

109TH CONGRESS
2D SESSION

S. 2426

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

MARCH 16 (legislative day, MARCH 15), 2006

Mr. BAUCUS (for himself and Mr. PRYOR) 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 “Cyber Safety for Kids
5 Act of 2006”.

6 **SEC. 2. ESTABLISHMENT OF TOP-LEVEL INTERNET DOMAIN**
7 **NAME.**

8 (a) NTIA ACTION.—Not later than 30 days after the
9 date of the enactment of this Act, the Secretary of Com-

1 merce, acting through the National Telecommunications
2 and Information Administration, shall—

3 (1) pursuant to the authority under section
4 II.B. of the Memorandum of Understanding Be-
5 tween the United States Department of Commerce
6 and ICANN, entered into on November 25, 1998,
7 regarding oversight of the policy for determining the
8 circumstances under which new top-level Internet
9 domains are added to the root system, jointly with
10 ICANN, develop a plan in accordance with section
11 102 for ICANN to establish a new domain meeting
12 the requirements in subsection (b);

13 (2) upon completion of the plan developed
14 under paragraph (1), make such plan publicly avail-
15 able;

16 (3) enter into any memorandums of under-
17 standing, agreements, and contracts with ICANN,
18 as may be necessary to carry out the plan developed
19 under paragraph (1); and

20 (4) make any amendments to any existing
21 memorandums of understandings, agreements, and
22 contracts with ICANN, as may be necessary to carry
23 out the plan developed under paragraph (1).

1 (b) REQUIREMENTS FOR NEW DOMAIN.—The new
2 domain established under subsection (a) shall be subject
3 to the following requirements:

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

5 (A) IN GENERAL.—The new domain shall
6 be established as a top-level, International do-
7 main having a domain name appropriate for its
8 purpose.

9 (B) DOMAIN NAME ENDING.—The new do-
10 main shall have domain name that ends in a
11 manner that allows a user of the Internet to
12 understand that by accessing such domain, a
13 user is likely to view material that is harmful
14 to minors, such as domain name ending in .xxx.

15 (2) OPERATOR OF DOMAIN.—The entity se-
16 lected pursuant to section 3 to establish, operate,
17 and maintain the new domain shall—

18 (A) establish, operate, and maintain the
19 new domain in accordance with this subsection;
20 and

21 (B) provide for the creation of an inde-
22 pendent board, with diverse membership, which
23 shall be responsible for—

24 (i) establishing written criteria for—

1 (I) accepting registrants for the
2 new domain; and

3 (II) any limitations applicable to
4 the new domain; and

5 (ii) ensuring that subscription rates or
6 fees for obtaining a name for the new do-
7 main are as minimal as possible.

8 (3) OTHER REQUIREMENTS.—The plan devel-
9 oped under subsection (a) may include such other
10 requirements with respect to the new domain as the
11 National Telecommunications and Information Ad-
12 ministration and ICANN jointly consider appro-
13 priate.

14 **SEC. 3. SELECTION OF OPERATOR OF NEW DOMAIN.**

15 (a) APPLICATION PROCESS.—The plan developed
16 under section 2(a) shall establish a process for soliciting
17 applications for the establishment of the new domain de-
18 scribed in section 2, which process shall—

19 (1) commence and complete not later than 60
20 days after the expiration of the 30-day period re-
21 ferred to in section 2(a);

22 (2) provide adequate notice to prospective appli-
23 cants of—

24 (A) the opportunity to submit an applica-
25 tion; and

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

3 (3) include a fee for filing an application that
4 does not exceed the minimum amount reasonably es-
5 timated by ICANN to be necessary to recover its ex-
6 penses under section 2 and this section; and

7 (4) provide for reimbursement to applicants of
8 any amounts collected in filing fees that exceed the
9 actual amount of expenses of ICANN under section
10 2 and this section.

11 (b) SELECTION PROCESS.—

12 (1) IN GENERAL.—The plan developed under
13 section 2(a) shall establish a process for selection,
14 from applications submitted pursuant to subsection
15 (a), of an application for the establishment of the
16 new domain meeting the requirements under section
17 2(b).

18 (2) REQUIREMENTS.—The selection process de-
19 scribed in paragraph (1) shall comply with the fol-
20 lowing requirements:

21 (A) CRITERIA.—The selection shall be
22 made pursuant to written, objective criteria de-
23 signed to ensure that—

1 (i) the new domain is established, op-
2 erated, and maintained in accordance with
3 the requirements under section 2(b); and

4 (ii) the entity selected to establish, op-
5 erate, and maintain the new domain is the
6 applicant most capable and qualified to do
7 so.

