Hedge Funds Contributing to Food and Energy Price Inflation?''.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. CARDIN. Mr. President, I ask unanimous consent that the Senate Committee on the Judiciary be authorized to meet during the session of the Senate, to conduct a hearing entitled ''Protecting the Constitutional Rights to Vote for All Americans'' on Tuesday, May 20, 2008, at 2:30 p.m., in room SD–226 of the Dirksen Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. CARDIN. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on May 20, 2008, at 2:30 p.m. to hold a hearing.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON HUMAN RIGHTS AND THE LAW

Mr. CARDIN. Mr. President, I ask unanimous consent that the Senate Committee on the Judiciary, Subcommittee on Human Rights and the Law, be authorized to meet during the session of the Senate, to conduct a hearing entitled ''Global Internet Freedom: Corporate Responsibility and the Rule of Law'' on Tuesday, May 20, 2008, at 10 a.m., in room SD–226 of the Dirksen Senate Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

## PRIVILEGES OF THE FLOOR

Mr. ENZI. Mr. President, I ask unanimous consent that Clint Lohse of my staff, who has done a tremendous amount of work to assure that we recognize the American cowboy, be granted the privileges of the floor during debate on the resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. I ask unanimous consent that Eric Jaffe of the Appropriations Committee staff be granted the privileges of the floor during consideration of the fiscal year 2008 emergency supplemental.

The PRESIDING OFFICER. Without objection, it is so ordered.

## AMENDING THE MISSING CHILDREN'S ASSISTANCE ACT

Mr. REID. I ask unanimous consent that the Judiciary Committee be discharged from the consideration of H.R. 2517 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 2517) to amend the Missing Children's Assistance Act to authorize appropriations, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. LEAHY. Mr. President, tomorrow, the country will commemorate Missing Children's Day. Ceremonies at the Department of Justice and elsewhere will remember our commitment to work together in locating and recovering missing children. I am proud that today, Congress has also realized its obligation to our Nation's children by passing the Protecting Our Children Comes First Act of 2007, which takes important steps toward this goal.

For more than 5 months, one Senator has prevented this important legislation from becoming law. This is regrettable. The authorization for National Center for Missing and Exploited Children, NCMEC, and all that it does to help children and families expires at the end of this fiscal year. This is a bill that passed the House by a vote of 408 to 3. There were 95 cosponsors in the House, both Democrats and Republicans. I introduced a Senate companion bill with Senator HATCH, Senator LANDRIEU, and Senator SHELBY last summer. The Senator Judiciary Committee considered and reported our Senate bill, S. 1829, last December. We have been trying to pass it in the Senate ever since. I am glad the objecting Senator has reconsidered his hold on this legislation. The National Center will now have the security of being able to plan and to maintain their services and staff for the future.

It pains us all to see photo after photo of missing children from all around our country. As a father and grandfather, I can imagine that an abducted child is any parent's worst nightmare. Unfortunately, it is a nightmare that happens all too often. Indeed, the Justice Department estimates that 2,200 children are reported missing each day. There are approximately 114,600 attempted stranger abductions every year, with 3,000 to 5,000 of those attempts succeeding. These families need the assistance of the American people and a helping hand from Congress.

The National Center for Missing and Exploited Children spearheads national efforts to locate and recover missing children and raises public awareness about ways to prevent child abduction, molestation, and sexual exploitation. Further, NCMEC works to make our children safer by acting as a national voice and advocate for those too young to vote or speak up for their own rights.

The national center's professionals have busy, stressful and important jobs. They have worked on more than 127,700 cases of missing and exploited children since the national center's 1984 founding, helping to recover more than 110,200 children. The national center reports that it raised its recovery rate from 64 percent in the 1990s to 96 percent today. It has set up three nationwide tip lines: a toll free, 24-hour telephone hotline to take reports about missing children and clues that might lead to their recovery; a national child pornography tipline to handle calls from individuals reporting the sexual exploitation of children through the production and distribution of pornography; and a cybertipline to process online leads from individuals reporting the sexual exploitation of children. The national center has taken the lead in circulating millions of photographs of missing children, and it serves as a vital resource for the 17,000 law enforcement agencies throughout the Nation who are one the frontlines in the search for missing children and in the pursuit of adequate child protection.

The National Center for Missing and Exploited Children manages to do all of this good work with an annual DOJ grant, which is set to expire after fiscal year 2008. It is important to act now to extend its authorization so that it can continue to help keep children safe and families intact around our Nation. We should continue to do everything we can to protect our children and I thank my friends on both sides of the aisle for joining me in this effort.

Mr. REID. I ask unanimous consent the bill be read a third time and passed, the motion to reconsider be laid upon the table with no intervening action or debate, and any statements be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 2517) was ordered to a third reading, was read the third time, and passed.

## KIDS ACT OF 2007

Mr. REID. I ask unanimous consent the Senate proceed to the immediate consideration of Calendar No. 706, S. 431.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 431) to require convicted sex offenders to register online identifiers, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italics)

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Keeping the Internet Devoid of Sexual Predators Act of 2007'' or the ''KIDS Act of 2007''.

**SEC. 2. REGISTRATION OF ONLINE IDENTIFIERS OF SEX OFFENDERS.**

(a) IN GENERAL.—Section 114(a) of the Sex Offender Registration and Notification Act (42 U.S.C. 16914(a)) is amended—

(1) by redesignating paragraphs (4) through (7) as paragraphs (5) through (8); and

(2) by inserting after paragraph (3) the following:

**[**''(4) Any electronic mail address, instant message address, or other similar Internet identifier the sex offender used or will use to communicate over the Internet.**]**

*''(4) Any electronic mail address, instant message address, or other designation the sex offender uses or will use for self-identification or routing in an Internet communication or posting.''.*

(b) UPDATING OF INFORMATION.—Section 113(c) of the Sex Offender Registration and Notification Act (42 U.S.C. 16913(c)) is amended by inserting ''and before any use of an electronic mail address, instant message address, [or other similar Internet identifier not provided under subsection (b) by the sex offender to communicate over the Internet,] *or other designation used for self-identification or routing in an Internet communication or posting that is not included in the sex offender's registration information,*'' after ''or student status,''.

