

The Internet Community Ports Act of 2007¹

I. Congressional Findings. The Congress finds that:

1. The Internet has become an extremely important and popular means of exchanging information, relied on by millions of Americans and other citizens of the globe on a daily basis for personal and commercial purposes. Its global availability makes the Internet extremely convenient and efficient to access. The Internet plays an essential role in development and growth of frictionless commerce.
2. Many Internet sites contain material that is pornographic – either obscene or inappropriate for children. A majority of these sites originate in the United States.
3. The availability of Internet pornography on the job costs employers significant numbers of work hours, puts a strain on employers' computer equipment, reduces productivity, and leads to potentially hostile work environments for men and women.
4. While the custody, care, and nurture of children resides primarily with the parent, the widespread availability of the Internet presents opportunities for children to access materials in a manner that can defeat the best attempts at parental supervision or control.
5. As children get closer to their teenage years, they begin to use the Internet regularly in school assignments, as well as seeking knowledge and entertainment through the World Wide Web. Additionally, at this same age, children are developing physically, becoming curious about their own sexuality and beginning to form ideas about sexual relationships. Thus, at this age, children and parents need to be educated about the effect that Internet pornography can have on their developing notions of intimacy and sexual relationships.
6. Similarly, society needs to become more aware of the risks on the Internet and the options for responding appropriately.
7. Some Internet pornographers seek ways to elude filtering programs, target children, and otherwise induce individuals to view or purchase pornographic material.
8. Current methods for protecting computers and computer networks from unwanted Internet content are expensive and negatively affect computer performance. They frequently block more than the intended content. In addition, they can be easily circumvented. The cost to deploy such measures, when not prohibitive, consumes both dollars and work hours. Most parents are not adept at procuring and maintaining quality filters.

9. Even if no one ever stumbled unintentionally on pornographic material on the Internet, children and employees may seek out pornography. Thus, warnings and other labels meant to avoid inadvertent hits on pornographic sites may simply increase the likelihood that such sites will be visited.
10. Notwithstanding the existence of some protections that limit the distribution of pornography over the Internet, there must be continued efforts to protect children from dangers posed by the Internet.
11. It is the policy of the United States to encourage the development of technologies that maximize user control over the Internet.
12. The solution to the rapid growth of pornography on the Internet cannot be solved by law alone; an effective solution requires education, the sensitivity to, use of, and further development of technological approaches, and the pursuit of cooperative efforts with other countries.
13. While the industry has adopted some self-regulation and developed some innovative ways to help parents and educators restrict material that is inappropriate for children, such efforts have created a false sense of security without providing an effective national solution to the problem of inappropriate material on the Internet.
14. Some states have enacted legislation intended to regulate Internet pornography. These cannot be fully successful because of the borderless nature of the Internet and federal preemption.
15. It is the policy of the United States to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, child pornography, and harassment by means of the Internet.
16. The Department of Justice should continue to use all existing law enforcement tools to facilitate the enforcement of Federal laws, including the tools contained in chapters 47 and 63 of title 18, United States Code (relating to fraud and false statements); chapter 71 of title 18, United States Code (relating to obscenity); chapter 110 of title 18, United States Code (relating to the sexual exploitation of children); and chapter 95 of title 18, United States Code (relating to racketeering), as appropriate.
17. Protecting the physical and psychological well-being of children by shielding them from inappropriate materials is a compelling governmental interest.
18. Supporting the right of parents to control the education of their children is a compelling governmental interest.
19. Protecting the right of citizens to control what materials enter their homes and other private property is a compelling governmental interest.

20. Retaining choice and accountability with individuals rather than government is a compelling governmental interest.
21. Preserving the right of free expression embodied in the First Amendment is a compelling governmental interest.
22. The only workable way to address these competing governmental interests is an approach that respects and balances each one.
23. An effective solution to the problem of Internet pornography must respect the First Amendment, provide reasonable protections for children, maximize citizen choice through “opt-in” provisions, account for the global nature of the Internet, and encourage technological and economic innovations.
24. The United States government’s partners and resources within the Internet governance community should be called upon to assist in the effort to protect Americans from unwanted Internet pornography.
25. Because of the global nature of the Internet, the fact that a majority of Internet pornography is served from the United States, and the role of the United States as a global leader, the United States should create a framework that allows other countries to follow its lead in developing protections for children, and provides economic incentives to guard against Internet abuses.

II. **Definitions.** For purposes of this Act, the following definitions shall apply:

1. **Aggrieved Party.** The term “Aggrieved Party” means a person who reasonably believes that he or she has been the recipient of Communication that is in violation of this Act, but who has not yet initiated a Complaint Procedure.
2. **Alleged Violation(s).** The term “Alleged Violation(s)” means a Communication that is claimed by an Aggrieved Party to be an Inappropriate Communication, but which has not yet become subject to a Complaint Procedure.
3. **Allocat(e)(s)(d)(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.
4. **Allocator.** The term “Allocator” means any person who Allocates.

