

## State Legislation: Suggested Act 3

### Act 3: Restrictions on Free-to-Air Private Wireless Connections

- a. **Unintentional Access.** Any person (including an Internet service provider) who uses or deploys a Wireless Internet Connection within the STATE and fails to take reasonable efforts to prevent access to Communications<sup>2</sup> that are Obscene or Harmful to Minors (together, Harmful Communications) by any person who is not an employee or family member of such person will be subject to a fine, in a reasonable amount to be determined by the Commission.
- b. **Efforts to Prevent Access.** Reasonable efforts to prevent access to Harmful Communications on a wireless connection may include requiring a password for access, as long as the password is kept secure; running a commercial filter that is reasonably effective at blocking access to Harmful Communications using the wireless connection;<sup>3</sup> or using any other security mechanism that is reasonably effective at preventing persons from accessing Harmful Communications.
- c. **Intentional Access.** Any person who repeatedly violates Section (a), or who makes a Wireless Internet Connection available with intent to permit or cause access by any Minor to Harmful Communications will be held [criminally or civilly liable].<sup>4</sup>
- d. **Notice.** The STATE will give notice of the requirements of this Act on its website and take other reasonable steps to make the public aware of the Act's terms.
- e. **Definitions.**<sup>5</sup>
  - i. **Communication(s).** The term "Communication(s)" includes all Internet Protocol (IP) and Transmission Control Protocol (TCP) Packet transmissions and includes all data types and materials transmitted via the Internet. Such data types and materials include text, images, graphics, simulations, animations, video and audio. A response from an IP Address to any single request for an Internet Communication is considered a separate Communication for purposes of this Act.
  - ii. **Harmful To Minors.**<sup>6</sup> The term "Harmful to Minors" means any Communication that:
    - a) the average adult, applying a contemporary community standard, would find, taking the Communication as a whole, is designed to appeal to, or is designed to pander to, prurient interest, or describes or depicts Sexually Explicit Conduct;
    - b) depicts, describes, or represents, in a manner patently offensive with respect to Minors, an actual or simulated sexual act or sexual contact, an actual or simulated normal or perverted sexual act, or a lewd exhibition of the genitals or post-pubescent female breast; and

- c) taken as a whole, lacks serious literary, artistic, political, or scientific value for Minors.
- iii. **Internet.** The term “Internet” means the combination of computer facilities and electromagnetic transmission media, and related equipment and software, comprising the interconnected worldwide networks that employ the Transmission Control Protocol/Internet Protocol (TCP/IP) or a successor protocol to transmit information.
- iv. **Obscene.**<sup>7</sup> The term “Obscene” means any Communication, picture, image, graphic image file, article, recording, writing, or other matter of any kind that:
  - a) the average person, applying contemporary community standards,
  - b) would find, taking the material as a whole is designed to appeal to, or is designed to pander to, the prurient interest;
  - c) depicts, describes, or represents, in a manner patently offensive, 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
  - d) taken as a whole, lacks serious literary, artistic, political, or scientific value.
- v. **Minor.**<sup>8</sup> The term “Minor” means any person who is under seventeen (17) years of age and above fourteen (14) years of age.
- vi. **Sexually Explicit Conduct.** The term “Sexually Explicit Conduct” has the meaning given that term in Title 42, Section 13031(c)(5) of the United States Code.<sup>9</sup>
- vii. **Wireless Internet Connection(s).** The term “Wireless Internet Connection” means an Internet Connection in which electromagnetic waves, rather than some form of wire, carry the signal over part or all of the communication path.

**Purpose.** The purpose of this Act is to prevent minors from accessing Harmful Communications over unsecured wireless Internet networks. Having readily available free-to-air unfiltered Internet access defeats the efforts of parents to control the Internet usage of their children. As parents become more involved and take control of the content on home computers and insist on the same in schools and libraries, the availability of unfiltered free-to-air access will become a bigger and bigger issue. In addition, minors will continue to have greater access to a wider variety of wireless devices.<sup>10</sup> These devices, though useful and enjoyable, make degrading Internet pornography available virtually anytime and most anywhere. Unsupervised by family, government, or educators, minors are free to access Harmful Communications on the wireless services of neighbors, commercial establishments, public properties, parks, and other locations. Without this legislation, parent’s efforts to keep their homes and their children’s lives porn-free will be sabotaged.

For more in depth discussion of this Act and responses to common arguments, see DISCUSSION OF ACT 3, at the end of the section on Suggested State Statutes.

1. Insert appropriate state name.
2. All capitalized terms are defined in section e.
3. This would require a filter at the server level, rather than just at an individual computer.
4. Each state may choose a penalty.
5. This suggested statute includes some definitions. A state may decide that it wants more or fewer defined terms.
6. This is the COPA definition with the exception of the phrase "or describes or depicts Sexually Explicit Conduct." COPA derived this definition from the test for obscenity announced by the Supreme Court in *Miller v. California*, 413 U.S. 15 (1973).
7. This is the traditional *Miller v. California* definition used by the Supreme Court.
8. The designation of a person under age seventeen is taken from Supreme Court language in *Ginsburg v. New York*, 390 U.S. 629, 639 (1968), and *Reno v. ACLU*, 521 U.S. 844, 865-66 (1997). The "under age seventeen" designation was challenged in *ACLU v. Gonzales*, 478 F.Supp.2d 775 (2007). The court held that the under seventeen designation from *Ginsberg* was vague, as it could be interpreted to mean very young children, for whom very little material would be appropriate on the Internet. We thus make explicit the intended reference to an older child.
9. The actual text of the federal statute referenced is as follows:

(S) the term "sexually explicit conduct" means actual or simulated--  
(A) sexual intercourse, including sexual contact in the manner of genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between persons of the same or of opposite sex; sexual contact means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify sexual desire of any person;  
(B) bestiality;  
(C) masturbation;  
(D) lascivious exhibition of the genitals or pubic area of a person or animal; or  
(E) sadistic or masochistic abuse.

42 U.S.C. § 13031(c)(5).

10. Cell phones, smartphones, Blackberries, PDAs, laptops, etc.