(c) FAILURE TO REGISTER ONLINE IDENTIFIERS.—Section 2250 of title 18, United States Code, is amended—

(1) in subsection (b), by inserting ''or (d)'' after ''subsection (a)''; and

(2) by adding at the end the following:

''(d) *Knowing*. Failure To Register Online Identifiers.—

''(1) IN GENERAL.—It shall be unlawful for any person who is required to register under the Sex Offender Registration and Notification Act (42 U.S.C. 16901 et seq.) to *knowingly* fail to provide an electronic mail [address, instant message address, or other similar Internet identifier used by that person to communicate over the Internet] *address, instant message address, or other designation used for self-identification or routing in an Internet communication or posting* to the appropriate official for inclusion in the sex offender registry, as required under that Act.

''(2) PENALTY.—Any person who violates paragraph (1) shall be fined under this title, imprisoned not more than 10 years, or both.''.

*(d) CONFORMING AMENDMENT; DIRECTIVE TO UNITED STATES SENTENCING COMMISSION.—Section 141(b) of the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109–248; 120 Stat. 602) is amended by striking ''offense specified in subsection (a)'' and inserting ''offenses specified in subsections (a) and (d) of section 2250 of title 18, United States Code''.*

**SEC. 3. RELEASE OF ELECTRONIC MAIL ADDRESSES, INSTANT MESSAGE ADDRESSES, OR OTHER SIMILAR INTERNET IDENTIFIERS.**

(a) PUBLIC ACCESS.—Section 118(b) of the Sex Offender Registration and Notification Act (42 U.S.C. 16918(b)) is amended—

(1) in paragraph (3), by striking ''and'' at the end;

(2) by redesignating paragraph (4) as paragraph (5); and

(3) by inserting after paragraph (3) the following:

''(4) any electronic mail address, instant message address, or other similar Internet identifier used by the sex offender; and''.

(b) NATIONAL REGISTRY.—Section 119 of the Sex Offender Registration and Notification Act (42 U.S.C. 16919) is amended by adding at the end the following:

''(c) RELEASE OF ELECTRONIC MAIL ADDRESSES, INSTANT MESSAGE ADDRESSES, OR OTHER SIMILAR INTERNET IDENTIFIERS TO COMMERCIAL SOCIAL NETWORKING WEBSITE.—

''(1) IN GENERAL.—The Attorney General shall maintain a system allowing a commercial social networking website to compare the database of registered users of that commercial social networking website to the list of electronic mail addresses, instant message addresses, and other similar Internet identifiers of persons in the National Sex Offender Registry.

''(2) PROCESS FOR RELEASE OF ELECTRONIC MAIL ADDRESSES, INSTANT MESSAGE ADDRESSES, OR OTHER SIMILAR INTERNET IDENTIFIERS.—A commercial social networking website desiring to compare its database of registered users to the list of electronic mail addresses, instant messages, and other similar Internet identifiers of persons in the National Sex Offender Registry shall provide to the Attorney General—

''(A) the name, address, and telephone number of the commercial social networking website;

''(B) the specific legal nature and corporate status of the commercial social networking website;

''(C) an affirmation signed by the chief legal officer of the commercial social networking website that the information obtained from that database shall not be disclosed for any purpose other than for comparing the database of registered users of that commercial social networking website against the list of electronic mail addresses, instant message addresses, and other similar Internet identifiers of persons in the National Sex Offender Registry to protect [children] *individuals* from online sexual predators and that disclosure of this information for purposes other than those under this section may be unlawful; and

''(D) the name, address, and telephone number of a natural person who consents to service of process for the commercial social networking website.

''(3) USE OF DATABASE.—After a commercial social networking website has complied with paragraph (2) and paid any fee established by the Attorney General, the commercial social networking website may screen new users or compare its database of registered users to the list of electronic mail addresses, instant message addresses, and other similar Internet identifiers of persons in the National Sex Offender Registry as frequently as the Attorney General may allow for the purpose of identifying a registered user associated with an electronic mail address, instant message address, or other similar Internet identifier contained in the National Sex Offender Registry.

[''(4) LIABILITY RELIEF FOR SOCIAL NETWORKING SITES USING THE REGISTRY INFORMATION TO PROTECT USERS.—

[''(A) IN GENERAL.—If a commercial social networking website complies with this section, a covered civil action against that commercial social networking website or any director, officer, employee, or agent of that commercial social networking website may not be brought in any Federal or State court.

[''(B) DEFINITION.—In this paragraph, the term 'covered civil action' means a civil action relating to the use of the information in the National Sex Offender Registry by a commercial social networking website to screen users or compare its database of registered users for the purpose of identifying a registered user associated with an electronic mail address, instant message address, or other similar Internet identifier information contained in the National Sex Offender Registry.

[''(5) INTERIM PERIOD.—In any interim period before the National Sex Offender Registry is implemented, any commercial social networking website shall have access to the electronic mail addresses, instant message addresses, and other similar Internet identifiers of persons required to register in a jurisdiction's sex offender registry through the methods set forth in paragraphs (2) and (3). Until such time as the National Sex Offender Registry is implemented, the term 'Attorney General' shall be replaced with 'the jurisdiction' and the term 'the National Sex Offender Registry' shall be replaced with 'a jurisdiction's sex offender registry' in paragraphs (2) and (3).''.]