5. **Caches.** The term “Caches” means utilizing the process whereby an Internet Communication is duplicated or mirrored at an Internet Location other than the location of its origination.
6. **Commercial Purpose(s).**² A Content Publisher shall be considered to make a Communication for a Commercial Purpose only if:
 - i. Such Content Publisher is Engaged in the Business of making such Communications; and
 - ii. Such Communication is made as an advertisement or for the purpose of attracting customers or luring customers to any business enterprise.
7. **Commission.** The term “Commission” means the Federal Communications Commission.
8. **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.
9. **Community Port(s).** The term “Community Port(s)” means all Internet Ports that are designated from time to time by the Commission as Community Ports.
10. **Complainant(s).** The term “Complainant(s)” means an Aggrieved Party who has initiated a Complaint Procedure in accordance with Section IV(4)(i)(a).
11. **Complaint Procedure(s).** The term “Complaint Procedure(s)” means the process(es) outlined in Section IV(4), by which an Enforcement Office determines whether an alleged Inappropriate Communication is in violation of this Act.
12. **Content Publisher(s).** The term “Content Publisher(s)” means any person who publishes, broadcasts, Posts, Links, Caches, or uses an IP Address to make or Proxy a Communication. With respect to a single Communication, more than one person may be considered to be the Content Publisher.
13. **Curriculum Committee.** The term “Curriculum Committee” means a committee established by a State Internet Office as provided in Section III(3)(vi)(c)(a).

14. **Designated Agent(s).** The term “Designated Agent(s)” means the person(s) selected and identified by a Service Provider to receive Notifications of claimed violations of this Act.
15. **Domain Name(s).** The term “Domain Name(s)” means the text name corresponding to the numeric IP address of a computer on the Internet.
16. **Education Program(s).** The term “Educational Program(s)” means any program complying with the requirements of Section III(3)(vi)(c).
17. **Enforcement Office.** The term “Enforcement Office” means either the Commission or a State Internet Office to which a Notification is sent as described in Section IV(1)(i).
18. **Engaged in the Business.**³ The term “Engaged in the Business” means that the person who makes a Communication, or offers to make a Communication, by means of the Internet, that includes any Inappropriate Communication, devotes time, attention, or labor to such activities, as a regular course of such person's trade or business, with the objective of earning a profit as a result of such activities (although it is not necessary that the person make a profit or that the making or offering to make such Communications be the person's sole or principal business or source of income). A person may be considered to be Engaged in the Business of making, by means of the Internet, Communications for Commercial Purposes, only if the person knowingly causes such material to be posted on the Internet or knowingly solicits such material to be posted on the Internet.
19. **Equipment Owner(s).** The term “Equipment Owner(s)” means any person who provides equipment for use in Hosting or publishing content over the Internet.
20. **Final Determination(s).** The term “Final Determination(s)” means:
 - i. An Initial Determination by either the Commission or a State Internet Office that has not been appealed within the time limits provided in Section IV(4)(iv);
 - ii. A Second Determination made by a State Internet Office that has not been appealed to the Commission within the required time limits provided by Section IV(4)(vi);
 - iii. A Second Determination made by the Commission; or
 - iv. A decision by the Commission made following the appeal of a Second Determination made by a State Internet Office.

21. **Harmful for Minors.**⁴ The term “Harmful for Minors” means any Communication that:
- i. the average adult, applying a contemporary community standard,⁵ 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;
 - ii. 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
 - iii. taken as a whole, lacks serious literary, artistic, political, or scientific value for Minors.
22. **Hit(s).** The term “Hit(s)” means a request from a webserver including requests by a web browser for html pages, jpegs, gifs, and other images.
23. **Hoster.** The term “Hoster” means any person who provides an Internet Location to one or more Content Publisher(s).
24. **Hosting.** The term “Hosting” means providing an Internet Location to one or more Content Publisher(s).
25. **Identified Communication(s).** The term “Identified Communication(s)” means the Communication(s) alleged to an Inappropriate Communication in a Notification filed with the Commission pursuant to Section IV(1)(i).
26. **Inappropriate Communication(s).** The term “Inappropriate Communication(s)” means any Communication that is either Obscene or Harmful for Minors.
27. **Initial Determination(s).** The term “Initial Determination(s)” means the first decision in the Complaint Process made by the Enforcement Office that there is a reasonable likelihood that a court would conclude that an Identified Communication is in violation of this Act.
28. **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.