8 (B) INITIAL REVIEW.—Not later than 60
9 days after the completion of the application pe-
10 riod under subsection (a)(1), ICANN shall—

11 (i) review and apply the selection cri-
12 teria established under subparagraph (A)
13 to each application submitted; and

14 (ii) based upon such criteria, select an
15 application and award to the applicant a
16 contract for the establishment, operation,
17 and maintenance of the new domain, un-
18 less ICANN determines that no applicant
19 could minimally provide for the establish-
20 ment, operation, and maintenance of the
21 new domain in accordance with the re-
22 quirements under section 2(b).

23 (C) SECOND APPLICATION PERIOD.—If no
24 applicant is selected pursuant to subparagraph
25 (B), not later than 30 days after the expiration

1 of the 60-day period under subparagraph (B),
 2 ICANN shall commence another application
 3 and selection process that complies with the re-
 4 quirements under subsection (a) and this sub-
 5 section.

6 (D) REPORT.—If the second application
 7 and selection process under subparagraph (C)
 8 does not result in the award of a contract for
 9 the establishment, operation, and maintenance
 10 of the new domain, not later than 30 days after
 11 the conclusion of the 60-day period under sub-
 12 paragraph (C), ICANN shall—

13 (i) notify the Secretary of Commerce
 14 in writing of the failure to award a con-
 15 tract under subparagraph (C); and

16 (ii) submit to the Secretary of Com-
 17 merce a report describing the application
 18 and selection process and setting forth the
 19 reasons for the failure to award the con-
 20 tract.

21 (c) FULL OPERATION.—The plan developed under
 22 section 2(a) shall provide for ICANN to take all actions
 23 necessary to facilitate the full operation of the new domain
 24 not later than 6 months after the award of the contract

1 for the establishment, operation, and maintenance of the
2 new domain.

3 (d) ANNUAL OVERSIGHT.—The plan developed under
4 section 2(a) shall provide that ICANN shall, on an annual
5 basis, review the actions of the entity selected to establish,
6 operate, and maintain the new domain to ensure that such
7 entity is complying with the requirements under section
8 2(b).

9 **SEC. 4. USE OF NEW DOMAIN.**

10 Commencing not later than 6 months after the estab-
11 lishment of the new domain under section 2, any operator
12 of a commercial Internet website or online service that has
13 as its principal or primary business the making available
14 of material that is harmful to minors shall register such
15 website or online service with the new domain and operate
16 such website or online service under the new domain.

17 **SEC. 5. LIABILITY PROTECTIONS.**

18 (a) TREATMENT OF PUBLISHER OR SPEAKER.—No
19 person or entity that operates or maintains the new do-
20 main shall be treated as the publisher or speaker of any
21 information or material provided by another registrant
22 under the domain.

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

1 (1) any action voluntarily taken in good faith to
2 restrict to minors access through the new domain to,
3 or availability through the new domain of, material
4 that is harmful to minors; or

5 (2) any action taken to enable or make avail-
6 able to registrants to the new domain or others the
7 technical means to restrict access by minors to ma-
8 terial described in paragraph (1).

9 **SEC. 6. ENFORCEMENT.**

10 (a) VIOLATION.—Any person who violates section 4,
11 or any requirement, registration criteria, or limitation ap-
12 plicable to a registrant to the new domain under section
13 2(b), shall be subject to such civil penalties as the Sec-
14 retary of Commerce shall prescribe.

15 (b) ENFORCEMENT.—The Secretary of Commerce
16 shall have the power to enforce the provisions of this title,
17 including—

18 (1) any requirements or limitations applicable
19 to a registrant to the new domain under section
20 2(b); and

21 (2) the imposition and collection of civil pen-
22 alties under subsection (a).

23 (c) PERIODIC AUDITS.—The Secretary of Commerce
24 shall conduct periodic audits to ensure compliance with re-

1 requirements, registration criteria, and limitations applica-
 2 ble to the new domain under this title.

3 **SEC. 7. OUTREACH.**

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

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

12 **SEC. 8. DEFINITIONS.**

13 In this Act, the following definitions shall apply:

14 (1) ICANN.—The term “ICANN” means the
 15 Internet Corporation for Assigned Names and Num-
 16 bers.

17 (2) MATERIAL THAT IS HARMFUL TO MI-
 18 NORS.—The term “material that is harmful to mi-
 19 nors” means any communication, picture, image,
 20 graphic image file, article, recording, writing, or
 21 other matter of any kind that is obscene, or that a
 22 reasonable person would find—

23 (A) taking the material as a whole and
 24 with respect to minors, is designed to appeal to,

1 or is designed to pander to, the prurient inter-
 2 est;

3 (B) depicts, describes, or represents, in a
 4 manner patently offensive with respect to mi-
 5 nors—

6 (i) an actual or simulated sexual act
 7 or sexual contact;

8 (ii) an actual or simulated normal or
 9 perverted sexual act; or

10 (iii) a lewd exhibition of the genitals
 11 or post-pubescent female breast; and

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

15 (3) MINOR.—The term “minor” means any per-
 16 son under 18 years of age.

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

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