*''(4) LIMITATION ON RELEASE OF INTERNET IDENTIFIERS.—Except as explicitly provided for in this section or for a necessary law enforcement purpose, the Attorney General may not authorize the release or dissemination of any Internet identifier contained in the National Sex Offender Registry.*

*''(5) LIMITATION ON LIABILITY.—*

*''(A) IN GENERAL.—A civil claim against a commercial social networking website, including any director, officer, employee, or agent of that commercial social networking website, arising from the use by such website of the National Sex Offender Registry, may not be brought in any Federal or State court.*

*''(B) INTENTIONAL, RECKLESS, OR OTHER MISCONDUCT.—Subsection (a) shall not apply to a claim if the commercial social networking website, or a director, officer, employee, or agent of that commercial social networking website—*

*''(i) engaged in intentional misconduct; or*

*''(ii) acted, or failed to act—*

*''(I) with actual malice;*

*''(II) with reckless disregard to a substantial risk of causing injury without legal justification; or*

*''(III) for a purpose unrelated to the performance of any responsibility or function described in paragraph (3).*

*''(C) ORDINARY BUSINESS ACTIVITIES.—Subsection (a) shall not apply to an act or omission to act relating to an ordinary business activity of any commercial social networking website, including to any acts related to the general administration or operations of such website, the use of motor vehicles by employees or agents of such website, or any personnel management decisions of such websites.*

*''(D) MINIMIZING ACCESS.—A commercial social networking website shall minimize the number of employees that are provided access to the list of electronic mail addresses, instant message addresses, and other similar Internet identifiers of persons in the National Sex Offender Registry.*

*''(6) RULE OF CONSTRUCTION.—Nothing is this section shall be construed to require any Internet website, including a commercial social networking website, to compare its database of registered users with the list of electronic mail addresses, instant message addresses, and other similar Internet identifiers of persons in the National Sex Offender Registry, and no Federal or State liability, or any other actionable adverse consequence, shall be imposed on such website based on its decision not to compare its database with such list.''.*

**SEC. 4. DEFINITIONS.**

Section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911) [is amended—

[(1) in paragraph (7)(H), by striking the period and inserting the following: '', except that it shall not be necessary to show that the sexual conduct actually occurred or to offer proof that the defendant engaged in an act, other than use of the Internet to facilitate criminal sexual conduct involving a minor.''; and

[(2) by adding at the end the following:] *is amended by adding at the end the following:*

''(15) The term 'commercial social networking website' means a commercially operated Internet website that—

[''(A) allows users to create web pages or profiles that provide information about themselves and are available publicly or to other users; and]

*''(A) allows users, through the creation of web pages or profiles or by other means, to provide information about themselves that is available publicly or to other users; and*

''(B) offers a mechanism for communication with other users, such as a forum, chat room, electronic mail, or instant messenger.

[''(16) The term 'chat room' means any Internet website through which a number of users can communicate in real time via text and that allows messages to be almost immediately visible to all other users or to a designated segment of all other users.]

''(16) The term 'chat room' means any Internet service through which a number of users can communicate in real time so that communications are almost immediately available to all other users or to a designated segment of all other users.

''(17) The term 'Internet' has the meaning given that term in section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note).

''(18) The term 'electronic mail address' has the meaning given that term in section 3 of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (15 U.S.C. 7702).

''(19) The term 'instant message address' means an identifier that allows a person to [communication] *communicate* in real-time with another person using the Internet.''.

**SEC. 5.÷ CRIMINALIZATION OF AGE MISREPRESENTATION IN CONNECTION WITH ONLINE SOLICITATION OF A MINOR.**

Section 2252C of title 18, United States Code, is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(2) by inserting after subsection (b) the following:

[''(c) AGE MISREPRESENTATION.—Any person 18 years or older who knowingly misrepresents their age with the intent to use the Internet to engage in criminal sexual conduct involving a minor, or to facilitate or attempt such conduct, shall be fined under this title and imprisoned for not more than 20 years. Such penalty shall be in addition to any penalty pursuant to the laws of any jurisdiction for the crime of using the Internet to engage in criminal sexual conduct involving a minor, or to facilitate or attempt such conduct.''.]

*''(c) AGE OF MISREPRESENTATION.—Any person 18 years or older who knowingly misrepresents his or her age with the intent to use the Internet, to operate a facility, by mail, or by any other means of interstate or foreign commerce to engage in criminal sexual conduct involving a minor who is at least 4 years younger than the person engaging in such conduct, or to facilitate or attempt such conduct, shall be fined under this title and imprisoned for not more than 20 years. Such penalty shall be in addition to any penalty pursuant to the laws of any jurisdiction for the crime of using the Internet to engage in criminal sexual conduct involving a minor, or to facilitate or attempt such conduct.''.*

***SEC. 6. KNOWINGLY ACCESSING CHILD PORNOGRAPHY WITH THE INTENT TO WATCH CHILD PORNOGRAPHY.***

*(a) MATERIALS INVOLVING SEXUAL EXPLOITATION OF MINORS.—Section 2252(a)(4) of title 18, United States Code, is amended—*

*(1) in subparagraph (A), by inserting '', or knowingly accesses with intent to view,'' after ''possesses''; and*

*(2) in subparagraph (B), by inserting '', or knowingly accesses with intent to view,'' after ''possesses''.*

*(b) MATERIALS CONSTITUTING OR CONTAINING CHILD PORNOGRAPHY.—Section 2252A(a)(5) of title 18, United States Code, is amended—*

*(1) in subparagraph (A), by inserting '', or knowingly accesses with intent to view,'' after ''possesses''; and*

*(2) in subparagraph (B), by inserting '', or knowingly accesses with intent to view,'' after ''possesses''.*

***SEC. 7. CLARIFYING BAN OF CHILD PORNOGRAPHY.***

*(a) IN GENERAL.—Chapter 110 of title 18, United States Code, is amended—*

*(1) in section 2251—*

*(A) in each of subsections (a), (b), and (d), by inserting ''using any means or facility of interstate or foreign commerce or'' after ''be transported'';*