29. **Internet Location.** The term “Internet Location” means any site, destination, or other environment that can be accessed by means of the Internet.
30. **Internet Protocol.** The term “Internet Protocol” means a data-oriented protocol used for communicating data across a packet-switched network.
31. **Internet User.** The term “Internet User” means any person who receives or transmits any Communication over the Internet.
32. **IP Address.** The term “IP Address” means a number that uniquely identifies a device that is connected to a computer network that is Internet Protocol based.
33. **Link(s).** The term “Link(s)” means functionality integrated into an Internet Location whereby an Internet User can easily move to another Internet Location.
34. **Minor.**⁶ The term “Minor” means any person who is under seventeen (17) years of age and above fourteen (14) years of age.
35. **Notice of Initial Determination.** The term “Notice of Initial Determination” means the notice given to the Respondent, and Complainant if one is involved, of the Initial Determination of the Enforcement Office in a Complaint Procedure.
36. **Notice of Second Determination.** The term “Notice of Second Determination” means the notice given to the Respondent, and Complainant if one is involved, of the Second Determination of the Enforcement Office in a Complaint Procedure.
37. **Notification(s).** The term “Notification(s)” means the formality through which an Aggrieved Party communicates certain facts or events relating to an Identified Communication to the Commission, a State Internet Office, or a Designated Agent.
38. **Obscene.**⁷ The term “Obscene” means any Communication, picture, image, graphic image file, article, recording, writing, or other matter of any kind that:
- i. the average person, applying contemporary community standards,
 - ii. would find, taking the material as a whole is designed to appeal to, or is designed to pander to, the prurient interest;
 - iii. 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

- iv. taken as a whole, lacks serious literary, artistic, political, or scientific value.

39. **Open Port(s).** The term “Open Ports” means all Internet Ports designated from time to time by the Commission as other than Community Ports.
40. **Ordinary Service Activities.** The term “Ordinary Service Activities” means activities typically conducted pursuant to contract by Service Providers on behalf of others who pay fees for such services and are not owned or controlled by the Service Providers. Ordinary Service Activities includes, but is not limited to, transmitting, routing, providing connections and temporary storage, system caching, providing storage for a customer, or offering search and location tools.
41. **Packet(s).** The term “Packet(s)” means an electronic container of data that is transmitted via the Internet.
42. **Port(s).** The term “Port(s)” means a number identifying a communication path for sending and receiving data via the Internet.
43. **Post(s).** The term “Post(s)” means uses a process whereby a Communication enters the Internet.
44. **Proxy.** The term “Proxy” means a process whereby an Internet Communication is processed by an intermediary as a means of masking the identity of any Internet User or permitting access to an Open Port from any device set to receive only Community Ports.
45. **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.
46. **Qualified State Internet Office(s).** The term “Qualified State Internet Office(s)” means any State Internet Office that the Commission has determined qualifies for deferred administrative powers pursuant to Section IV(3).
47. **Removal Order(s).** The term “Removal Order(s)” means an order issued by an Enforcement Office following a Final Determination in favor of the Complainant, requiring the Service Provider to restrict access to the Identified Communication, as described in Section IV(7).

48. **Respondent(s).** The term “Respondent(s)” means the Content Publisher responsible for the Identified Communication once a Complaint Procedure has been initiated.
49. **Right-to-Sue Letter(s).** The term “Right-to-Sue Letter(s)” means a document granting a Complainant a private right of action to pursue the remedies provided in Section IV(9).
50. **Second Determination(s).** The term “Second Determination(s)” means a decision made by an Enforcement Office following an appeal from an Initial Determination by the Complainant or Respondent, either affirming or reversing the Initial Determination.
51. **Service Provider(s).** The term “Service Provider(s)” means any person who is:
- i. Providing Internet access;
 - ii. An Equipment Owner;
 - iii. A Host; or
 - iv. An IP Address Allocator
52. **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.⁸
53. **State Internet Office(s).** The term “State Internet Office(s)” means an agency that has been created by a State for the purpose of assisting in the administration of this Act.
54. **Transmission Control Protocol.** The term “Transmission Control Protocol” means the protocol used as part of the Internet Protocol suite to facilitate the transmission of data packets from sender to receiver in a reliable and ordered delivery method.
55. **URL.** The term “URL” stands for “Uniform Resource Locator” and means a string of characters used to represent and identify a page of information on the World Wide Web that is used by a web browser to find resources on the Internet.
56. **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.

III. Violations

1. **Liability of Content Publishers.** A Content Publisher who knowingly and with knowledge of the character of the material, in interstate or foreign commerce:
 - i. By means of any Community Port makes or causes to be made any Communication that is Obscene or Harmful for Minors; or
 - ii. By means of any Port makes or causes to be made any Communication that is Obscene

shall be subject to the penalties described herein. This Section III(1) does not apply to a Service Provider except as provided in Section III(2) and Section IV(7).

2. **Responsibility of Service Providers.**⁹
 - i. **Liability.** A Service Provider shall be liable as a Content Publisher pursuant to Section III(2), if:
 - a) **Failure to Keep Records.**¹⁰ A Service 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:
 - a. Each IP Address Allocated by or to such Service Provider;
 - b. The date and time when such IP Address was Allocated; and
 - c. The Internet User who obtained such IP Address; or
 - b) **Failure to Make Records Available.** Upon receipt of a Notification as provided in Section (c), a Service Provider fails to make reasonably available a record as described in Section III(2)(i)(a) to an Enforcement Office;
 - c) **Failure to Control Access to IP Addresses.** A Service Provider Allocates an IP Address within its control to an Internet User who is located outside of the United States; or
 - d) **Failure to Remove Identified Communication.** Upon receipt of a Removal Order, a Service Provider fails

expeditiously to remove, disable, block or otherwise restrict access to the Identified Communication described in such Removal Order.

