

107TH CONGRESS
2D SESSION

S. 2137

To facilitate the protection of minors using the Internet from material that is harmful to minors, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 16, 2002

Ms. LANDRIEU introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To facilitate the protection of minors using the Internet from material that is harmful to minors, 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 “Family Privacy and
5 Security Act of 2002”.

1 **TITLE I—INTERNET DOMAIN**
2 **FOR MATERIAL HARMFUL TO**
3 **MINORS**

4 **SEC. 101. ESTABLISHMENT OF TOP-LEVEL INTERNET DO-**
5 **MAIN NAME.**

6 (a) NTIA ACTION.—Not later than 30 days after the
7 date of the enactment of this Act, the Secretary of Com-
8 merce, acting through the National Telecommunications
9 and Information Administration, shall—

10 (1) pursuant to the authority under section
11 II.B. of the Memorandum of Understanding Be-
12 tween the U.S. Department of Commerce and the
13 Internet Corporation for Assigned Names and Num-
14 bers, entered into on November 25, 1998, regarding
15 oversight of the policy for determining the cir-
16 cumstances under which new top-level Internet do-
17 mains are added to the root system, jointly with
18 ICANN, develop a plan in accordance with section
19 102 for ICANN to establish a new domain meeting
20 the requirements in subsection (b) of this section;

21 (2) upon completion of the plan, make the plan
22 publicly available; and

23 (3) enter into any memorandums of under-
24 standing, agreements, and contracts with ICANN,
25 and any amendments to existing such memoran-

1 dums, agreements, and contracts, as may be nec-
 2 essary to provide for ICANN to carry out the plan.

3 (b) REQUIREMENTS FOR NEW DOMAIN.—The new
 4 domain shall be subject to the following requirements:

5 (1) TOP-LEVEL, INTERNATIONAL DOMAIN.—

6 The new domain shall be established as a top-level,
 7 International domain having a domain name appro-
 8 priate for its purpose.

9 (2) OPERATOR OF DOMAIN.—The entity se-
 10 lected pursuant to section 102 to establish, operate,
 11 and maintain the new domain shall—

12 (A) establish, operate, and maintain the
 13 new domain in accordance with this subsection;
 14 and

15 (B) provide for the creation of an inde-
 16 pendent board, with diverse membership, which
 17 shall be responsible for—

18 (i) establishing written criteria for ac-
 19 cepting registrants for the new domain and
 20 for any limitations applicable to the new
 21 domain; and

22 (ii) ensuring that subscription rates or
 23 fees for obtaining a name for the new do-
 24 main are as minimal as possible.

1 (3) OTHER REQUIREMENTS.—The plan devel-
 2 oped under section 102 may include such other re-
 3 quirements with respect to the new domain as the
 4 National Telecommunications and Information Ad-
 5 ministration and ICANN jointly consider appro-
 6 priate.

7 **SEC. 102. SELECTION OF OPERATOR OF NEW DOMAIN.**

8 (a) APPLICATION PROCESS.—The plan under this
 9 section shall establish a process for soliciting applications
 10 for the establishment of the new domain, which process
 11 shall—

12 (1) commence and complete not later than 60
 13 days after the expiration of the 30-day period re-
 14 ferred to in section 101(a);

15 (2) provide adequate notice to prospective appli-
 16 cants of—

17 (A) the opportunity to submit an applica-
 18 tion; and

19 (B) the criteria for selection under sub-
 20 section (b)(1);

21 (3) include a fee for filing an application that
 22 does not exceed the minimum amount reasonably es-
 23 timated by ICANN to be necessary to recover its ex-
 24 penses under section 101 and this section; and

1 (4) provide for reimbursement to applicants of
2 any amounts collected in filing fees that exceed the
3 actual amount of expenses of ICANN under section
4 101 and this section.

5 (b) SELECTION PROCESS.—The plan under this sec-
6 tion shall establish a process for selection, from applica-
7 tions submitted pursuant to subsection (a), of an applica-
8 tion for the establishment of the new domain meeting the
9 requirements under section 101(b). Such selection process
10 shall comply with the following requirements:

11 (1) CRITERIA.—The selection shall be made
12 pursuant to written, objective criteria designed to
13 ensure that—

14 (A) the new domain is established, oper-
15 ated, and maintained in accordance with the re-
16 quirements under section 101(b); and

17 (B) the entity selected to establish, oper-
18 ate, and maintain the new domain is the appli-
19 cant most capable and qualified to do so.

