

## State Legislation: Suggested Act 2

### Act 2: Obligation of Internet Service Providers to Keep Records.

- a. An Internet Service Provider domiciled in STATE<sup>1</sup> (STATE Provider) will be subject to the penalties provided in this Act, if:
  - i. **Failure to Keep Records.** The STATE Provider fails to keep a record, for two years following any Allocation of an IP Address under its control, excluding Private and Non-Routable IP Address(es), sufficient to reasonably identify:
    1. Each IP Address Allocated by or to the STATE Provider;
    2. The date and time when such IP Address was Allocated; and
    3. The Internet User who obtained such IP Address;
  - ii. **Failure to Make Records Available.** The STATE Provider fails to make reasonably available, upon official request, a record, as described in Section (a)(i), to federal and state law enforcement and the STATE Attorney General; or
  - iii. **Failure to Control Access to IP Addresses.** The STATE Provider Allocates an IP Address within its control to an Internet User who is located outside of the United States.
- b. **Penalty.** Any STATE Provider who fails to conform to the requirements of this Act will be subject to [a fine in the following amount: \_\_\_\_\_, criminal and/or civil penalties].<sup>2</sup>
- c. **Definitions.**
  - i. **Allocat(e)(es)(ed)(ion).** The term “Allocat(e)(es)(ed)(ion)” means distribute, delegate, lease, sublease, grant a license, give or any other means by which a Service Provider allows another person to use an IP Address.
  - ii. **Allocator.** The term “Allocator” means any person who Allocates.
  - iii. **Equipment Owner(s).** The term “Equipment Owner(s)” means any person who provides equipment for use in Hosting or publishing content over the Internet.
  - iv. **Hoster.** The term “Hoster” means any person who provides an Internet Location to one or more Content Publisher(s).
  - v. **Internet Service Provider.** The term “Internet Service Provider” means any person who is:
    - a) providing Internet access;
    - b) an Equipment Owner;

- c) a Host; or
- d) an IP Address Allocator
  
- vi. **Internet User.** The term “Internet User” means any person who receives or transmits any Communication over the Internet.
  
- vii. **IP Address(es).** The term “IP Address(es)” means a number that uniquely identifies a device that is connected to a computer network that is Internet Protocol based.
  
- viii. **Private and Non-Routable IP Address(es).** The term “Private and Non-Routable IP Address(es)” means the IP Address ranges defined by *Y. Rekhter et al., Best Current Practice: Address Allocation for Private Internets*, RFC 1918 (1996), available at <http://www.ietf.org/rfc/rfc1918.txt?number=1918>, or any subsequent convention.

**Purpose.** This Act requires ISPs to keep for two years the simple records they already have for billing and other purposes. There is no personal data required, no invasion of privacy, no tracking of the times or contents of anyone’s Internet use – just the identity of who owns a particular IP Address at any given time. The information is simply a record of a commercial transaction (a money payment is exchanged for use of the IP Address) and is no different than a receipt acknowledging any sale or transfer.

Because many serious crimes may be committed through an Internet site controlled by an IP Address owner, it makes sense, in conformity with existing legal structures, to require some way to identify the person who commits such crimes or is responsible for the site. We do not allow the driving of unlicensed cars, the unrecorded ownership of property on which crimes may be committed, nor the unregistered ownership of telephone lines or short wave radios.

Many examples exist of the use of the Internet to commit crimes, especially those involving the abduction of children for sexual purposes. Not infrequently, law enforcement can trace the activity to a particular web site but cannot get information to identify the owner of that site. Certainly, privacy and anonymous speech are important. But once a crime has been committed, or law enforcement has a reasonable basis for suspecting a crime, law enforcement should be able to access mere property ownership records. In addition, governments need tools to trace the posting of Obscenity, which has no First Amendment protection, and, eventually, the posting of pornography as laws are enacted to regulate it.

**Burden.** The burden this Act imposes on STATE Providers is minimal. In fact, most STATE Providers already keep such records for at least two years. Moreover, as more laws are put in place, such as the federal Digital Millennium Copyright Act, that impose sanctions on use of the Internet in violating various laws, a law-abiding ISP would want, for its own protection, evidence of when an IP Address was in the control of another party. This Act provides sanctions for the disreputable person who would set up a STATE Provider through which untraceable IP addresses can be obtained.

Footnotes:

1. Replace with appropriate state name.
2. State may choose desired remedy.