e) **Failure to Notify Customers of this Act.** A Service Provider fails to notify customers of this Act as required by this Section. Within sixty (60) days of the enactment of this Act, a Service Provider must establish a reasonable mechanism for notifying its customers:

a. Of the requirements of the Act, including:

i. The definitions of Obscene and Harmful for Minors;

ii. Publishing Obscene Communications on any Internet port is illegal;

iii. Publishing any Communication that is Harmful for Minors on a Community Port is illegal;

iv. An email address or link to the Commission for purposes of reporting violations; and

v. The date the Act will become effective.

b. Of the Service Provider's policies regarding terminating subscriber accounts for violating the Act.

ii. **Limitations on Liability of Service Provider.¹¹**

a) **Ordinary Service Activities.** A Service Provider is not liable pursuant to Section III(2)(i) merely for conducting Ordinary Service Activities as long as the Service Provider does not:

a. Initiate, Post, reroute, alter or otherwise take ownership or control of a Communication beyond providing what are ordinary service activities in the industry; or

b. Receive a financial benefit directly attributable to the violation.

- b) **Removal of Communication Following Initial Determination.** Subject to Section III(2)(ii)(c), a Service Provider shall not be liable to a customer or account holder for any claim based on the Service Provider's good faith action to remove, disable, block or otherwise restrict access to the Identified Communication pursuant to:
 - a. A court order issued pursuant to this Act;
 - b. A subpoena issued pursuant to this Act;
 - c. A Removal Order; or
 - d. A Final Determination that there is a reasonable likelihood that a court would conclude that the Identified Communication is in violation of this Act.
- c) **Proper Service Provider Notification.** The limitations on liability established by this Section shall apply to a Service Provider only if the Service Provider reasonably informs its customers and account holders of the Service Provider's limitations of liability under Section III(2)(ii)(b) through contract or other reasonable means of communication.
- iii. **Designated Agent.**¹² The limitations on liability established in Section III(2)(ii) apply to a Service Provider only if the Service Provider has established a Designated Agent to receive Notifications by making available through its service, including on its website in a location accessible to the public, and by providing to the Commission, substantially the following information:
 - a) The name, address, phone number, and electronic mail address of the Designated Agent; and
 - b) Other contact information that the Commission may deem appropriate.
- iv. **Directory of Designated Agents.** The Commission shall maintain a current directory of Designated Agents available to the public for inspection, including through the Internet, in both electronic and hard copy formats, and may require payment of a fee by Service Providers to cover the costs of maintaining the directory.

3. **Owners of Private Wireless Connections with Open Port Services.**¹³

- i. **Unintentional Access to Open Ports.** Any person who deploys an unsecured wireless Internet connection over which Open Ports

are available and fails to take reasonable efforts to prevent access to such wireless connection by any Minor who is not an employee, family member or invitee will be subject to a fine, in a reasonable amount to be determined by the Commission.

- ii. **Intentional Access to Open Ports.** Any person who repeatedly violates Section III(3)(i) or makes such access available with intent to permit or cause access by a Minor to Inappropriate Communications will be liable as a Content Publisher pursuant to Section III(1).

IV. Enforcement

1. **Power of Commission to Administer this Act.** The Commission is empowered, as hereinafter provided, to take action to enforce this Act. The Commission may defer certain responsibilities to a Qualified State Internet Office, as provided in Section IV(3)(i). In addition, the Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its responsibilities under this Act. Not later than 170 days after the date of enactment of this Act, the Commission shall issue regulations to implement the execution of the Commission's responsibilities as described in this Section.
2. **Notification of Alleged Violation.**¹⁴
 - i. **Notification.** Upon receipt of either:
 - a) A Communication on a Community Port that the recipient in good faith reasonably believes is Obscene or Harmful for Minors; or
 - b) A Communication on any port that the recipient in good faith reasonably believes is Obscene,the recipient of such Communication (an Aggrieved Party) may file a Notification with either the Commission or a Qualified State Internet Office, if such an Office exists in the jurisdiction where the recipient resides. In addition, the Aggrieved Party may provide a copy of such Notification to the Content Publisher and the Designated Agent of the Service Provider that granted access to the IP Address through which such Communication originated.
 - ii. **Time for Filing Notification.** If an Aggrieved Party files a Notification that is sufficient under Section IV(2)(v) within ten (10) days following the receipt of such Inappropriate

Communication, the Aggrieved Party will qualify to initiate a Complaint Procedure pursuant to Section IV(4)(i).

- iii. **Notification Requirements.** To be effective under this Act, a Notification must be a written communication that includes substantially the following:
 - a) A physical or electronic signature of the Aggrieved Party;
 - b) Information reasonably sufficient to permit a the Enforcement Office to locate the Communication claimed to be an Inappropriate Communication, or, if multiple instances of such Communications at a single online site are covered by a single Notification, a representative list of such Communications at that site;
 - c) The Aggrieved Party's name, street address, email address and telephone number;
 - d) A statement that the Aggrieved Party has a good faith belief that the Identified Communication is an Inappropriate Communication; and
 - e) A statement, under penalty of perjury, that the information in the Notification is accurate.¹⁵
 - f) Such Notification may, but is not required to, include:
 - a. The approximate date and time when and place where the Identified Communication was received;
 - b. The URL or IP Address of the Internet site on which the Identified Communication appeared;
 - c. A statement of reasons why the Aggrieved Party believes the Identified Communication to be an Inappropriate Communication; and
 - d. A copy or record of the Identified Communication.