20 (2) INITIAL REVIEW.—Not later than 60 days
21 after the completion of the application period under
22 subsection (a)(1), ICANN shall—

23 (A) review and apply the selection criteria
24 established under paragraph (1) to each appli-
25 cation submitted; and

1 (B) based upon such criteria, select an ap-
2 plication and award to the applicant a contract
3 for the establishment, operation, and mainte-
4 nance of the new domain, unless ICANN deter-
5 mines that no applicant could minimally provide
6 for the establishment, operation, and mainte-
7 nance of the new domain in accordance with the
8 requirements under section 101(b).

9 (3) SECOND APPLICATION PERIOD.—If no ap-
10 plicant is selected pursuant to paragraph (2), not
11 later than 30 days after the expiration of the 60-day
12 period under paragraph (2), ICANN shall commence
13 another application and selection process that com-
14 plies with the requirements under subsection (a) and
15 this subsection.

16 (4) REPORT.—If the second application and se-
17 lection process under paragraph (3) does not result
18 in the award of a contract for the establishment, op-
19 eration, and maintenance of the new domain, not
20 later than 30 days after the conclusion of the 60-day
21 period under paragraph (3), ICANN shall—

22 (A) notify the Secretary of Commerce in
23 writing of the failure to award a contract under
24 paragraph (3); and

1 (B) submit to the Secretary a report de-
2 scribing the application and selection process
3 and setting forth the reasons for the failure to
4 award the contract.

5 (c) FULL OPERATION.—The plan under this section
6 shall provide for ICANN to take all actions necessary to
7 facilitate the full operation of the new domain within six
8 months after the award of the contract for the establish-
9 ment, operation, and maintenance of the new domain.

10 (d) ANNUAL OVERSIGHT.—The plan under this sec-
11 tion shall provide that ICANN shall, on an annual basis,
12 review the actions of the entity selected to establish, oper-
13 ate, and maintain the new domain to ensure that such en-
14 tity is complying with the requirements under section
15 101(b).

16 **SEC. 103. USE OF NEW DOMAIN.**

17 Commencing not later than 12 months after the es-
18 tablishment of the new domain under section 102, any op-
19 erator of a commercial Internet web site or online service
20 that has as its principal or primary business the making
21 available of material that is harmful to minors shall reg-
22 ister such web site or online service with the new domain
23 and operate such web site or online service under the new
24 domain.

1 **SEC. 104. LIABILITY PROTECTIONS.**

2 (a) TREATMENT OF PUBLISHER OR SPEAKER.—No
3 person or entity that operates or maintains the new do-
4 main shall be treated as the publisher or speaker of any
5 information or material provided by another registrant
6 under the domain.

7 (b) CIVIL LIABILITY.—No person or entity that oper-
8 ates or maintains the new domain shall be held liable be-
9 cause of—

10 (1) any action voluntarily taken in good faith to
11 restrict to minors access through the new domain to,
12 or availability through the new domain of, material
13 that is harmful to minors; or

14 (2) any action taken to enable or make avail-
15 able to registrants to the new domain or others the
16 technical means to restrict access by minors to ma-
17 terial described in paragraph (1).

18 **SEC. 105. ENFORCEMENT.**

19 (a) VIOLATION.—Any person who violates section
20 103, or any requirement, registration criteria, or limita-
21 tion applicable to a registrant to the new domain under
22 section 101(b), shall be subject to such civil penalties as
23 the Secretary of Commerce shall prescribe for purposes
24 of this title.

25 (b) ENFORCEMENT.—The Secretary shall have the
26 power to enforce the provisions of this title, including any

1 requirements or limitations applicable to a registrant to
 2 the new domain under section 101(b) and the imposition
 3 and collection of civil penalties under subsection (a).

4 (c) PERIODIC AUDITS.—The Secretary shall conduct
 5 periodic audits to ensure compliance with requirements,
 6 registration criteria, and limitations applicable to the new
 7 domain under this title.

8 **SEC. 106. OUTREACH.**

9 (a) IN GENERAL.—The Secretary of Commerce, act-
 10 ing through the National Telecommunications and Infor-
 11 mation Administration, shall carry out a program to pub-
 12 licize the availability of the new domain under this title.

13 (b) COMMENCEMENT.—The program under sub-
 14 section (a) shall commence not later than 30 days after
 15 the date that the new domain first becomes operational
 16 and accessible by the public.

17 **SEC. 107. DEFINITIONS.**

18 In this title:

19 (1) ICANN.—The term “ICANN” means the
 20 Internet Corporation for Assigned Names and Num-
 21 bers.