*(B) in each of subsections (a) and (b), by inserting ''using any means or facility of interstate or foreign commerce or'' after ''been transported''; and*

*(C) in subsection (d), by inserting ''using any means or facility of interstate or foreign commerce or'' after ''is transported'';*

*(2) in section 2251A(c), by inserting ''using any means or facility of interstate or foreign commerce or'' after ''or transported'';*

*(3) in section 2252(a)—*

*(A) in paragraph (1), by inserting ''using any means or facility of interstate or foreign commerce or'' after ''ships'';*

*(B) in paragraph (2)—*

*(i) by inserting ''using any means or facility of interstate or foreign commerce or'' after ''distributes, any visual depiction''; and*

*(ii) by inserting ''using any means or facility of interstate or foreign commerce or'' after ''depiction for distribution''; and*

*(C) in paragraph (4), by inserting ''using any means or facility of interstate or foreign commerce or'' after ''has been shipped or transported''; and*

*(4) in section 2252A(a)—*

*(A) in paragraph (1), by inserting ''using any means or facility of interstate or foreign commerce or'' after ''ships'';*

*(B) in paragraph (3), by inserting ''using any means or facility of interstate or foreign commerce or'' after ''mails, or'' each place it appears;*

*(C) in each of paragraphs (4) and (5), by inserting ''using any means or facility of interstate or foreign commerce or'' after ''has been mailed, or shipped or transported''; and*

*(D) in paragraph (6), by inserting ''using any means or facility of interstate or foreign commerce or'' after ''has been mailed, shipped, or transported''.*

*(b) AFFECTING INTERSTATE COMMERCE.—Chapter 110 of title 18, United States Code, is amended in each of sections 2251, 2251A, 2252, and 2252A, by striking ''in interstate'' each place it appears and inserting ''in or affecting interstate''.*

*(c) CERTAIN ACTIVITIES RELATING TO MATERIAL INVOLVING THE SEXUAL EXPLOITATION OF MINORS.—Section 2252(a)(3)(B) of title 18, United States Code, is amended by inserting '', shipped, or transported using any means or facility of interstate or foreign commerce'' after ''that has been mailed''.*

*(d) CERTAIN ACTIVITIES RELATING TO MATERIAL CONSTITUTING OR CONTAINING CHILD PORNOGRAPHY.—Section 2252A(a)(6)(C) of title 18, United States Code, is amended by striking ''or by transmitting'' and all that follows through ''by computer,'' and inserting ''or any means or facility of interstate or foreign commerce,''.*

Mr. KYL. Mr. President, I rise to say a few words about final passage of the KIDS Act, S. 431. This bill authorizes procedures for social networking Web sites to check whether a particular email address is registered to a sex offender. The bill also includes provisions that would make it an offense to use the Internet to lure a victim and then sexually assault her, that expand the jurisdictional predicates for the child-porn possession offenses, and that make it an offense to knowingly access child pornography on the Internet with the intent to view child pornography.

Section 7 of the bill, which expands the jurisdictional predicates for offenses relating to child pornography, is of particular interest to me. I offered this proposal as an amendment in the Judiciary Committee after it was informally proposed to me by the Justice Department. The proposal addresses a problem highlighted by *United States* v. *Schaefer*, 501 F.3d 1197, 10th Circuit 2007, which dismissed a conviction for receipt and possession of child pornography because the court found that proof that an image traveled over the Internet is not sufficient to prove that the image in question moved in interstate commerce. I understand that this ruling has had a substantial impact on prosecutions pertaining to sexually abusive images of children, particularly in the Tenth Circuit.

In Schaefer, the Tenth Circuit found that evidence that an image had traveled through servers in another State could prove that the image moved across State lines. Unfortunately, this conclusion provides little help for Federal prosecutions in the State of Colorado because the largest Internet service provider in Colorado maintains all of it servers in that State. Therefore, in Colorado it is extremely difficult to get the kind of evidence required by the Tenth Circuit's decision.

It is an irony of the Internet that the more that it grows, the harder that it is to prove that an image of child pornography crossed State lines. As in Colorado, many Internet service providers are setting up server farms across the United States, so it is harder to get the requisite evidence that the images moved through out-of-State servers. Additionally, with the advent of different ways of connecting to the Internet, such as wireless, broadband, and DSL, it can be harder to trace the route that an image took across the Internet. And with certain Internet-based technologies, such as instant messaging and peer-to-peer file sharing, it can be impossible to find out to whom or from where a defendant sent or received an image.

The child pornography statutes were enacted, for the most part, before Internet and cell phone technology existed. At the time the statutes were originally written, there were really only two ways to transport this contraband: by mailing it or by physically carrying it on one's person. The statutes were drafted accordingly. Now, however, because of technological developments, Federal laws pertaining to sexually abusive images of children simply do not reach all of the crimes they could under the Constitution.

Section 7 of the KIDS Act adds the words ''affecting interstate or foreign commerce'' and ''using a facility or means of interstate or foreign commerce'' to the child pornography laws, thereby employing maximum Federal power to proscribe child pornography. The primary advantage of the ''facility or means'' language is that it accurately reflects how sexually abusive images of children are traded today, which is to say, over the Internet and phone lines. The Supreme Court and courts of appeals have long recognized that the Internet and phones are facilities of interstate commerce, regardless of whether the actual transmission goes across State lines. Finally, the ''facility or means'' language tracks that in 18 U.S.C. §§ 1470 and 2422(b).

Thus there is already a body of case law to guide the drafting of jury instructions and statutory interpretation.

