

munications Privacy Act of 1986 or any of the amendments made by such Act, or any similar State law.

#### (f) Definitions

As used in this section:

##### (1) Internet

The term “Internet” means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

##### (2) Interactive computer service

The term “interactive computer service” means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

##### (3) Information content provider

The term “information content provider” means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

##### (4) Access software provider

The term “access software provider” means a provider of software (including client or server software), or enabling tools that do any one or more of the following:

- (A) filter, screen, allow, or disallow content;
- (B) pick, choose, analyze, or digest content; or
- (C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

(June 19, 1934, ch. 652, title II, §230, as added Pub. L. 104-104, title V, §509, Feb. 8, 1996, 110 Stat. 137; amended Pub. L. 105-277, div. C, title XIV, §1404(a), Oct. 21, 1998, 112 Stat. 2681-739.)

#### REFERENCES IN TEXT

The Electronic Communications Privacy Act of 1986, referred to in subsec. (e)(4), is Pub. L. 99-508, Oct. 21, 1986, 100 Stat. 1848, as amended. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 2510 of Title 18, Crimes and Criminal Procedure, and Tables.

#### CODIFICATION

Section 509 of Pub. L. 104-104, which directed amendment of title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) by adding section 230 at end, was executed by adding the section at end of part I of title II of the Act to reflect the probable intent of Congress and amendments by sections 101(a), (b), and 151(a) of Pub. L. 104-104 designating §§201 to 229 as part I and adding parts II (§251 et seq.) and III (§271 et seq.) to title II of the Act.

#### AMENDMENTS

1998—Subsec. (d). Pub. L. 105-277, §1404(a)(3), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1). Pub. L. 105-277, §1404(a)(1), inserted “or 231” after “section 223”.

Subsecs. (e), (f). Pub. L. 105-277, §1404(a)(2), redesignated subsecs. (d) and (e) as (e) and (f), respectively.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-277 effective 30 days after Oct. 21, 1998, see section 1406 of Pub. L. 105-277, set out as a note under section 223 of this title.

### § 231. Restriction of access by minors to materials commercially distributed by means of World Wide Web that are harmful to minors

#### (a) Requirement to restrict access

##### (1) Prohibited conduct

Whoever knowingly and with knowledge of the character of the material, in interstate or foreign commerce by means of the World Wide Web, makes any communication for commercial purposes that is available to any minor and that includes any material that is harmful to minors shall be fined not more than \$50,000, imprisoned not more than 6 months, or both.

##### (2) Intentional violations

In addition to the penalties under paragraph (1), whoever intentionally violates such paragraph shall be subject to a fine of not more than \$50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

##### (3) Civil penalty

In addition to the penalties under paragraphs (1) and (2), whoever violates paragraph (1) shall be subject to a civil penalty of not more than \$50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

#### (b) Inapplicability of carriers and other service providers

For purposes of subsection (a) of this section, a person shall not be considered to make any communication for commercial purposes to the extent that such person is—

- (1) a telecommunications carrier engaged in the provision of a telecommunications service;
- (2) a person engaged in the business of providing an Internet access service;
- (3) a person engaged in the business of providing an Internet information location tool; or

(4) similarly engaged in the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication made by another person, without selection or alteration of the content of the communication, except that such person's deletion of a particular communication or material made by another person in a manner consistent with subsection (c) of this section or section 230 of this title shall not constitute such selection or alteration of the content of the communication.

#### (c) Affirmative defense

##### (1) Defense

It is an affirmative defense to prosecution under this section that the defendant, in good faith, has restricted access by minors to material that is harmful to minors—

(A) by requiring use of a credit card, debit account, adult access code, or adult personal identification number;

(B) by accepting a digital certificate that verifies age; or

(C) by any other reasonable measures that are feasible under available technology.

**(2) Protection for use of defenses**

No cause of action may be brought in any court or administrative agency against any person on account of any activity that is not in violation of any law punishable by criminal or civil penalty, and that the person has taken in good faith to implement a defense authorized under this subsection or otherwise to restrict or prevent the transmission of, or access to, a communication specified in this section.

**(d) Privacy protection requirements**

**(1) Disclosure of information limited**

A person making a communication described in subsection (a) of this section—

(A) shall not disclose any information collected for the purposes of restricting access to such communications to individuals 17 years of age or older without the prior written or electronic consent of—

- (i) the individual concerned, if the individual is an adult; or
- (ii) the individual's parent or guardian, if the individual is under 17 years of age; and

(B) shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the person making such communication and the recipient of such communication.

**(2) Exceptions**

A person making a communication described in subsection (a) of this section may disclose such information if the disclosure is—

- (A) necessary to make the communication or conduct a legitimate business activity related to making the communication; or
- (B) made pursuant to a court order authorizing such disclosure.

