

108TH CONGRESS
1ST SESSION

H. R. 2885

To prohibit the distribution of peer-to-peer file trading software in interstate commerce.

IN THE HOUSE OF REPRESENTATIVES

JULY 24, 2003

Mr. PITTS (for himself, Mr. JOHN, Mr. SULLIVAN, Mr. PENCE, and Mr. DEMINT) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To prohibit the distribution of peer-to-peer file trading software in interstate commerce.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting Children
5 from Peer-to-Peer Pornography Act of 2003”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Peer-to-peer file trading software has been
9 very widely distributed. The most popular of these
10 programs has been downloaded over 200 million

1 times, and at any one time, there are over 3 million
2 people using it.

3 (2) Peer-to-peer systems are emerging as a con-
4 duit for the distribution of pornographic images and
5 videos, including child pornography. Child pornog-
6 raphy is easily found and downloaded using peer-to-
7 peer systems.

8 (3) Child pornography has become increasingly
9 available on peer-to-peer systems. In 2002, there
10 was a fourfold increase in the number of reports of
11 child pornography on peer-to-peer systems.

12 (4) Approximately 40 percent of users of peer-
13 to-peer systems are juveniles.

14 (5) Juvenile users of peer-to-peer systems are
15 at significant risk of inadvertent exposure to pornog-
16 raphy, including child pornography, because searches
17 on innocuous keywords likely to be used by juveniles
18 produce a high proportion of pornographic images.

19 (6) The availability of peer-to-peer systems as a
20 distribution mechanism for child pornography may
21 lead to further sexual abuse of children, because the
22 production of child pornography is intrinsically re-
23 lated to sexual abuse of children.

24 (7) Peer-to-peer systems also pose serious secu-
25 rity and privacy threats to users. Among other

1 things, peer-to-peer software often gives others ac-
2 cess to all the files that are stored on a user’s hard
3 drive, and many users, including juvenile users and
4 their parents, do not even know of these threats.

5 (8) In light of these considerations, it is impor-
6 tant that Federal law provide appropriate protection
7 for juvenile users of peer-to-peer systems.

8 **SEC. 3. DEFINITIONS.**

9 In this Act—

10 (1) the term “Commission” means the Federal
11 Trade Commission;

12 (2) the term “juvenile” means an individual
13 under the age of 18;

14 (3) the term “parent” includes a legal guard-
15 ian;

16 (4) the terms “peer-to-peer file trading soft-
17 ware” and “peer-to-peer system” have the definition
18 given to such terms by the regulations to be promul-
19 gated under section 3(b)(1);

20 (5) the term “verifiable parental consent”
21 means any reasonable effort (taking into consider-
22 ation available technology) to ensure that a parent
23 of a juvenile receives notice as described in section
24 3(b)(2)(A) and authorizes the distribution of peer-
25 to-peer file trading software to the juvenile, includ-

1 ing efforts such as those constituting “verifiable pa-
2 rental consent” under the Children’s Online Privacy
3 Protection Act of 1998;

4 (6) the term “verification of majority” means
5 any reasonable effort (taking into consideration
6 available technology) to ensure that a recipient of
7 peer-to-peer file trading software is not a juvenile,
8 including efforts such as accepting and verifying a
9 credit card number in connection with a distribution
10 of peer-to-peer file trading software; and

11 (7) the term “person” means any individual,
12 partnership, corporation, trust, estate, cooperative,
13 association, or other entity.

14 **SEC. 4. REGULATION OF JUVENILE ACCESS TO PEER-TO-**
15 **PEER NETWORKS.**

16 (a) ACTS PROHIBITED.—It is unlawful for any per-
17 son to distribute peer-to-peer file trading software, or to
18 authorize or cause peer-to-peer file trading software to be
19 distributed by another person, in interstate commerce in
20 a manner that violates the regulations prescribed under
21 subsection (b)(2).

22 (b) REGULATIONS.—Not later than 1 year after the
23 date of the enactment of this Act, the Commission shall
24 promulgate regulations that—

1 (1) define the term “peer-to-peer file trading
2 software” for purposes of this Act, with such defini-
3 tion to encompass computer software that enables
4 the transmission of computer files or data over the
5 Internet or any other public network of computers
6 and that has as its primary function the capability
7 to do all of the following—

8 (A) enable a computer on which such soft-
9 ware is used to transmit files or data to another
10 such computer;

11 (B) enable the user of one such computer
12 to request the transmission of files or data from
13 another such computer; and

14 (C) enable the user of one such computer
15 to designate files or data available for trans-
16 mission to another such computer, but which
17 definition excludes, to the extent otherwise in-
18 cluded, software products legitimately marketed
19 and distributed primarily for the operation of
20 business and home networks, the networks of
21 Internet access providers, or the Internet itself;
22 and