3. **State Internet Offices.**¹⁶

- i. **Deference to Qualified State Internet Office.** Any State may create a State Internet Office to assist in the administration of this Act. If a State Internet Office qualifies pursuant to Section IV(3)(ii), the Commission shall delegate to such State Internet

Office the power to accept Notifications from residents of such State, conduct Complaint Procedures, make Initial Determinations, conduct administrative hearings, make Second Determinations, make Final Determinations, and issue Right-to-Sue Letters with respect to Aggrieved Parties who are residents of such state.

- ii. **State Internet Office Qualifications.** A State may request the Commission to approve a State Internet Office for deferred administrative assistance pursuant to Section IV(3)(i). Upon such a request, the Commission may determine that such State Internet Office qualifies for deferred administrative assistance by considering the following, in addition to other factors deemed relevant by the Commission:
 - a) **Adequate Staffing.** The State must show that the State Internet Office has adequate staffing. Such staffing must include, but is not limited to:
 - a. A review board to conduct hearings and make Initial, Secondary, and Final Determinations, singly or in groups, composed of at least five (5) qualified residents of such State. The members of such review board must be able to:
 - i. Interpret the definitions and apply the standards provided in this Act in an unbiased and objective manner;
 - ii. Make fair, careful, equitable, timely and informed decisions.
 - b. An administrative staff that is sufficient to enable the State Internet Office to complete the administrative processes outlined in this Act or prescribed by the Commission with reasonable timeliness.
 - b) **Adequate Funding.** The State must show that the State Internet Office has, and will continue to have for the year following such request, sufficient funding to enable such State Internet Office to perform effectively the responsibilities delegated to it by the Commission under this Act.
- iii. **State Internet Office Reporting**

- a) **Annual Reports.** All Qualified State Internet Offices shall provide an annual report to the Commission on a date designated by the Commission. The annual report must include:
- a. The information required under IV(3)(ii) as evidence that the Office continues to qualify for deferred administrative assistance.
 - b. A chart of the organization of the Office and the agency or authority within the state responsible for the Office;
 - c. The amount of funds made available to or allocated by the State to the Office for the purpose of assisting in the administration of this Act;
 - d. The telephone number(s), location and identity of the persons responsible for the operation of the Office;
 - e. Data on the Office's performance for the prior year, including:
 - i. The number of Notifications received by the Office;
 - ii. The number of requests from Aggrieved Parties to open a Complaint Procedure received by the Office;
 - iii. The number of Complaint Procedures initiated by the Office itself;
 - iv. The amount of time taken by the Office to complete Complaint Procedures;
 - v. The number of Communications found by the Office to be Inappropriate Communications;
 - vi. The number of Communications found by the Office to be not in violation of this Act; and
 - f. All other reasonable information that the Commission deems necessary to make a

determination of whether such Office is fit to continue to conduct administrative functions under this Act.

- b) **Monthly Reports.** Each month, on a day designated by the Commission, each Qualified State Internet Offices shall identify all Notifications and requests to open Complaint Procedure received by the Office in the preceding month and the status of each.
- iv. **Withdrawal of Authority.** If at any time the Commission determines that a previously approved State Internet Office no longer meets the requirements necessary to qualify for deferred administration under this Act, the Commission may withdraw its deferral to such Office.
- v. **Grants for Funding State Internet Offices.**¹⁷
 - a) **Commission Grants.** The Commission shall, subject to the availability of appropriations, make grants to States for the purpose of establishing and maintaining Qualified State Internet Offices.
 - b) **Authorization of Appropriations.** Congress is authorized to appropriate \$10,000,000 for each of the fiscal years 2007 through 2011 to provide funds for grants as provided in this Section.
- vi. **Educational Programs of State Internet Offices.**
 - a) **Provide Education.** A state that establishes a Qualifying State Internet Office may receive additional funding if the State Internet Office establishes an Educational Program.¹⁸
 - b) **Coordination.** State Internet Offices may cooperate with and coordinate its Educational Programs with other state and federal educational programs and systems, such as the DARE program or the public schools system.¹⁹
 - c) **Curriculum for Educational Programs.**
 - a. **Committee on Curriculum.** To qualify for funding, an Educational Programs shall consist of curriculum determined by a Curriculum Committee assembled by the State Internet Office. The State Internet Office has discretion to determine the members of the Curriculum Committee, but should

consider including individuals with a range of viewpoints and representing:

- i. Members of the State Internet Office review board;
 - ii. Local government;
 - iii. The medical community;
 - iv. Academics;
 - v. Members of local school boards; and
 - vi. Parents and PTA groups.
- b. **Recommended Topics.** The Curriculum Committee assembled by the State Internet Office shall have discretion in determining what material to cover in the curriculum created for Educational Programs. Among the topics that the Curriculum Committee should consider are:
- i. Risks of early exposure to pornography;
 - ii. Tactics employed by pornographers to attract children to their sites;²⁰
 - iii. Penalties for violating this Act;
 - iv. Options for controlling access to unwanted pornography and responding to violations of the Act.
 - v. Any other information that the Curriculum Committee determines should be taught as part of the state's Educational Programs.