**(e) Definitions**

For purposes of this subsection,<sup>1</sup> the following definitions shall apply:

**(1) By means of the World Wide Web**

The term “by means of the World Wide Web” means by placement of material in a computer server-based file archive so that it is publicly accessible, over the Internet, using hypertext transfer protocol or any successor protocol.

**(2) Commercial purposes; engaged in the business**

**(A) Commercial purposes**

A person shall be considered to make a communication for commercial purposes only if such person is engaged in the business of making such communications.

**(B) Engaged in the business**

The term “engaged in the business” means that the person who makes a communication, or offers to make a communication, by means of the World Wide Web, that includes any material that is harmful to minors, devotes time, attention, or labor to such ac-

tivities, 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 World Wide Web, communications for commercial purposes that include material that is harmful to minors, only if the person knowingly causes the material that is harmful to minors to be posted on the World Wide Web or knowingly solicits such material to be posted on the World Wide Web.

**(3) Internet**

The term “Internet” means the combination of computer facilities and electromagnetic transmission media, and related equipment and software, comprising the interconnected worldwide network of computer networks that employ the Transmission Control Protocol/Internet Protocol or any successor protocol to transmit information.

**(4) Internet access service**

The term “Internet access service” means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. Such term does not include telecommunications services.

**(5) Internet information location tool**

The term “Internet information location tool” means a service that refers or links users to an online location on the World Wide Web. Such term includes directories, indices, references, pointers, and hypertext links.

**(6) Material that is harmful to minors**

The term “material that is harmful to minors” means any communication, picture, image, graphic image file, article, recording, writing, or other matter of any kind that is obscene or that—

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

(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.

**(7) Minor**

The term “minor” means any person under 17 years of age.

(June 19, 1934, ch. 652, title II, §231, as added Pub. L. 105-277, div. C, title XIV, §1403, Oct. 21, 1998, 112 Stat. 2681-736.)

<sup>1</sup> So in original. Probably should be “section.”

## EFFECTIVE DATE

Section effective 30 days after Oct. 21, 1998, see section 1406 of Pub. L. 105-277, set out as a note under section 223 of this title.

## CONGRESSIONAL FINDINGS

Pub. L. 105-277, div. C, title XIV, §1402, Oct. 21, 1998, 112 Stat. 2681-736, provided that: "The Congress finds that—

"(1) while custody, care, and nurture of the child resides first with the parent, the widespread availability of the Internet presents opportunities for minors to access materials through the World Wide Web in a manner that can frustrate parental supervision or control;

"(2) the protection of the physical and psychological well-being of minors by shielding them from materials that are harmful to them is a compelling governmental interest;

"(3) to date, while the industry has developed innovative ways to help parents and educators restrict material that is harmful to minors through parental control protections and self-regulation, such efforts have not provided a national solution to the problem of minors accessing harmful material on the World Wide Web;

"(4) a prohibition on the distribution of material harmful to minors, combined with legitimate defenses, is currently the most effective and least restrictive means by which to satisfy the compelling government interest; and

"(5) notwithstanding the existence of protections that limit the distribution over the World Wide Web of material that is harmful to minors, parents, educators, and industry must continue efforts to find ways to protect children from being exposed to harmful material found on the Internet."

## STUDY BY COMMISSION ON ONLINE CHILD PROTECTION

Pub. L. 105-277, div. C, title XIV, §1405, Oct. 21, 1998, 112 Stat. 2681-739, as amended by Pub. L. 106-113, div. B, §1000(a)(9) [title V, §5001(b)-(f), Nov. 29, 1999, 113 Stat. 1536, 1501A-591, 1501-592; Pub. L. 106-229, title IV, §401, June 30, 2000, 114 Stat. 476, provided that:

"(a) ESTABLISHMENT.—There is hereby established a temporary Commission to be known as the Commission on Online Child Protection (in this section referred to as the 'Commission') for the purpose of conducting a study under this section regarding methods to help reduce access by minors to material that is harmful to minors on the Internet.

"(b) MEMBERSHIP.—The Commission shall be composed of 19 members, as follows:

"(1) INDUSTRY MEMBERS.—The Commission shall include 16 members who shall consist of representatives of—

"(A) providers of Internet filtering or blocking services or software;

"(B) Internet access services;

"(C) labeling or ratings services;

"(D) Internet portal or search services;

"(E) domain name registration services;

"(F) academic experts; and

"(G) providers that make content available over the Internet.

Of the members of the Commission by reason of this paragraph, an equal number shall be appointed by the Speaker of the House of Representatives and by the Majority Leader of the Senate. Members of the Commission appointed on or before October 31, 1999, shall remain members.

"(2) EX OFFICIO MEMBERS.—The Commission shall include the following officials:

"(A) The Assistant Secretary (or the Assistant Secretary's designee).