My second favorite provision in S. 431 is section 6, which makes it a crime to knowingly access child pornography with the intent to view child pornography. This proposal was brought to my attention by my colleague Senator VITTER, who persuaded me to offer it as an amendment in the Judiciary Committee. Like section 7, section 6 adapts our laws to address a new obstacle to child-pornography prosecutions that was created by changes in technology and that is exemplified by a recent court of appeals decision. The Vitter staff also provided me with the following Justice Department testimony, which explains the need for this provision and is worth quoting in full. It is the testimony of Larry Rothenberg, a Deputy Assistant Attorney General in the Justice Department's Office of Legal Policy, before the House Judiciary Committee on October 17 of last year:

18 U.S.C. §§ 2252 and 2252A currently criminalize various activities related to child pornography including transportation, trafficking, and possession. Some courts have narrowly interpreted (incorrectly, in our view) the definition of possession so that a person would not have violated the statute if he, for example, viewed images of child pornography on his computer but did not save them onto his disk drive. Even if, in his computer's ''temporary Internet cache,'' we have a record of his viewing the images, and thus proof that he accessed them on a website, under this narrow interpretation, he would not be guilty of violating the statute if he did not know that his temporary Internet cache automatically saved the images on his computer.

Two recent cases demonstrate the need for these changes. In *United States* v. *Teal*, No. 1:04–CR–00042–CCB–1 (D. Md., motion to dismiss granted Aug. 13, 2004), the Maryland U.S. Attorney's Office prosecuted Marvin Teal, a former administrative law judge who had prior convictions for sexually abusing children, for possession and attempted possession of child pornography based on his viewing child pornography at a public library in Baltimore, Maryland. Library police officers saw child pornography on the computer Teal was using, arrested him, and printed out the images that could be seen on the computer screen. Because there was no evidence that the defendant had himself downloaded or saved anything, the District Court dismissed the case. We chose not to appeal, given the state of the law and the facts of the case.

In *United States* v. *Kuchinski*, 469 F.3d 853 (9th Cir. 2006), the Ninth Circuit vacated and remanded the sentence of an offender found with between 15,120 and 19,000 separate images of child pornography on his computer on the basis that he did not know that they were in his Internet cache. The court stated, ''There is no question that the child pornography images were found on the computer's hard drive and that Kuchinski possessed the computer itself. Also, there is no doubt that he had accessed the web page that had those images somewhere upon it, whether he actually saw the images or not. What is in question is whether it makes a difference that, as far as this record shows, Kuchinski had no knowledge of the images that were simply in the cache files. It does.'' Of course we acknowledge the Ninth Circuit's authority to interpret the law this way. However, we think the court's distinction should not make a difference under the law.

Our proposal [which is identical to Section 6 of the KIDS Act] would correct these anomalies while protecting unsuspecting persons who unintentionally access child pornography from prosecution. Specifically, the bill would amend 18 U.S.C. § 2252(a)(4) and 18 U.S.C. § 2252A(a)(5) to criminalize not only possession of child pornography, but also ''knowingly accessing child pornography with the intent to view it.'' That is, a person would be liable to prosecution if he purposefully clicked on a link with the intent that when the link opened, he would view child pornography. It would therefore be a two-step test that the prosecution would have to satisfy—first, that he purposefully (that is, not accidentally) clicked the link, and, second, he did so with the intent that by clicking on the link child pornography would appear on his computer screen. This test would not be difficult to satisfy in the case of people who really did want to view child pornography. Extrinsic evidence—such as the name of the link, which would probably have terms indicating that it displayed child pornography, and payment for the images—would be used to prove the violation. But in the case of an ''innocent viewer'' who accidentally came across child pornography, the two-step proof would be his protection.

I would also like to express my appreciation to the sponsors of this bill for their willingness to work with the Justice Department to address technical concerns with the bill. It is particularly important that the bill has been modified to minimize conflict with the Justice Department's forthcoming guidelines for implementation of SORNA, which serve many of the same ends as the bill. Earlier versions of the KIDS Act used terminology inconsistent with that used in SORNA, unnecessarily required that sex offenders appear in person to report their e-mail addresses, did not clearly provide the Attorney General with discretion to screen out ill-intentioned users of the checking system, limited access to the checking system to only commercial websites, and unnecessarily restricted to only the SORNA database the sources on which the checking system may rely for Internet addresses. I am pleased to report that all of these problems will be corrected in the floor amendment for the bill. While these issues may seem like technicalities, had they not been addressed they would have degraded the utility of the checking system.

The committee-reported bill also appeared to limit existing programs for helping law enforcement and parents to determine whether the individual using a particular address is a sex offender. The final Senate bill includes a rule of construction that makes clear that the bill does not limit the Attorney General's preexisting authority to allow such searches. The final bill also includes a compromise on how the Attorney General and social networking Web sites may disseminate sex-offender e-mail addresses. The compromise is somewhat complicated and merits explanation. The bill still does bar the wholesale distribution to the general public of sex offenders' e-mail information contained in the system, and further requires that the AG limit how the social networking sites disseminate the information about individual offenders that such sites receive. I understand that some Senators expressed concern that such bulk distribution of offenders' e-mail addresses would make it possible for malicious individuals to identify individual offenders' e-mail addresses and use those addresses to harass an offender. Preventing the publication of lists of offenders' e-mail addresses also will prevent offenders from using the checking system to identify each other's e-mail addresses and communicate with each other. We should not allow the system's information about sex offenders' e-mail addresses to be used in this way. The bill creates a two-tiered limit on distribution of these e-mail addresses in proposed SORNA section 121(d)(4)(A) and (B). Subparagraph (A) bars bulk distribution of offenders' addresses contained in the system to the public at large, and subparagraph (B) further requires the AG to limit how social networking sites disseminate the information that they receive. Subparagraph (A) bars both the AG and the participating social-networking sites from disseminating lists of sex-offender e-mail information that are generated through the operation of the checking system unless the information is only given to a limited set of sources with a particular need for the information, as opposed to the public at large. It does not limit dissemination of information generated from other sources, but should substantially prevent the creation of bulk public lists of sex-offender e-mail information as a result of the operation of the checking system. Subparagraph (B) complements this provision by requiring the AG to regulate how participating social networking sites use the information that they receive. It is likely that some social-networking sites will come into possession of large amounts of sex-offender e-mail information as a result of their participation in this system. It is thus important that the AG see to it that those sites do not liberally disseminate such information in a way that would allow others to create bulk public lists of sex offenders' e-mail information. Although subparagraph (B) contains no specific mandate to the AG, I trust that he will apply this provision with this purpose in mind.