4. **Complaint Procedures.**

i. **Initiation of a Complaint Procedure.**

- a) **By an Aggrieved Party.** After submitting a Notification to an Enforcement Office as described in Section IV(1), the Aggrieved Party may, at any time within a year following the date of such Notification, submit a request to open a

Complaint Procedure with respect to the Identified Communication described in the Notification to the Commission or State Internet Office with which the Notification was filed as provided in Section IV(1)(i).

- a. Such request must contain information sufficient to identify the relevant Notification, Complainant, Respondent, and Identified Communication.
 - b. Within thirty (30) days following the receipt of such request, the Enforcement Office shall open a Complaint Procedure with respect to the Identified Communication as described in such Notification.
- b) **By the Commission or State Internet Office.** Any time within a year after receiving a Notification as described in Section IV(1), the Enforcement Office may open a Complaint Procedure on its own initiative with respect to the Identified Communication as described in such Notification.
- ii. **Notifying Respondent of Opening of Complaint Procedure.** Within ten (10) days following the opening a Complaint Procedure as described in Section IV(4)(i), the Enforcement Office shall notify the Respondent of the allegations contained in the Notification and may request additional information concerning the Identified Communication.
 - iii. **Initial Determination.** Within thirty (30) days after providing notice to the Respondent of the Complaint Procedure in accordance with Section IV(4)(ii), the Enforcement Office shall make an Initial Determination of whether there is a reasonable likelihood that a court would conclude that the Identified Communication is in violation of this Act. Following such Determination, the Enforcement Office shall promptly provide the Respondent, and the Complainant if one is involved, with a Notice of Initial Determination.
 - iv. **Temporary Removal Order.** Following the issuance of an Initial Determination determining that there is a reasonable likelihood that a court would conclude that the Identified Communication is in violation of this Act, the Enforcement Office may issue a Temporary Removal Order to the domain name registrar, domain name registry, other domain name authority that registered or assigned the domain name,²¹ or the Designated Agent of the Service Provider that granted access to the IP Address through which such Communication originated. A Temporary Removal

Order may require the prompt removal, disabling, blocking or other restriction of access to the Identified Communication until a Final Determination can be made. A registrar, registry, domain name authority, or Service Provider that fails to comply promptly with a Removal Order shall be liable as a Content Publisher under Section III(1) of this Act.

- v. **Administrative Hearing.** The Respondent, and the Complainant if one is involved, shall have thirty (30) days following receipt of a Notice of Initial Determination to request an administrative hearing challenging the Enforcement Office's Initial Determination. The Enforcement Office shall conduct such administrative hearing in accordance with procedures provided by regulations enacted by the Commission in accordance with Section IV(2).
- vi. **Second Determination.** After conducting an administrative hearing in accordance with Section IV(4)(iv), the Enforcement Office shall make a Second Determination, either affirming or reversing the Initial Determination. Following such Determination, the Enforcement Office shall promptly provide the Respondent, and the Complainant if one is involved, with a Notice of Second Determination.
- vii. **Appeal from State Internet Office Second Determination.** The Respondent, and the Complainant if one is involved, shall have thirty (30) days following receipt of a Notice of Second Determination from an Enforcement Office that is a State Internet Office to appeal the Second Determination to the Commission.
- viii. **Subpoena to Service Provider.**²²
 - a) **Request.** Upon initiation of a Complaint Procedure, the Enforcement Office may request the clerk of any United States district court to issue a subpoena to a Service Provider for identification of a Content Publisher in accordance with this Section.
 - b) **Contents of request.** The request may be made by filing with the clerk:
 - a. A copy of a Notification described in Section IV(1);
 - b. A proposed subpoena; and

- c. A sworn declaration to the effect that the purpose for which the subpoena is sought is to obtain the identity of an alleged Content Publisher and that such information will only be used for the purpose of protecting rights under this Act.
 - c) **Contents of subpoena.** The subpoena shall authorize and order the Service Provider receiving the subpoena to expeditiously disclose to the Enforcement Office information sufficient to identify the alleged Content Publisher of the material described in the subpoena to the extent such information is available to the Service Provider.
 - d) **Basis for granting subpoena.** If the Notification satisfies the provisions of Section IV(1)(v), the proposed subpoena is in proper form, and the accompanying declaration is properly executed, the clerk shall expeditiously issue and sign the proposed subpoena and return it to the requester for delivery to the Service Provider.
 - e) **Actions of Service Provider receiving subpoena.** Upon receipt of the issued subpoena the Service Provider shall expeditiously disclose to the Enforcement Office the information required by the subpoena, notwithstanding any other provision of law.
 - f) **Rules applicable to subpoena.** Unless otherwise provided by this Section or by applicable rules of the court, the procedure for issuance and delivery of the subpoena, and the remedies for noncompliance with the subpoena, shall be governed to the greatest extent practicable by those provisions of the Federal Rules of Civil Procedure governing the issuance, service, and enforcement of a subpoena duces tecum.
- 5. Right-to-Sue Letter.** Following the issuance of a Final Determination determining that there is a reasonable likelihood that a court would conclude that the Identified Communication is in violation of this Act, the Complainant may request, and the Enforcement Office shall provide, a Right-to-Sue Letter conferring on the Complainant a private right of action with respect to the Identified Communication to pursue the remedies set forth in Section IV(9) of this Act.
- 6. Final Removal Order.** Following the issuance of a Final Determination determining that there is a reasonable likelihood that a court would conclude that the Identified Communication is in violation of this Act, the

