them to contractually obligate registrants to use the new domain in accordance with the standards of the registry. New section 157(b)(4) requires the registry to create rules for oversight and enforcement that minimize the chance the new domain will allow access to material that is not in accordance with the standards of the registry. The Committee understands that no system can guarantee 100% effectiveness in finding and keeping inappropriate images from the eyes of children. Even the

technology industry has found it difficult to keep pace with Internet hackers. However, this bill is drafted to encourage the maximum effectiveness that the Committee acknowledges is significantly better than the current Internet environment.

Under new section 157(b)(5), the registry must create a process for removing content not in accordance with the standards of the registry. New section 157(b)(6) provides that the registry must create a process allowing prompt, expeditious and impartial dispute resolution for material excluded from the new domain. While this process need not provide a formal and protracted hearing, it should accord registrants with the basic protections of due process. Under new section 157(b)(7), the registry must provide for continuous and uninterrupted service of the new domain during any transition to a new registry.

New section 157(b)(8) requires the registry to promote the accuracy of the registrant contact data maintained by the registrars so it may locate registrants who act contrary to the standards of the registry or in violation of the law. The Committee recognizes the so-called “who-is” database contact information may assist individuals and companies to locate website owners. With respect to a subdomain specifically dedicated to children, however, where children themselves may have individual websites, the public listing of home address, phone, and contact information may be information that many parents elect or desire not to publicly post in order to protect the safety of their children. That is why an increased emphasis on non-public contact data held by registrars is of particular importance and usefulness. New section 157(b)(9) mandates that the registry must be operational within one year of enactment. “Operational” is intended to mean that the new domain is available to, and accessible by, the public.

Pursuant to new section 157(b)(10), the registry must enter into written agreements with registrars that require registrars to contract with registrants to prohibit two-way and multiuser interactive services, unless the registrant can certify that such services can be offered in compliance with the content standards created by the registry and will not compromise the safety or security of the minors. The Committee is aware of some organizations, such as the I-SAFE Foundation, that are working on models to make such interactive services safe for children. This language is intended to cover communications with an upstream and downstream transmission, such as chat, instant messaging and e-mail. Since most child predators utilize these kind of communication mediums to lure or harass children, special care should be taken in the new domain to protect minors from the dangers inherent in such interactive communications. This language is not meant to prohibit such things as interactive games, assuming there is no transfer of personally identifiable information or the users do not have the ability to pursue or stalk children. Although physical harm can occur when a predator uses the Internet to meet a child, emotional and psychological harm can also result from harassing and inappropriate communications. The language in new section 157(b)(10) is intended to cover both such communications. Moreover, any communications on the new domain, whether it be static content, advertising, or interactive communications, must also be consistent

with the Child Online Privacy Protection Act (15 U.S.C. § 6501 et seq.) and other applicable law.

Under new section 157(b)(11) the registry must enter into agreements with registrars that require registrars to contract with registrants to prohibit hyperlinks that take users of “.kids.us” outside of “.kids.us” domain. The new domain is meant to be a safe space for children and such safety cannot be assured if only a few clicks of the mouse can transport minors to material that may not be “suitable for minors” or may be “harmful to minors.” Finally, new section 157(b)(12) allows the NTIA to take any other action that may be necessary to establish, operate or maintain the new domain consistent with the bill.

In order to provide incentives for rigorous and thorough content control, new section 157(c) provides limited liability protection for the actions taken by certain entities on the “.kids.us” domain. This provision utilizes existing section 230(c) of the Communications Act of 1934 (47 U.S.C. § 230(c)), otherwise known as the “Good Samaritan” protections. New section 157(c) expands the definition of “interactive computer services” in section 230(c) to include those functions undertaken by the “.kids.us” registry, registrars, and any company contracted with the registry, such as independent monitoring companies, only to the extent that such entities carry out the functions under this bill. These entities will have the current protections afforded to Internet Service Providers (ISPs) for any actions voluntarily taken in good faith to restrict access to or availability of material that the provider considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected. Additionally under section 230(c), neither the “.kids.us” registry, registrars, nor parties contracted to operate the new domain, shall be treated as the publisher or speaker of any information provided by another information content provider.

