

106TH CONGRESS
2D SESSION

S. 2063

To amend title 18, United States Code, to provide for the applicability to operators of Internet Web sites of restrictions on the disclosure or records and other information relating to the use of such sites, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 10, 2000

Mr. TORRICELLI (for himself and Mr. FEINGOLD) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to provide for the applicability to operators of Internet Web sites of restrictions on the disclosure or records and other information relating to the use of such sites, and for other purposes.

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 “Secure Online Commu-
5 nication Enforcement Act of 2000”.

1 **SEC. 2. ENHANCED PRIVACY PROTECTION FOR INFORMA-**
2 **TION ON COMPUTER NETWORKS.**

3 (a) IN GENERAL.—Section 2703(b) of title 18,
4 United States Code, is amended by striking paragraph (1)
5 and inserting the following new paragraph (1):

6 “(1) IN GENERAL.—A governmental entity may
7 require a provider of remote computing service to
8 disclose the contents of any electronic communica-
9 tion to which this paragraph is made applicable by
10 paragraph (2)—

11 “(A) pursuant to a warrant issued under
12 the Federal Rules of Criminal Procedure or
13 equivalent State warrant, a copy of which war-
14 rant shall be served on the subscriber or cus-
15 tomer of such remote computing service before
16 or at the same time the warrant is served on
17 the provider of the remote computing service; or

18 “(B) pursuant to a Federal or State grand
19 jury or trial subpoena, a copy of which sub-
20 poena shall be served on the subscriber or cus-
21 tomer of such remote computing service under
22 circumstances allowing the subscriber or cus-
23 tomer a meaningful opportunity to challenge
24 the subpoena.”.

25 (b) CONFORMING AMENDMENTS.—Paragraph (2) of
26 that section is amended—

- 1 (1) by indenting the paragraph 2 ems;
- 2 (2) by inserting “APPLICABILITY.—” after
- 3 “(2)”; and
- 4 (3) by indenting subparagraphs (A) and (B) 4
- 5 ems.

6 **SEC. 3. ENHANCEMENT OF SECURE ON-LINE COMMUNICA-**
 7 **TIONS.**

8 (a) APPLICABILITY OF LIMITATIONS ON DISCLOSURE
 9 OF COMMUNICATION RECORDS.—Paragraph (1) of section
 10 2703(c) of title 18, United States Code, is amended—

11 (1) in subparagraph (A)—

12 (A) by inserting “, or an operator of an
 13 Internet Web site (including an agent of such
 14 operator) or other third party,” after “remote
 15 computing service”; and

16 (B) by inserting “or Internet Web site”
 17 after “of such service”; and

18 (2) in subparagraph (B)—

19 (A) in the matter preceding clause (i)—

20 (i) by inserting “, or an operator of
 21 an Internet Web site (including an agent
 22 of such operator) or other third party,”
 23 after “remote computing service”; and

24 (ii) by inserting “or Internet Web
 25 site” after “of such service”; and

1 (B) in clause (iv), by inserting “or oper-
 2 ator” after “of such provider”.

3 (b) DISCLOSURE OF COMMUNICATION RECORDS TO
 4 NON-GOVERNMENT ENTITIES.—Paragraph (1)(A) of
 5 such section is further amended by striking “other than
 6 a government entity.” and inserting “other than a govern-
 7 ment entity only if the disclosure is—

8 “(i) necessary to initiate, provide, bill, or collect
 9 for such service or for access to or use of such Inter-
 10 net Web site;

11 “(ii) necessary to protect the rights or property
 12 of the provider of such service or Internet Web site;

13 “(iii) made at the request of the subscriber or
 14 customer;

15 “(iv) made with the affirmative consent of the
 16 subscriber or customer given at the time the disclo-
 17 sure is sought; or

18 “(v) required by law.”.

19 (c) INFORMATION COVERED BY LIMITATIONS ON
 20 DISCLOSURE.—Such section is further amended in para-
 21 graphs (1)(A) and (1)(B) by inserting before the end pa-
 22 renthesis the following: “, but including information gen-
 23 erated in the process of accessing or otherwise using the
 24 Internet”.

1 (d) DISCLOSURE OF AGGREGATE INFORMATION.—

2 Such section is further amended by adding at the end the
3 following new paragraph:

4 “(3) Nothing in this subsection may be construed to
5 prohibit a provider of electronic communication service or
6 remote computing service, operator of an Internet Web
7 site (including an agent of such operator), or third party
8 from using, disclosing, or permitting access to aggregate
9 customer or subscriber information from which individual
10 customer or subscriber information and characteristics
11 have been removed.”.

12 (e) PROTECTION OF SERVICE.—Such section is fur-
13 ther amended by adding at the end the following new para-
14 graph:

15 “(4) A provider of electronic communication service
16 or remote computing service or operator of an Internet
17 Web site may not terminate the provision of such service
18 or access to or use of such Internet Web site to an indi-
19 vidual who refuses to consent to the disclosure of records
20 or other information under paragraph (1)(A)(iv) as a re-
21 sult of such refusal.”.

22 (f) FEDERAL PREEMPTION.—Such section is further
23 amended by adding at the end the following new para-
24 graph:

1 “(5) This subsection preempts any State or local law
2 regarding the disclosure by providers of electronic commu-
3 nication service or remote computing service and operators
4 of Internet Web sites of records or other information cov-
5 ered by this subsection.”.

6 (g) CONFORMING AMENDMENT.—The subsection
7 heading of such section is amended by striking “OR RE-
8 MOTE COMPUTING SERVICE” and inserting “, REMOTE
9 COMPUTING SERVICE, OR INTERNET WEB SITE”.

10 (h) EFFECTIVE DATE.—The amendments made by
11 this section shall take effect 180 days after the date of
12 enactment.

○