22 (2) MATERIAL THAT IS HARMFUL TO MI-
 23 NORS.—The term “material that is harmful to mi-
 24 nors” means any communication, picture, image,
 25 graphic image file, article, recording, writing, or

1 other matter of any kind that is obscene, or that a
2 reasonable person would find—

3 (A) taking the material as a whole and
4 with respect to minors, is designed to appeal to,
5 or is designed to pander to, the prurient inter-
6 est;

7 (B) depicts, describes, or represents, in a
8 manner patently offensive with respect to mi-
9 nors, an actual or simulated sexual act or sex-
10 ual contact, an actual or simulated normal or
11 perverted sexual act, or a lewd exhibition of the
12 genitals or post-pubescent female breast; and

13 (C) taking the material as a whole, lacks
14 serious literary, artistic, political, or scientific
15 value for minors.

16 (3) MINOR.—The term “minor” means any per-
17 son under 17 years of age.

18 (4) NEW DOMAIN.—The term “new domain”
19 means the Internet domain established pursuant to
20 this title.

1 **TITLE II—OTHER MATTERS**

2 **SEC. 201. PROHIBITION ON E-MAIL OF SEXUALLY ORI-**
3 **ENTED ADVERTISEMENTS TO MINORS WITH-**
4 **OUT PRESCRIBED MARKS OR NOTICE.**

5 (a) IN GENERAL.—Chapter 71 of title 18, United
6 States Code, is amended by adding at the end the fol-
7 lowing new section:

8 **“§ 1471. E-mail of sexually oriented advertisements to**
9 **minors**

10 “(a) PRESCRIPTION OF MARKS OR NOTICES.—

11 “(1) IN GENERAL.—Not later than 120 days
12 after the date of the enactment of this section, the
13 National Institute of Standards and Technology
14 shall prescribe marks or notices to be included in
15 or affixed to the subject line of any e-mail that con-
16 tains a sexually oriented advertisement sent to mi-
17 nors.

18 “(2) SPECIFIC REQUIREMENT.—Marks or no-
19 tices prescribed under paragraph (1) shall, to the ex-
20 tent possible, be made so that they may not be re-
21 moved or altered.

22 “(b) SENDING E-MAIL WITHOUT MARK OR NO-
23 TICE.—Whoever in the business of selling sexually ori-
24 ented products or materials knowingly sends, through an
25 instrumentality in or affecting interstate or foreign com-

1 merce, an e-mail that includes a sexually oriented adver-
 2 tisement but does not include a mark or notice prescribed
 3 under subsection (a) shall be fined under this title, impris-
 4 oned not more than one year, or both.

5 “(c) PRODUCTION OF MAIL MATTER INTENDED FOR
 6 E-MAIL TO MINORS WITHOUT MARK OR NOTICE.—Who-
 7 ever produces, reproduces, or manufactures any sexually
 8 related mail matter, intending or knowing that such mail
 9 matter will be sent to a minor in an e-mail in violation
 10 of subsection (b)—

11 “(1), shall be fined under this title, imprisoned
 12 not more than 5 years, or both, in the case of an
 13 offense which does not occur after another offense
 14 under this subsection; and

15 “(2) shall be fined under this title, imprisoned
 16 not more than 10 years, or both, in the case of an
 17 offense which occurs after another offense under this
 18 subsection.

19 “(d) DEFINITIONS.—In this section:

20 “(1) MINOR.—The term ‘minor’ means any in-
 21 dividual who has not yet attained the age of 18
 22 years.

23 “(2) SEXUALLY ORIENTED ADVERTISEMENT.—
 24 The term ‘sexually oriented advertisement’ means
 25 any advertisement that depicts, in actual or simu-

1 lated form, or explicitly describes, in a predomi-
 2 nantly sexual context, human genitalia, any act of
 3 natural or unnatural sexual intercourse, any act of
 4 sadism or masochism, or any other erotic subject di-
 5 rectly related to the foregoing, except that material
 6 otherwise within the definition of this paragraph
 7 shall be deemed not to constitute a sexually oriented
 8 advertisement if such material constitutes only a
 9 small and insignificant part of the whole, the re-
 10 mainder of which is not primarily devoted to sexual
 11 matters.

12 “(3) SEXUALLY RELATED MAIL MATTER.—The
 13 term ‘sexually related mail matter’ means any mail
 14 matter containing a sexually oriented advertise-
 15 ment.”.

16 (b) CLERICAL AMENDMENT.—The table of sections
 17 at the beginning of chapter 71 of title 18, United States
 18 Code, is amended by adding at the end the following new
 19 item:

“1471. E-mail of sexually oriented advertisements to minors.”.