In addition, I would like to address two urgently-needed reforms to our Nation's child pornography laws that are not included in this bill, but that I hope to amend onto future legislation. We need tougher, mandatory penalties for possession of child pornography, and Congress needs to act to stiffen and expand penalties for electronic-communication service providers who fail to report the presence of child pornography on their systems. The case for both of these provisions is made in the Rothenberg testimony noted above, and I quote it in full:

[W]e urge Congress to establish a mandatory minimum sentence for possession of child pornography. This is crucial because too many people believe that child pornography is ''just pictures'' and is not ''a big deal.'' That is wrong. Each pornographic image of a child is the visual record of the sexual exploitation of that child. It is not just a picture. Every time that image is viewed, the child is violated once again. Moreover, the demand for such images is what fuels the physical violation of the children in these images in the first place. Possession of child pornography is victimization of a child and should be punished accordingly.

Unfortunately, since the Federal Sentencing Guidelines became advisory under the Supreme Court's decision in *United States* v. *Booker* the number of downward departures by judges in federal child pornography possession cases has increased. After enactment of the PROTECT Act of 2003, which restricted in various ways the authority of courts to make non-government-sponsored downward departures in sentences, the rate of non-government-sponsored below-range sentences for all offense types was about 5 percent. *See* United States Sentencing Commission, Final Report on the Impact of *United States* v. *Booker* on Federal Sentencing (March 2006), at p. 54, *available at* http://www.ussc.gov/booker_report/Booker_Report
.pdf. Following *Booker*, that rate jumped up to 12.5 percent. *Id*. at p. 47. For child pornography possession offenses, however, the rate of non-government-sponsored below-range sentences leapt to 26.3 percent, more than twice the average rate. *Id*. at p. 122. By way of comparison, for drug trafficking and firearms violations, the rate has increased to 12.8 percent and 15.2 percent, respectively, much closer to the average. *Id*. at table on page D–5.

The increase in non-government-sponsored, below-range sentences for possession offenses after *Booker* demonstrates the need for a mandatory minimum sentence for possession offenses. Establishing a two-year minimum sentence will be a warning to potential consumers of child pornography, prevent unwarranted downward departures, and forcefully express our revulsion at this type of material. This change is contained in section 201 of the Department's Violent Crime and Anti-Terrorism Act of 2007 and is included as section 201 of H.R. 3156, the Violent Crime Control Act of 2007.

Our second proposal would amend an existing law that requires certain providers of electronic communications services to report violations of the child pornography laws. Currently the law provides that a provider who knowingly and willfully fails to report the presence of child pornography images on its computer servers shall be subject to a criminal fine of up to $50,000 for the initial failure to report and $100,000 for each subsequent failure to report. Prosecutors and law enforcement sources report that this criminal provision has been virtually impossible to enforce because of the particular *mens rea* requirement and the low amount of the potential penalty. These impediments severely hinder the needed crackdown on the presence of child pornography on the Internet.

Our legislation would triple the criminal fines available for knowing and willful failures to report, making the available fines $150,000 for the initial violation and $300,000 for each subsequent violation.

Even more importantly, the legislation would add civil fines for *negligent* failure to report a child pornography offense. The civil penalty is set at $50,000 for the initial violation and $100,000 for each subsequent violation. The Federal Communications Commission would be provided with the authority to levy the civil fines under this section and to promulgate the necessary regulations, in consultation with the Attorney General, for imposing the fines and for providing an appropriate administrative review process.

These proposals would make it much more likely that service providers will exercise sound practices for weeding out child pornography. The images are out there, too often on commercial computer servers, and law enforcement needs to know about them to investigate and to prosecute the sexual predators who consume them. This amendment is contained in section 202 of the Department's Violent Crime and Anti-Terrorism Act of 2007 and in section 202 of H.R. 3156.

Finally, I would like to thank Preet Bharara and Lee Dunn, staffers to Senators SCHUMER and MCCAIN, respectively, who have worked tirelessly to see this bill through the Senate. S. 431 is a good bill, and I hope to see it enacted into law.

Mr. REID. I ask unanimous consent a Schumer amendment which is at the desk be agreed to, the committee amendments, as amended, be agreed to, the bill, as amended, be read a third time and passed, the motions to reconsider be laid upon the table with no intervening action or debate, and any statements be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 4798) was agreed to.

(The text of the amendment is printed in today's RECORD under ''Text of Amendments.'')

The committee amendments, as amended, were agreed to.

The bill (S. 431), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 431

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Keeping the Internet Devoid of Sexual Predators Act of 2008'' or the ''KIDS Act of 2008''.

**SEC. 2. REGISTRATION OF ONLINE IDENTIFIERS OF SEX OFFENDERS.**

(a) IN GENERAL.—Section 114(a) of the Sex Offender Registration and Notification Act (42 U.S.C. 16914(a)) is amended—

(1) by redesignating paragraphs (4) through (7) as paragraphs (5) through (8); and

(2) by inserting after paragraph (3) the following:

''(4) Any electronic mail address or other designation the sex offender uses or will use for self-identification or routing in Internet communication or posting.''.

(b) UPDATING OF INFORMATION.—Section 113(c) of the Sex Offender Registration and Notification Act (42 U.S.C. 16913(c)) is amended by adding at the end the following: ''The Attorney General shall have the authority to specify the time and manner for reporting of other changes in registration information, including any addition or change of an electronic mail address or other designation used for self-identification or routing in Internet communication or posting.''.