Enforcement Office may issue a Final Removal Order to the Removal Order to the domain name registrar, domain name registry, other domain name authority that registered or assigned the domain name,²³ or the Designated Agent of the Service Provider that granted access to the IP Address through which such Communication originated. A Removal Order may require the prompt removal, disabling, blocking or other restriction of access to the Identified Communication. A registrar, registry domain name authority, or Service Provider that fails to comply promptly with a Removal Order shall be liable as a Content Publisher under Section III(1) of this Act.

7. **Attorney General Enforcement.** Following the issuance of a Final Determination determining that there is a reasonable likelihood that a court would conclude that the Identified Communication is in violation of this Act, the Commission may request the Attorney General to make application, and the Attorney General is authorized to make application, to a district court of the United States for an order directing immediate compliance with a Removal Order and for remedies as provided herein.
8. **Jurisdiction.** Any district court of the United States shall have jurisdiction, upon application by the Attorney General, to issue an order directing compliance with a Removal Order and awarding remedies as provided by this Act.
9. **Civil Penalties and Private Right of Action.**
 - i. **Penalties.** In addition to any other penalties hereunder, a Content Publisher who knowingly and with knowledge of the character of the material, in interstate or foreign commerce by means of any Community Port, makes or causes to be made any Communication that is Obscene or is Harmful for Minors shall be liable for civil penalties to the Commission and, as a private right of action, to any Complainant with respect to such Communication, in an total amount of not more than:
 - a) \$100,000 for each violation by an Obscene Communication that is made for a Commercial Purpose;²⁴
 - b) \$10,000 for each violation by an Obscene Communication that is not made for a Commercial Purpose;
 - c) \$50,000 for each violation by a Communication Harmful for Minors that is made for a Commercial Purpose;
 - d) \$5,000 for each violation by a Communication Harmful for Minors that is not made for a Commercial Purpose;

- e) Any actual damage sustained by such Complainant as a result of the violation;
- f) Punitive damages in such amount as the court may allow;
- g) In the case of a class action, such amount as the court may allow, except that the total recovery under this Section in any class action or series of class actions arising out of the same violation by the same Content Publisher shall not be more than the greater of \$1,000,000 or one percent of the net worth of the Content Publisher involved;²⁵ and
- h) In the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

For purposes of this Section, each day of violation, and each day of posting a Fundamentally Similar Communication after the issuance of a district court order, shall constitute a separate violation.

ii. **Punitive Damages or Class Action.** For purposes of determining an amount to be awarded as punitive damages or in a class action pursuant to this Section, the court shall consider, among other relevant factors:

- a) The amount of any actual damages awarded;
- b) The frequency and persistence of failures of compliance by the Content Publisher;
- c) The number of Notifications as provided by Section IV(1)(ii) or other complaints received by the Content Publisher;
- d) The number of hits accessing any Communication that is the subject of the action;
- e) The resources of the Content Publisher;
- f) The number of persons adversely affected; and
- g) The extent to which the failure of compliance was

intentional.

- iii. **Jurisdiction.** Any district court of the United States in which a Complainant plaintiff resides shall have jurisdiction over a case brought under this Section.

10. **Criminal Penalties.**²⁶ Intentional failure to observe a district court order issued pursuant to this Act may be punishable by not more than six months in jail; forfeiture of any equipment, domain name and IP Addresses used in making any Inappropriate Communication that is the subject of the order; and a fine of not more than:

- i. \$100,000 for each violation by an Obscene Communication that is made for a Commercial Purpose;
- ii. \$10,000 for each violation by an Obscene Communication that is not made for a Commercial Purpose;
- iii. \$50,000 for each violation by a Communication Harmful for Minors that is made for a Commercial Purpose;
- iv. \$5,000 for each violation by a Communication Harmful for Minors that is not made for a Commercial Purpose.

For purposes of this Section, each day of violation, and each day of posting a Fundamentally Similar Communication after the issuance of a district court order, shall constitute a separate violation.

V. **Miscellaneous**

1. **Severability:** If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected.
2. **Effective Date:** This Act will become effective as of 180 days after its enactment.

Footnotes:

1. CP80 Foundation and Cheryl B. Preston, Edwin M. Thomas Professor of Law, Brigham Young University Law School.
2. This definition is from COPA.
3. This definition is from COPA.
4. This is the COPA definition with the exception of the phrase “or describes or depicts Sexually Explicit Conduct.”