As noted in new section 157(c)(2), nothing in this section shall be construed to affect the application of any other provision of title II of the Communications Act of 1934 (47 U.S.C. § 201 et seq.) to the parties protected in this bill. The section 230(c) protections will continue to apply to entities that clearly fall within the definition of “interactive computer service” in section 230(f)(2), such as the entity hosting the third party’s web site. New section 157(c) is only intended to clarify that the new domain registry, registrars, and entities under contract to the registry would also fall within the scope of section 230(c) protections.

New section 157(c) is intended to shield the “.kids.us” registry, registrars, and parties who contract with the registry, from liability based on self-policing efforts to intercept and take down material that is not “suitable for minors” or is “harmful to minors.” The Committee notes that ISPs have successfully defended many lawsuits using section 230(c). The courts have correctly interpreted section 230(c), which was aimed at protecting against liability for such claims as negligence (See, e.g., *Doe v. America Online*, 783 So.2d 1010 (Fla. 2001)) and defamation (*Ben Ezra, Weinstein, and Co. v. America Online*, 206 F.3d 980 (2000); *Zeran v. America Online*, 129 F.3d 327 (1997)). The Committee intends these interpretations of section 230(c) to be equally applicable to those entities covered by H.R. 3833.

New section 157(d) requires the NTIA to carry out a program to publicize the availability of the “.kids.us” domain and to educate parents about filtering and blocking technologies that can be used in conjunction with the new domain to provide a safe environment for children on the Internet. The Committee expects that the NTIA will fulfill this obligation by advertising the new domain on its website, incorporating the availability of the website into speeches, and drafting and distributing pamphlets to schools, libraries, and parents.

New section 157(e) requires the new domain registry to, within 30 days of the new domain becoming publicly accessible, consult with appropriate federal government agencies regarding steps that can be taken to prevent minors from being targeted for predatory behavior, exploitation, or other illegal actions. The Committee expects the new domain registry will also communicate with children’s organizations, including the National Center for Missing and Exploited Children, among others, to make the new domain as safe as possible for minors. Under new section 157(e), the new domain registry must take such actions as may be necessary to prevent the targeting of minors for illegal purposes.

New section 157(f) requires the new domain registry to prepare an annual compliance report, detailing the registry’s monitoring and enforcement procedures, to be submitted to the Committee on Energy and Commerce of the U.S. House of Representatives and the Committee on Commerce, Science, and Transportation of the U.S. Senate.

New section 157(g)(1)(A) deals with consumer acceptance of the new domain. The Committee expects that the “.us” country code will be remarkably profitable, and also expects the “.kids.us” domain to be successful. The Committee recognizes, however, that the “.kids.us” domain could pose a potential financial drain on the registry should consumer acceptance be slow. If the new domain registry can make a good faith showing to the NTIA that it suffers “extreme financial hardship” in the operation of the new domain, the registry may relinquish the right to operate and maintain the new domain. Should the “.kids.us” registry elect to relinquish the new domain, the NTIA shall select a subcontractor to operate and maintain the new domain under a competitive bidding process. For purposes of this bill, a subcontractor of the “.kids.us” domain will have all of the rights and duties of the registry under the bill, but shall not include the technical maintenance of the new domain. “Extreme financial hardship” is defined in new section 157(g)(1)(B) as the costs of operating and maintaining the new domain exceeding the revenues generated by registrants by more than 25 percent for a period of more than six (6) consecutive quarters, following the first year of operation.

New section 157(g)(2) sets forth the competitive bid process for the NTIA’s selection of a subcontractor for the new domain. The selection process shall begin and end not later than 120 days after the new domain registry elects to relinquish the “.kids.us” domain for “extreme financial hardship.” The NTIA must provide adequate notice to prospective applicants of the opportunity to submit an application and the criteria used to select the subcontractor. The selection criteria must be written and objective and must ensure that the new domain is operated and maintained under the require-

ments of new section 157(b) and that the subcontractor selected is the most capable and qualified to operate and maintain the new domain. Not more than 60 days after the conclusion of the period for submission of applications, the NTIA must review and apply the selection criteria to each application and, based on that criteria, select an application and award to the applicant a subcontract to operate and maintain the new domain. If the NTIA fails to find a subcontractor pursuant to this process, the NTIA shall permit the registry to cease operation of the “.kids.us” domain.