(c) FAILURE TO REGISTER ONLINE IDENTIFIERS.—Section 2250 of title 18, United States Code, is amended—

(1) in subsection (b), by inserting ''or (d)'' after ''subsection (a)''; and

(2) by adding at the end the following:

''(d) KNOWING FAILURE TO REGISTER ONLINE IDENTIFIERS.—Whoever—

''(1) is required to register under the Sex Offender Registration and Notification Act (42 U.S.C. 16901 et seq.); and

''(2) uses an email address or any other designation used for self-identification or routing in Internet communication or posting which the individual knowingly failed to provide for inclusion in a sex offender registry as required under that Act;

shall be fined under this title or imprisoned not more than 10 years, or both.''.

(d) CONFORMING AMENDMENT; DIRECTIVE TO UNITED STATES SENTENCING COMMISSION.—Section 141(b) of the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109–248; 120 Stat. 602) is amended by striking ''offense specified in subsection (a)'' and inserting ''offenses specified in subsections (a) and (d) of section 2250 of title 18, United States Code''.

**SEC. 3. CHECKING OF ONLINE IDENTIFIERS AGAINST SEX OFFENDER REGISTRATION INFORMATION.**

(a) PUBLIC ACCESS.—Section 118(b) of the Sex Offender Registration and Notification Act (42 U.S.C. 16918(b)) is amended—

(1) in paragraph (3), by striking ''and'' at the end;

(2) by redesignating paragraph (4) as paragraph (5); and

(3) by inserting after paragraph (3) the following:

''(4) any electronic mail address or designation used for self-identification or routing in Internet communication or posting; and''.

(b) ONLINE IDENTIFIER CHECKING SYSTEM FOR SOCIAL NETWORKING WEBSITES.—Section 121 of the Sex Offender Registration and Notification Act (42 U.S.C. 16921) is amended by adding at the end the following:

''(d) CHECKING SYSTEM FOR SOCIAL NETWORKING WEBSITES.—

''(1) IN GENERAL.—The Attorney General shall maintain a system available to social networking websites that permits the automated comparison of lists or databases of the electronic mail addresses and other designations used for self-identification or routing in Internet communication or posting of the registered users of such websites, to the corresponding information contained in or derived from sex offender registries.

''(2) QUALIFICATION FOR USE OF SYSTEM.—A social networking website seeking to use the system established under paragraph (1) shall submit an application to the Attorney General which provides—

''(A) the name and legal status of the website;

''(B) the contact information for the website;

''(C) a description of the nature and operations of the website;

''(D) a statement explaining why the website seeks to use the system; and

''(E) such other information or attestations as the Attorney General may require

to ensure that the website will use the system—

''(i) to protect the safety of the users of such website; and

''(ii) not for any unlawful or improper purpose.

''(3) SEARCHES AGAINST THE SYSTEM.—

''(A) IN GENERAL.—A social networking website approved to use the system established under paragraph (1) shall—

''(i) submit the information to be compared in a form satisfying the technical requirements for searches against the system; and

''(ii) pay any fee established by the Attorney General for use of the system.

''(B) FREQUENCY OF USE OF THE SYSTEM.—A social networking website approved by the Attorney General to use the system established under paragraph (1) may conduct searches under the system as frequently as the Attorney General may allow.

''(C) AUTHORITY OF AG TO SUSPEND USE.—The Attorney General may deny, suspend, or terminate use of the system by a social networking website that—

''(i) provides false information in its application for use of the system; or

''(ii) may be using or seeks to use the system for any unlawful or improper purpose.

''(4) LIMITATION ON RELEASE OF INTERNET IDENTIFIERS.—

''(A) NO PUBLIC RELEASE.—Neither the Attorney General nor a social networking website approved to use the system established under paragraph (1) may release to the public any list of the e-mail addresses or other designations used for self-identification or routing in Internet communication or posting of sex offenders contained in the system.

''(B) ADDITIONAL LIMITATIONS.—The Attorney General shall limit the release of information obtained through the use of the system established under paragraph (1) by social networking websites approved to use such system.

''(C) STRICT ADHERENCE TO LIMITATION.—The use of the system established under paragraph (1) by a social networking website shall be conditioned on the website's agreement to observe the limitations required under this paragraph.

''(D) RULE OF CONSTRUCTION.—This subsection shall not be construed to limit the authority of the Attorney General under any other provision of law to conduct or to allow searches or checks against sex offender registration information.

''(5) LIMITATION ON LIABILITY.—

''(A) IN GENERAL.—A civil claim against a social networking website, including any director, officer, employee, parent, or agent of that social networking website, arising from the use by such website of the National Sex Offender Registry, may not be brought in any Federal or State court.

''(B) INTENTIONAL, RECKLESS, OR OTHER MISCONDUCT.—Subsection (a) shall not apply to a claim if the social networking website, or a director, officer, employee, or agent of that social networking website—

''(i) engaged in intentional misconduct; or

''(ii) acted, or failed to act—

''(I) with actual malice;

''(II) with reckless disregard to a substantial risk of causing injury without legal justification; or

''(III) for a purpose unrelated to the performance of any responsibility or function described in paragraph (3).

''(C) ORDINARY BUSINESS ACTIVITIES.—Subsection (a) shall not apply to an act or omission to act relating to an ordinary business activity of any social networking website, including to any acts related to the general administration or operations of such website, the use of motor vehicles by employees or agents of such website, or any personnel management decisions of such websites.

''(D) MINIMIZING ACCESS.—A social networking website shall minimize the number of employees that are provided access to the list of electronic mail addresses, and other designations used for self-identification or routing in Internet communication or posting by persons in the National Sex Offender Registry.