5. We may decide it is necessary to replace this with a national standard. If a community standard is used, it needs to be based on the community of the recipient I would think.
6. The designation of a person under age seventeen is taken from Supreme Court language in *Ginsburg v. New York* and *Reno v. ACLU*. 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 *Ginsburg* was too 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.
7. This is the traditional *Miller* definition.
8. The actual text of the federal statute referenced is as follows:

(5) 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). Although the “problem of drawing a line” has received undue attention, the fact is that several federal statutes, as well as several state statutes, private standards and other codes, do define the kind of material we, as a nation, do not think is appropriate for children and other audiences that are not seeking “adult” content.

9. ISPs have asked us about changing from penalties to positive reinforcement, like tax breaks for keeping records. But the pornography industry can always out pay the government and pay to have an ISP that keeps no records. We could perhaps do some kind of combination or head-patting and ultimate liability. Another option would be to convince ICANN to require recordkeeping about all IP Address transfers as a condition of ISPs obtaining and retaining licenses to use IP Addresses. However, this record keeping requirement is so minimal and, moreover, such recordkeeping is likely to be required by other statutes anyway in the near future. There is no significant invasion of privacy. It is simply a record of commercial transactions (the economic based benefit is exchanged for use of the IP Address). There are technologies available now that can easily track the physical locations of the equipment using the IP Address in question. These technologies are commonly used today by Internet search engines, and others, for creating targeting marketing – to push businesses in the geographical area where the Internet user is located. Thus, the ISP recordkeeping should not be a major issue for the long term. Finally, we may want to give some tax breaks to cover costs of keeping records (mainly storage requirements); but we think the ISPs’ complaints about this are pretextual, and represent an interest in appeasing their pornographer customers.
10. This recordkeeping requirement is minimal and, moreover, may not be necessary at all. Such recordkeeping is likely to be required by other statutes in the near future. There is no significant invasion of privacy. It is simply a record of commercial transactions (the economically based benefit is exchanged for use of the IP Address). In addition, a statutory recordkeeping requirement may not be necessary. First, there are technologies available now that can easily track the physical locations of the equipment using the IP Address in question. These technologies are commonly used today by Internet search engines, and others, for creating targeted marketing – to push businesses in the geographical area where the Internet user is located. Second, CP80 is working on finding industry-based enforcement mechanisms. One possibility is developing policies against posting adult content in violation of this statute through ICANN and other governmental and private organizations involved in regulating the distribution and use of IP Addresses.
11. These provisions are modeled after the Digital Millennium Copyright Act (DCMA).

12. The DMCA has already required all ISPs to identify and make available a list of a Designated Agents.
13. This provision only applies to Internet users who subscribe to Open Ports. Even then, it only requires those who install wireless transmitters for their Internet service to use the simple password or other security mechanisms that are available with all wireless transmitters. One reason for this section is to allow those who subscribe only to Community Ports to protect their children from easily accessing the Open Ports that may be available on the wireless services of neighboring houses or businesses. In addition, the only penalty is a fine, except with respect to repeated, intentional violations.
14. These notification provisions are modeled after the DCMA.
15. Although the existing enforcement mechanisms for penalizing perjury are sufficient to ensure that few, if any, false Notifications will be filed, we could incorporate a fine for a false claim similar to the \$1,000 fine for false claims of employment discrimination.
16. The provisions regarding state administrative offices are loosely modeled after the provisions governing state EEOC offices.
17. I am working with students and others to fully explore the possibilities of funding from some combination of a fee on Internet users who sign up for a Community Port package, fees assessed for filing with and using a State Internet Office, fines assessed under the Act and so forth.
18. How the SIO would educate could vary from state to state. Allowing the SIO's of each state to determine how they wanted to educate would allow numerous types of educational interventions. The best types could be disseminated to other SIO's, promoting an effective educational process.
19. The targeted groups could be from grade school to adults. The DARE program serves as a model for how school-based programs could operate. State media efforts such as the recent "Don't DIS-ability" and "Tear off the labels," in addition to anti-smoking media campaigns, could serve as media models for state efforts to educate adults about the potentially harmful effects of internet pornography on minors, adults, and society.
20. Mouse-trapping, etc.
21. This is from 15 U.S.C. § 1125(d).
22. This section is based on the DCMA.
23. This is from 15 U.S.C. § 1125(d).
24. Both the criminal and civil penalties are scaled to differentiate both between material that is obscene and merely inappropriate for minors, and between commercial and noncommercial web publishers. The \$50,000 fine for a posting that is inappropriate for minors and made for a commercial purpose is set to be the same as provided in COPA.
25. The class action limits and other provisions in this section conform to those in other federal statutes with private attorney general provisions.
26. Note that criminal penalties are only available after a Content Publisher receives notice that a Compliance Procedure has been opened, a First Determination of violation of this Act, a right to appeal, a Final Determination of a violation of the Act, and a district court order. Upon a knowing and willful violation of that order, the Attorney General may initiate a criminal proceeding.