20 **SEC. 202. PROHIBITION ON VIDEO VOYEURISM.**

21 (a) IN GENERAL.—Chapter 71 of title 18, United
 22 States Code, as amended by section 201 of this Act, is
 23 further amended by adding at the end the following new
 24 section:

1 **“§ 1472. Video voyeurism**

2 “(a) IN GENERAL.—Whoever—

3 “(1) uses a camera, videotape, photo-optical,
4 photo-electric, or other image recording device that
5 has been transported, shipped, or received in inter-
6 state or foreign commerce to observe, view, photo-
7 graph, film, or videotape for a lewd or lascivious
8 purpose an image of another person involving actual
9 or simulated vaginal, anal, oral, or manual sexual
10 intercourse, masturbation, any unclothed portion of
11 the female breast below the top of the areola, or any
12 unclothed portion of the anus, vulva, or genitals,
13 without the consent of such other person to such ob-
14 servation, viewing, photographing, filming, or
15 videotaping; or

16 “(2) uses a camera, videotape, photo-optical,
17 photo-electric, or other image recording device that
18 has been transported, shipped, or received in inter-
19 state or foreign commerce to observe, view, photo-
20 graph, film, or videotape for a lewd or lascivious
21 purpose an image of a person under the age of 18
22 years involving actual or simulated vaginal, anal,
23 oral, or manual sexual intercourse, masturbation,
24 any unclothed portion of the female breast below the
25 top of the areola, or any unclothed portion of the
26 anus, vulva, or genitals,

1 shall be punished as provided in subsection (d).

2 “(b) EXCEPTIONS.—Subsection (a) shall not in the
3 case of—

4 “(1) observation, viewing, photographing, film-
5 ing, or videotaping for legitimate security purposes,
6 if the material is used only for such purposes;

7 “(2) observation, viewing, photographing, film-
8 ing, or videotaping in the course of a legitimate law
9 enforcement or private investigation, if the material
10 is used only for purposes of such investigation; or

11 “(3) the transfer of an image by—

12 “(A) a telecommunications carrier engaged
13 in the provision of a telecommunications serv-
14 ice;

15 “(B) a person engaged in the business of
16 providing an Internet access service;

17 “(C) a person engaged in the business of
18 providing access to an interactive computer
19 service; or

20 “(D) any other person engaged in the
21 transmission, storage, retrieval, hosting, for-
22 matting, or transmission (or any combination
23 thereof) of a communication made by another
24 person, without selection or alteration of the
25 content of the communication.

1 “(c) DEFENSE.—It shall be a defense to prosecution
2 under subsection (a)(1) that the observation, viewing,
3 photographing, filming, or videotaping in question was
4 done in a public place where there was no reasonable ex-
5 pectation of privacy.

6 “(d) PENALTIES.—The penalty for an offense under
7 subsection (a) is—

8 “(1) a fine under this title, imprisonment for
9 not more three years, or both, in the case of an of-
10 fense under paragraph (1) of that subsection; and

11 “(2) a fine under this title, imprisonment for
12 not more than ten years, or both, in the case of an
13 offense under paragraph (2) of that subsection.

14 “(e) SEAL OR DESTRUCTION OF IMAGES.—The court
15 may, upon its own motion or the motion of the Attorney
16 General, order the following:

17 “(1) The seal of any images introduced as evi-
18 dence in a trial for an offense under this section.

19 “(2) The destruction of any images held by the
20 United States for purposes of a prosecution under
21 this section in the event of an acquittal, dismissal,
22 plea agreement, or decision not to prosecute.

23 “(3) The destruction of any images held by the
24 United States for purposes of a prosecution under

1 this section if prosecution is not commenced within
2 the statute of limitations for the offense.

3 “(4) The destruction of any images introduced
4 as evidence in a trial for an offense under this sec-
5 tion that are held by the United States after convic-
6 tion upon the release of the offender from incarcer-
7 ation for the offense.”.

8 (b) CLERICAL AMENDMENT.—The table of sections
9 at the beginning of chapter 71 of title 18, United States
10 Code, as amended by section 201(b) of this Act, is further
11 amended by adding at the end the following new item:

“1472. Video voyeurism.”.

12 **SEC. 203. SEVERABILITY.**

13 If any provision of an amendment made by this title,
14 or the application thereof to any person or circumstances,
15 is held invalid, the remainder of the provisions of the
16 amendments made by this title, and the applications of
17 such provisions to other persons not similarly situated or
18 to other circumstances, shall not be affected thereby.

○