23 (2) require any person who distributes, or au-
24 thORIZES or causes another person to distribute, peer-

1 to-peer file trading software in interstate commerce
2 to—

3 (A) provide clear and prominent notice to
4 each recipient of peer-to-peer file trading soft-
5 ware, before the peer-to-peer file trading soft-
6 ware is provided to the recipient, that use
7 thereof may expose the user to pornography, il-
8 legal activities, and security and privacy
9 threats;

10 (B) check for the do-not-install beacon de-
11 scribed in subsection (c)(1) and not transmit
12 peer-to-peer file trading software to any com-
13 puter with such beacon;

14 (C) obtain verification of majority, or if a
15 recipient is a juvenile obtain verifiable parental
16 consent, before the peer-to-peer file trading
17 software is provided to the recipient;

18 (D) ask whether or not each juvenile re-
19 cipient of peer-to-peer file trading software is a
20 child under the age of 13;

21 (E) comply with the provisions of the Chil-
22 dren's Online Privacy Protection Act of 1998
23 (15 U.S.C. 6501 et seq.) as to all information
24 collected from children in connection with the

1 distribution of peer-to-peer file trading soft-
2 ware;

3 (F) ensure that the peer-to-peer file trad-
4 ing software has the capability to be readily dis-
5 abled or uninstalled by a user thereof, and
6 prominent means to access clear information
7 concerning the availability and use of that capa-
8 bility;

9 (G) if the peer-to-peer file trading software
10 has the capability of automatically causing a
11 user's computer to function as a supernode or
12 other focal point for the transmission of files or
13 data, or information about the availability of
14 files or data, among other computers on which
15 such software is used, ensure that such soft-
16 ware does not exercise that capability unless the
17 user receives clear and prominent notice thereof
18 and thereafter takes affirmative steps to enable
19 that capability;

20 (H) if the peer-to-peer file trading software
21 has the capability of disabling or circumventing
22 security or other protective software on, or fea-
23 tures of, the user's computer or network, in-
24 cluding a firewall, software that protects
25 against viruses or other malicious code or a do-

1 not-install beacon or other parental control, en-
2 sure that such peer-to-peer file trading software
3 does not exercise that capability unless the user
4 receives clear and prominent notice thereof and
5 thereafter takes affirmative steps to enable that
6 capability;

7 (I) if such person does not reside in the
8 United States, designate a resident agent for
9 service of process in the United States, and file
10 with the Commission such designation and the
11 address of the office or usual place of residence
12 of the agent;

13 (J) maintain reasonable records of its com-
14 pliance with the requirements set forth in this
15 paragraph; and

16 (K) establish and maintain reasonable pro-
17 cedures to protect the confidentiality, security,
18 and integrity of personal information contained
19 in such records.

20 (c) TECHNOLOGICAL MEASURES.—The Commission
21 shall—

22 (1) not later than 1 year after the date of the
23 enactment of this Act, in consultation with the
24 Under Secretary for Technology of the Department
25 of Commerce, develop and make readily available to

1 the public functional requirements for standard “do-
2 not-install” beacons that provide an effective techno-
3 logical means for parents to record on their com-
4 puters their desire that users not install or use peer-
5 to-peer file trading software on those computers;

6 (2) make available to the public a list of do-not-
7 install beacon products that have been certified by
8 their producers as conforming to such functional re-
9 quirements; and

10 (3) if in any study required by section 6, it ap-
11 pears to the Commission that any commonly-used
12 peer-to-peer file trading software does not have the
13 capability required by subsection (b)(2)(F), promptly
14 make readily available to the public information nec-
15 essary to enable parents to disable or uninstall such
16 software on their computers, and if necessary to
17 allow parents to do so readily, develop and make
18 available technological means for parents to disable
19 or uninstall such software on their computers.

20 (d) ENFORCEMENT.—A violation of the regulations
21 prescribed under subsection (b)(2) shall be treated as a
22 violation of a rule defining an unfair or deceptive act or
23 practice prescribed under section 18(a)(1)(B) of the Fed-
24 eral Trade Commission Act (15 U.S.C. 57a(a)(1)(B)). In
25 the case of any action arising under this Act against a

1 person that does not reside in the United States and has
2 distributed peer-to-peer file trading software, or author-
3 ized or caused peer-to-peer file trading software to be dis-
4 tributed by another person, in interstate commerce with-
5 out designating an agent as required by subsection
6 (b)(2)(I), service of process may be made by filing the
7 same in the office of the Commission.