"(B) The Attorney General (or the Attorney General's designee).

"(C) The Chairman of the Federal Trade Commission (or the Chairman's designee).

"(3) PROHIBITION OF PAY.—Members of the Commission shall not receive any pay by reason of their membership on the Commission.

"(c) FIRST MEETING.—The Commission shall hold its first meeting not later than March 31, 2000.

"(d) CHAIRPERSON.—The chairperson of the Commission shall be elected by a vote of a majority of the members, which shall take place not later than 30 days after the first meeting of the Commission.

"(e) STUDY.—

"(1) IN GENERAL.—The Commission shall conduct a study to identify technological or other methods that—

"(A) will help reduce access by minors to material that is harmful to minors on the Internet; and

"(B) may meet the requirements for use as affirmative defenses for purposes of section 231(c) of the Communications Act of 1934 [47 U.S.C. 231(c)] (as added by this title).

"Any methods so identified shall be used as the basis for making legislative recommendations to the Congress under subsection (d)(3).

"(2) SPECIFIC METHODS.—In carrying out the study, the Commission shall identify and analyze various technological tools and methods for protecting minors from material that is harmful to minors, which shall include (without limitation)—

"(A) a common resource for parents to use to help protect minors (such as a 'one-click-away' resource);

"(B) filtering or blocking software or services;

"(C) labeling or rating systems;

"(D) age verification systems;

"(E) the establishment of a domain name for posting of any material that is harmful to minors; and

"(F) any other existing or proposed technologies or methods for reducing access by minors to such material.

"(3) ANALYSIS.—In analyzing technologies and other methods identified pursuant to paragraph (2), the Commission shall examine—

"(A) the cost of such technologies and methods;

"(B) the effects of such technologies and methods on law enforcement entities;

"(C) the effects of such technologies and methods on privacy;

"(D) the extent to which material that is harmful to minors is globally distributed and the effect of such technologies and methods on such distribution;

"(E) the accessibility of such technologies and methods to parents; and

"(F) such other factors and issues as the Commission considers relevant and appropriate.

"(f) REPORT.—Not later than 2 years after the enactment of this Act [Oct. 21, 1998], the Commission shall submit a report to the Congress containing the results of the study under this section, which shall include—

"(1) a description of the technologies and methods identified by the study and the results of the analysis of each such technology and method;

"(2) the conclusions and recommendations of the Commission regarding each such technology or method;

"(3) recommendations for legislative or administrative actions to implement the conclusions of the committee; and

"(4) a description of the technologies or methods identified by the study that may meet the requirements for use as affirmative defenses for purposes of section 231(c) of the Communications Act of 1934 [47 U.S.C. 231(c)] (as added by this title).

"(g) RULES OF THE COMMISSION.—

"(1) QUORUM.—Nine members of the Commission shall constitute a quorum for conducting the business of the Commission.

"(2) MEETINGS.—Any meetings held by the Commission shall be duly noticed at least 14 days in advance and shall be open to the public.

“(3) OPPORTUNITIES TO TESTIFY.—The Commission shall provide opportunities for representatives of the general public to testify.

“(4) ADDITIONAL RULES.—The Commission may adopt other rules as necessary to carry out this section.

“(h) GIFTS, BEQUESTS, AND DEVICES.—The Commission may accept, use, and dispose of gifts, bequests, or devises of services or property, both real (including the use of office space) and personal, for the purpose of aiding or facilitating the work of the Commission. Gifts or grants not used at the termination of the Commission shall be returned to the donor or grantee.

“(i) TERMINATION.—The Commission shall terminate 30 days after the submission of the report under subsection (d) or November 30, 2000, whichever occurs earlier.

“(m)[j] INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.”

## PART II—DEVELOPMENT OF COMPETITIVE MARKETS

### § 251. Interconnection

#### (a) General duty of telecommunications carriers

Each telecommunications carrier has the duty—

- (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and
- (2) not to install network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255 or 256 of this title.

#### (b) Obligations of all local exchange carriers

Each local exchange carrier has the following duties:

##### (1) Resale

The duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services.

##### (2) Number portability

The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.

##### (3) Dialing parity

The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

##### (4) Access to rights-of-way

The duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224 of this title.

##### (5) Reciprocal compensation

The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

#### (c) Additional obligations of incumbent local exchange carriers

In addition to the duties contained in subsection (b) of this section, each incumbent local exchange carrier has the following duties:

#### (1) Duty to negotiate

The duty to negotiate in good faith in accordance with section 252 of this title the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) of this section and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

#### (2) Interconnection

The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—

(A) for the transmission and routing of telephone exchange service and exchange access;

(B) at any technically feasible point within the carrier's network;

(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and

(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title.

#### (3) Unbundled access

The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

#### (4) Resale

The duty—

(A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and

(B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

#### (5) Notice of changes

The duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using