New section 157(h) allows the NTIA, upon its own review or a good faith petition by the registry, to suspend operation of the “.kids.us” domain if the new domain cannot be operated as it was intended. The Committee intends the new domain to be a safe space on the Internet for children. However, there is no guarantee that “.kids.us” will prevent all inappropriate and harmful content. Although some seepage of inappropriate content into the new domain may be inevitable, H.R. 3833 is designed to ensure that such harmful content is removed as soon as practicable. This provision is not applicable for such occasional occurrences. New section 157(h) is designed to suspend the operation of the new domain should it become so populated with harmful and inappropriate content that it no longer is a place suitable for children under the age of 13. The Committee expects this to be used sparingly, as an effort of last resort.

New section 157(i) contains the definitions for the bill. New section 157(i)(1) defines “harmful to minors” as material that (A) the average person, applying contemporary community standards, would find, taking the material as a whole and with respect to minors, that it is designed to appeal to, or is designed to pander to, the prurient interest; (B) the material depicts, describes, or represents, in a manner patently offensive with respect to minors, 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, the material lacks serious, literary, artistic, political, or scientific value for minors.

This definition of “harmful to minors” was taken from the “harmful to minors” test set forth by the U.S. Supreme Court in *Ginsberg v. New York*, 390 U.S. 629 (1968), as modified by *Miller v. California*, 413 U.S. 15 (1973) in identifying “patently offensive” material. H.R. 3833 mirrors many of the state laws already in place that have been upheld by the Supreme Court. The Committee intends for the definition of harmful to minors to parallel the *Ginsberg* and *Miller* definitions of obscenity and harmful to minors, as those definitions were later refined in *Smith v. U.S.*, 431 U.S. 291 (1977) and *Pope v. Illinois*, 481 U.S. 497 (1987).

The Committee further recognizes that the applicability of community standards in the context of the World Wide Web is difficult. However, it is an “adult” standard, rather than a “geographic” standard, and one that is reasonably constant among adults in America with respect to what is inappropriate for children under 13 years of age.

New section 157(i)(2) defines “minor” as any person under 13 years of age.

New section 157(i)(3) defines “suitable for minors” as material that (A) is not psychologically or intellectually inappropriate for mi-

nors, and (B) serves (i) the educational, informational, intellectual, or cognitive needs of minors; or (ii) the social, emotional, or entertainment needs of minors. This definition is a combination of language from the Supreme Court case of *Board of Education v. Pico*, 457 U.S. 853 (1982) and the Children’s Television Act of 1990 (47 U.S.C. § 303 et seq.) and its regulations (47 CFR part 73.671). The Committee believes that this definition of “suitable for minors” is broad enough to include programming that is healthy for children and is attractive to children. Moreover, this definition is narrowly tailored to preclude Constitutional vagueness concerns.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**NATIONAL TELECOMMUNICATIONS AND INFORMATION
ADMINISTRATION ORGANIZATION ACT**

* * * * *

**TITLE I—NATIONAL TELECOMMUNI-
CATIONS AND INFORMATION ADMIN-
ISTRATION**

PART A—ORGANIZATION AND FUNCTIONS

* * * * *

SEC. 103. ESTABLISHMENT; ASSIGNED FUNCTIONS.

(a) * * *

(b) ASSIGNED FUNCTIONS.—

(1) * * *

* * * * *

(3) ADDITIONAL COMMUNICATIONS AND INFORMATION FUNCTIONS.—In addition to the functions described in paragraph (2), the Secretary under paragraph (1)—

(A) may assign to the NTIA the performance of functions under section 504(a) of the Communications Satellite Act of 1962 (47 U.S.C. 753(a)); **[and]**

(B) shall assign to the NTIA the administration of the Public Telecommunications Facilities Program under sections 390 through 393 of the Communications Act of 1934 (47 U.S.C. 390–393), and the National Endowment for Children’s Educational Television under section 394 of the Communications Act of 1934 (47 U.S.C. 394)**[.]**; and

(C) shall assign to the NTIA responsibility for providing for the establishment, and overseeing operation, of a second-level Internet domain within the United States country code domain in accordance with section 157.