''(6) RULE OF CONSTRUCTION.—Nothing is this section shall be construed to require any Internet website, including a social networking website, to compare its database of registered users with the list of electronic mail addresses and other designations used for self-identification or routing in Internet communication or posting by persons in the National Sex Offender Registry, and no Federal or State liability, or any other actionable adverse consequence, shall be imposed on such website based on its decision not to compare its database with such list.''.

**SEC. 4. DEFINITIONS.**

Section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911) is amended by adding at the end the following:

''(15) The term 'social networking website' means an Internet website that—

''(A) allows users, through the creation of web pages or profiles or by other means, to provide information about themselves that is available publicly or to other users; and

''(B) offers a mechanism for communication with other users.

''(16) The term 'Internet' has the meaning given that term in section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note).

''(17) The term 'electronic mail address' has the meaning given that term in section 3 of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (15 U.S.C. 7702).''.

**SEC. 5. CRIMINALIZATION OF AGE MISREPRESENTATION IN CONNECTION WITH ONLINE SOLICITATION OF A MINOR.**

Section 2422 of title 18, United States Code, is amended by adding at the end the following:

''(c) MISREPRESENTATION OF AGE.—Whoever knowingly misrepresents his or her age using the Internet or any other facility or means of interstate or foreign commerce or the mail, with the intent to further or facilitate a violation of this section, shall be fined under this title and imprisoned not more than 20 years. A sentence imposed under this subsection shall be in addition and consecutive to any sentence imposed for the offense the age misrepresentation was intended to further or facilitate.''.

**SEC. 6. KNOWINGLY ACCESSING CHILD PORNOGRAPHY WITH THE INTENT TO VIEW CHILD PORNOGRAPHY.**

(a) MATERIALS INVOLVING SEXUAL EXPLOITATION OF MINORS.—Section 2252(a)(4) of title 18, United States Code, is amended—

(1) in subparagraph (A), by inserting '', or knowingly accesses with intent to view,'' after ''possesses''; and

(2) in subparagraph (B), by inserting '', or knowingly accesses with intent to view,'' after ''possesses''.

(b) MATERIALS CONSTITUTING OR CONTAINING CHILD PORNOGRAPHY.—Section 2252A(a)(5) of title 18, United States Code, is amended—

(1) in subparagraph (A), by inserting '', or knowingly accesses with intent to view,'' after ''possesses''; and

(2) in subparagraph (B), by inserting '', or knowingly accesses with intent to view,'' after ''possesses''.

**SEC. 7. CLARIFYING BAN OF CHILD PORNOGRAPHY.**

(a) IN GENERAL.—Chapter 110 of title 18, United States Code, is amended—

(1) in section 2251—

(A) in each of subsections (a), (b), and (d), by inserting ''using any means or facility of interstate or foreign commerce or'' after ''be transported'';

(B) in each of subsections (a) and (b), by inserting ''using any means or facility of interstate or foreign commerce or'' after ''been transported'';

(C) in subsection (c), by striking ''computer'' each place that term appears and inserting ''using any means or facility of interstate or foreign commerce''; and

(D) in subsection (d), by inserting ''using any means or facility of interstate or foreign commerce or'' after ''is transported'';

(2) in section 2251A(c), by inserting ''using any means or facility of interstate or foreign commerce or'' after ''or transported'';

(3) in section 2252(a)—

(A) in paragraph (1), by inserting ''using any means or facility of interstate or foreign commerce or'' after ''ships'';

(B) in paragraph (2)—

(i) by inserting ''using any means or facility of interstate or foreign commerce or'' after ''distributes, any visual depiction''; and

(ii) by inserting ''using any means or facility of interstate or foreign commerce or'' after ''depiction for distribution'';

(C) in paragraph (3)—

(i) by inserting ''using any means or facility of interstate or foreign commerce'' after ''so shipped or transported''; and

(ii) by striking ''by any means,''; and

(D) in paragraph (4), by inserting ''using any means or facility of interstate or foreign commerce or'' after ''has been shipped or transported''; and

(4) in section 2252A(a)—

(A) in paragraph (1), by inserting ''using any means or facility of interstate or foreign commerce or'' after ''ships'';

(B) in paragraph (2), by inserting ''using any means or facility of interstate or foreign commerce'' after ''mailed, or'' each place it appears;

(C) in paragraph (3), by inserting ''using any means or facility of interstate or foreign commerce or'' after ''mails, or'' each place it appears;

(D) in each of paragraphs (4) and (5), by inserting ''using any means or facility of interstate or foreign commerce or'' after ''has been mailed, or shipped or transported''; and

(E) in paragraph (6), by inserting ''using any means or facility of interstate or foreign commerce or'' after ''has been mailed, shipped, or transported''.

(b) AFFECTING INTERSTATE COMMERCE.—Chapter 110 of title 18, United States Code, is amended in each of sections 2251, 2251A, 2252, and 2252A, by striking ''in interstate'' each place it appears and inserting ''in or affecting interstate''.

(c) CERTAIN ACTIVITIES RELATING TO MATERIAL INVOLVING THE SEXUAL EXPLOITATION OF MINORS.—Section 2252(a)(3)(B) of title 18, United States Code, is amended by inserting '', shipped, or transported using any means or facility of interstate or foreign commerce'' after ''that has been mailed''.

(d) CERTAIN ACTIVITIES RELATING TO MATERIAL CONSTITUTING OR CONTAINING CHILD PORNOGRAPHY.—Section 2252A(a)(6)(C) of title 18, United States Code, is amended by striking ''or by transmitting'' and all that follows through ''by computer,'' and inserting ''or any means or facility of interstate or foreign commerce,''.

## RECOGNIZING THE 100TH BIRTHDAY OF LYNDON BAINES JOHNSON

Mr. REID. I ask unanimous consent that the Senate now proceed to S. Res. 571.