8 **SEC. 5. ACTIONS BY THE COMMISSION.**

9 (a) IN GENERAL.—The Commission shall enforce this
10 Act, and the regulations promulgated pursuant to this
11 Act, in the same manner, by the same means, and with
12 the same jurisdiction, powers, and duties as though all ap-
13 plicable terms and provisions of the Federal Trade Com-
14 mission Act (15 U.S.C. 41 et seq.) were incorporated into
15 and made a part of this Act. Any entity that violates such
16 regulations shall be subject to the penalties and entitled
17 to the privileges and immunities provided in the Federal
18 Trade Commission Act in the same manner, by the same
19 means, and with the same jurisdiction, power, and duties
20 as though all applicable terms and provisions of the Fed-
21 eral Trade Commission Act were incorporated into and
22 made a part of this Act.

23 (b) EFFECT ON OTHER LAWS.—Nothing contained
24 in this Act shall be construed to limit the authority of the
25 Commission under any other provisions of law.

1 **SEC. 6. ACTIONS BY STATES.**

2 (a) IN GENERAL.—

3 (1) CIVIL ACTIONS.—In any case in which the
4 attorney general or other appropriate authority of a
5 State has reason to believe that an interest of the
6 residents of that State has been or is threatened or
7 adversely affected by the engagement of any person
8 in a practice that violates the regulations of the
9 Commission prescribed under section 3(b)(2), the
10 State, as *parens patriae*, may bring a civil action on
11 behalf of the residents of the State in a district
12 court of the United States of appropriate jurisdic-
13 tion to—

14 (A) enjoin that practice;

15 (B) enforce compliance with the regula-
16 tions;

17 (C) obtain damages, restitution, or other
18 compensation on behalf of residents of the
19 State; or

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

22 (2) NOTICE.—

23 (A) IN GENERAL.—Before filing an action
24 under paragraph (1), the attorney general or
25 other authority of the State involved shall pro-
26 vide to the Commission—

- 1 (i) written notice of that action; and
2 (ii) a copy of the complaint for that
3 action.

4 (B) EXEMPTION.—

5 (i) IN GENERAL.—Subparagraph (A)
6 shall not apply with respect to the filing of
7 an action by an attorney general or other
8 authority of a State under this subsection,
9 if the attorney general or other authority
10 determines that it is not feasible to provide
11 the notice described in that subparagraph
12 before the filing of the action.

13 (ii) NOTIFICATION.—In an action de-
14 scribed in clause (i), the attorney general
15 or other authority of a State shall provide
16 notice and a copy of the complaint to the
17 Commission at the same time as the attor-
18 ney general or other authority files the ac-
19 tion.

20 (b) INTERVENTION.—

21 (1) IN GENERAL.—On receiving notice under
22 subsection (a)(2), the Commission shall have the
23 right to intervene in the action that is the subject
24 of the notice.

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

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

6 (B) to file a petition for appeal.

7 (c) CONSTRUCTION.—For purposes of bringing any
8 civil action under subsection (a), nothing in this Act shall
9 be construed to prevent an attorney general or other au-
10 thority of a State from exercising the powers conferred
11 on the attorney general or other authority by the laws of
12 that State to—

13 (1) conduct investigations;

14 (2) administer oaths or affirmations; or

15 (3) compel the attendance of witnesses or the
16 production of documentary and other evidence.

17 (d) ACTIONS BY THE COMMISSION.—In any case in
18 which an action is instituted by or on behalf of the Com-
19 mission for violation of any of the regulations of the Com-
20 mission prescribed under section 3(b)(2), no State may,
21 during the pendency of that action, institute an action
22 under subsection (a) against any defendant named in the
23 complaint in that action for violation of that regulation.

24 (e) VENUE; SERVICE OF PROCESS.—

1 (1) VENUE.—Any action brought under sub-
2 section (a) may be brought in the district court of
3 the United States that meets applicable require-
4 ments relating to venue under section 1391 of title
5 28, United States Code.

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

9 (A) is an inhabitant; or

10 (B) may be found.

11 **SEC. 7. STUDY.**

12 The Commission shall conduct an annual study con-
13 cerning peer-to-peer file trading software, including the
14 availability of child pornography and other pornographic
15 images and videos using such software, security and pri-
16 vacy threats posed by such software, use of such software
17 by juveniles, the ability of parents to control access to and
18 use of such software by juveniles, the degree of compliance
19 with and the effectiveness of this Act, and any legislative
20 recommendations that may be warranted. The Commis-
21 sion shall submit a report to the Congress setting forth
22 the results of each such study. The Under Secretary for
23 Technology of the Department of Commerce shall provide
24 to the Commission such staff and resources as necessary

1 for the Commission to perform its duty efficiently and in
2 accordance with this section.

3 **SEC. 8. EFFECTIVE DATE.**

4 Sections 4(a), 5, and 6 of this Act take effect on the
5 date that is 18 months after the date of enactment of this
6 Act.