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**PART C—SPECIAL AND TEMPORARY
PROVISIONS**

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SEC. 157. CHILD-FRIENDLY SECOND-LEVEL INTERNET DOMAIN.

(a) *RESPONSIBILITIES.*—The NTIA shall require the registry selected to operate and maintain the United States country code Internet domain to establish, operate, and maintain a second-level domain within the United States country code domain that provides access only to material that is suitable for minors and not harmful to minors (in this section referred to as the “new domain”).

(b) *CONDITIONS OF CONTRACT RENEWAL.*—The NTIA may not renew any contract to operate and maintain the domain with the initial registry, or enter into or renew any such contract with any successor registry, unless such registry enters into an agreement with the NTIA, during the 90-day period beginning upon the date of the enactment of the Dot Kids Implementation and Efficiency Act of 2002 in the case of the initial registry or during the 90-day period after selection in the case of any successor registry, as applicable, which provides for the registry to carry out, and the new domain operates pursuant to, the following requirements:

(1) Written content standards for the new domain, except that the NTIA shall not have any authority to establish such standards.

(2) Written agreements with each registrar for the new domain that ensure use of the new domain is in accordance with the standards and requirements of the registry.

(3) Written agreements with registrars, which shall require registrars to enter into written agreements with registrants, to use the new domain in accordance with the standards and requirements of the registry.

(4) Rules and procedures for enforcement and oversight that minimize the possibility that the new domain provides access to content that is not in accordance with the standards and requirements of the registry.

(5) A process for removing from the new domain any content that is not in accordance with the standards and requirements of the registry.

(6) A process to provide registrants to the new domain with an opportunity for a prompt, expeditious, and impartial dispute resolution process regarding any material of the registrant excluded from the new domain.

(7) Continuous and uninterrupted service for the new domain during any transition to a new registry selected to operate and maintain the United States country code domain.

(8) Procedures and mechanisms to promote the accuracy of contact information submitted by registrants and retained by registrars in the new domain.

(9) Operationality of the new domain not later than one year after the date of the enactment of the Dot Kids Implementation and Efficiency Act of 2002.

(10) Written agreements with registrars, which shall require registrars to enter into written agreements with registrants, to prohibit two-way and multiuser interactive services in the new

domain, unless the registrant certifies to the registrar that such service will be offered in compliance with the content standards established pursuant to paragraph (1) and does not compromise the safety or security of minors.

(11) Written agreements with registrars, which shall require registrars to enter into written agreements with registrants, to prohibit hyperlinks in the new domain that take new domain users outside of the new domain.

(12) Any other action that the NTIA considers necessary to establish, operate, or maintain the new domain in accordance with the purposes of this section.

(c) TREATMENT OF REGISTRY AND OTHER ENTITIES.—

(1) IN GENERAL.—Only to the extent that such entities carry out functions under this section, the following entities are deemed to be interactive computer services for purposes of section 230(c) of the Communications Act of 1934 (47 U.S.C. 230(c)):

(A) The registry that operates and maintains the new domain.

(B) Any entity that contracts with such registry to carry out functions to ensure that content accessed through the new domain complies with the limitations applicable to the new domain.

(C) Any registrar for the registry of the new domain that is operating in compliance with its agreement with the registry.

(2) SAVINGS PROVISION.—Nothing in paragraph (1) shall be construed to affect the applicability of any other provision of title II of the Communications Act of 1934 to the entities covered by subparagraph (A), (B), or (C) of paragraph (1).

(d) EDUCATION.—The NTIA shall carry out a program to publicize the availability of the new domain and to educate the parents of minors regarding the process for utilizing the new domain in combination and coordination with hardware and software technologies that provide for filtering or blocking. The program under this subsection shall be commenced not later than 30 days after the date that the new domain first becomes operational and accessible by the public.

(e) COORDINATION WITH FEDERAL GOVERNMENT.—The registry selected to operate and maintain the new domain shall—

(1) consult with appropriate agencies of the Federal Government regarding procedures and actions to prevent minors and families who use the new domain from being targeted by adults and other children for predatory behavior, exploitation, or illegal actions; and

(2) establish such procedures and take such actions as may be necessary to prevent such targeting.

The consultations, procedures, and actions required under this subsection shall be commenced not later than 30 days after the date that the new domain first becomes operational and accessible by the public.

(f) COMPLIANCE REPORT.—The registry shall prepare, on an annual basis, a report on the registry's monitoring and enforcement procedures. The registry shall submit each such report, setting forth the results of the review of its monitoring and enforcement procedures, to the Committee on Energy and Commerce of the House of

Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(g) *SELECTION OF REGISTRY.—*

(1) *WITHDRAWAL OF REGISTRY.—*

(A) *IN GENERAL.—*Upon a good faith showing by the registry of the new domain to the NTIA of extreme financial hardship in the operation of the new domain, the registry may elect to relinquish the right to operate and maintain the new domain. If the registry elects to relinquish such right, the NTIA shall select a subcontractor to operate and maintain the new domain under the competitive bidding process established pursuant to paragraph (2). The subcontractor shall have all of the rights and duties specified under this Act, except that such duties shall not include the technical maintenance of the new domain.

(B) *EXTREME FINANCIAL HARDSHIP.—*For purposes of this paragraph, the term “extreme financial hardship” means that the costs of operating and maintaining the new domain exceed the revenues generated from registrants by more than 25 percent for a period of more than 6 consecutive quarters, following the first year of operation.

(2) *COMPETITIVE BID SELECTION PROCESS.—*The NTIA shall establish a process for soliciting applications and choosing a subcontractor to operate and maintain the new domain pursuant to paragraph (1), which process shall comply with the following requirements:

(A) *TIMING.—*The selection process shall commence and complete not later than 120 days after the registry elects to relinquish the new domain for extreme financial hardship.

(B) *NOTICE.—*The selection process shall provide adequate notice to prospective applicants of—

(i) the opportunity to submit such an application; and

(ii) the criteria for selection under subparagraph (C).

(C) *CRITERIA.—*The selection shall be made pursuant to written, objective criteria designed to ensure—

(i) that the new domain is operated and maintained in accordance with the requirements under subsection (b); and

(ii) that the subcontractor selected to operate and maintain the new domain is the applicant most capable and qualified to do so.

(D) *REVIEW.—*Not more than 60 days after the conclusion of the period established for submission of applications, the NTIA shall—

(i) review and apply the selection criteria established under subparagraph (C) to each application submitted; and

(ii) based upon such criteria and subject to submission of an application meeting such criteria, select an application and award to the applicant a subcontract for the operation and maintenance of the new domain.

(E) *FAILURE TO FIND SUBCONTRACTOR.—*If the NTIA fails to find a suitable subcontractor pursuant to the process

under this paragraph, the NTIA shall permit the registry to cease operation of the new domain.

(h) SUSPENSION OF NEW DOMAIN.—If the NTIA finds, pursuant to its own review or upon a good faith petition by the registry, that the new domain is not serving its intended purpose, the NTIA shall instruct the registry to suspend operation of the new domain until such time as the NTIA determines that the new domain can be operated as intended.

(i) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) HARMFUL TO MINORS.—The term “harmful to minors” means, with respect to material, that—

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

(B) the material 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, the material lacks serious, literary, artistic, political, or scientific value for minors.

(2) MINOR.—the term “minor” means any person under 13 years of age.

(3) SUITABLE FOR MINORS.—The term “suitable for minors” means, with respect to material, that it—

(A) is not psychologically or intellectually inappropriate for minors; and

(B) serves—

(i) the educational, informational, intellectual, or cognitive needs of minors; or

(ii) the social, emotional, or entertainment needs of minors.