

105<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# **H. R. 3783**

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## **AN ACT**

To amend the Communications Act of 1934 to require persons who are engaged in the business of distributing, by means of the World Wide Web, material that is harmful to minors to restrict access to such material by minors, and for other purposes.

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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 “Child Online Protec-  
5 tion Act”.

6 **TITLE I—PROTECTION FROM**  
7 **MATERIAL THAT IS HARMFUL**  
8 **TO MINORS**

9 **SEC. 101. CONGRESSIONAL FINDINGS.**

10 The Congress finds that—

11 (1) while custody, care, and nurture of the child  
12 resides first with the parent, the widespread avail-  
13 ability of the Internet presents opportunities for mi-  
14 nors to access materials through the World Wide  
15 Web in a manner that can frustrate parental super-  
16 vision or control;

17 (2) the protection of the physical and psycho-  
18 logical well-being of minors by shielding them from  
19 materials that are harmful to them is a compelling  
20 governmental interest;

21 (3) to date, while the industry has developed in-  
22 novative ways to help parents and educators restrict  
23 material that is harmful to minors through parental  
24 control protections and self-regulation, such efforts  
25 have not provided a national solution to the problem

1 of minors accessing harmful material on the World  
2 Wide Web;

3 (4) a prohibition on the distribution of material  
4 harmful to minors, combined with legitimate de-  
5 fenses, is currently the most effective and least re-  
6 strictive means by which to satisfy the compelling  
7 government interest; and

8 (5) notwithstanding the existence of protections  
9 that limit the distribution over the World Wide Web  
10 of material that is harmful to minors, parents, edu-  
11 cators, and industry must continue efforts to find  
12 ways to protect children from being exposed to  
13 harmful material found on the Internet.

14 **SEC. 102. REQUIREMENT TO RESTRICT ACCESS BY MINORS**  
15 **TO MATERIALS COMMERCIALY DISTRIB-**  
16 **UTED BY MEANS OF THE WORLD WIDE WEB**  
17 **THAT ARE HARMFUL TO MINORS.**

18 Part I of title II of the Communications Act of 1934  
19 (47 U.S.C. 201 et seq.) is amended by adding at the end  
20 the following new section:

21 **“SEC. 231. RESTRICTION OF ACCESS BY MINORS TO MATE-**  
22 **RIALS COMMERCIALY DISTRIBUTED BY**  
23 **MEANS OF WORLD WIDE WEB THAT ARE**  
24 **HARMFUL TO MINORS.**

25 **“(a) REQUIREMENT TO RESTRICT ACCESS.—**

1           “(1) PROHIBITED CONDUCT.—Whoever know-  
2           ingly and with knowledge of the character of the ma-  
3           terial, in interstate or foreign commerce by means of  
4           the World Wide Web, makes any communication for  
5           commercial purposes that is available to any minor  
6           and that includes any material that is harmful to  
7           minors shall be fined not more than \$50,000, im-  
8           prisoned not more than 6 months, or both.

9           “(2) INTENTIONAL VIOLATIONS.—In addition to  
10          the penalties under paragraph (1), whoever inten-  
11          tionally violates such paragraph shall be subject to  
12          a fine of not more than \$50,000 for each violation.  
13          For purposes of this paragraph, each day of viola-  
14          tion shall constitute a separate violation.

15          “(3) CIVIL PENALTY.—In addition to the pen-  
16          alties under paragraphs (1) and (2), whoever vio-  
17          lates paragraph (1) shall be subject to a civil penalty  
18          of not more than \$50,000 for each violation. For  
19          purposes of this paragraph, each day of violation  
20          shall constitute a separate violation.

21          “(b) INAPPLICABILITY OF CARRIERS AND OTHER  
22          SERVICE PROVIDERS.—For purposes of subsection (a), a  
23          person shall not be considered to make any communication  
24          for commercial purposes to the extent that such person  
25          is—

1           “(1) a telecommunications carrier engaged in  
2 the provision of a telecommunications service;

3           “(2) a person engaged in the business of pro-  
4 viding an Internet access service;

5           “(3) a person engaged in the business of pro-  
6 viding an Internet information location tool; or

7           “(4) similarly engaged in the transmission,  
8 storage, retrieval, hosting, formatting, or translation  
9 (or any combination thereof) of a communication  
10 made by another person, without selection or alter-  
11 ation of the content of the communication, except  
12 that such person’s deletion of a particular commu-  
13 nication or material made by another person in a  
14 manner consistent with subsection (c) or section 230  
15 shall not constitute such selection or alteration of  
16 the content of the communication.

17           “(c) AFFIRMATIVE DEFENSE.—

18           “(1) DEFENSE.—It is an affirmative defense to  
19 prosecution under this section that the defendant, in  
20 good faith, has restricted access by minors to mate-  
21 rial that is harmful to minors—

22                   “(A) by requiring use of a credit card,  
23 debit account, adult access code, or adult per-  
24 sonal identification number;

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

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

5           “(2) PROTECTION FOR USE OF DEFENSES.—No  
6           cause of action may be brought in any court or ad-  
7           ministrative agency against any person on account  
8           of any activity that is not in violation of any law  
9           punishable by criminal or civil penalty, and that the  
10          person has taken in good faith to implement a de-  
11          fense authorized under this subsection or otherwise  
12          to restrict or prevent the transmission of, or access  
13          to, a communication specified in this section.

14          “(d) PRIVACY PROTECTION REQUIREMENTS.—

15                 “(1) DISCLOSURE OF INFORMATION LIMITED.—  
16                 A person making a communication described in sub-  
17                 section (a)—

18                         “(A) shall not disclose any information col-  
19                         lected for the purposes of restricting access to  
20                         such communications to individuals 17 years of  
21                         age or older without the prior written or elec-  
22                         tronic consent of—

23                                 “(i) the individual concerned, if the  
24                                 individual is an adult; or

1                   “(ii) the individual’s parent or guard-  
2                   ian, if the individual is under 17 years of  
3                   age; and

4                   “(B) shall take such actions as are nec-  
5                   essary to prevent unauthorized access to such  
6                   information by a person other than the person  
7                   making such communication and the recipient  
8                   of such communication.

9                   “(2) EXCEPTIONS.—A person making a com-  
10                  munication described in subsection (a) may disclose  
11                  such information if the disclosure is—

12                   “(A) necessary to make the communication  
13                   or conduct a legitimate business activity related  
14                   to making the communication; or

15                   “(B) made pursuant to a court order au-  
16                   thorizing such disclosure.

17                  “(e) DEFINITIONS.—For purposes of this subsection,  
18                  the following definitions shall apply:

19                   “(1) BY MEANS OF THE WORLD WIDE WEB.—  
20                   The term ‘by means of the World Wide Web’ means  
21                   by placement of material in a computer server-based  
22                   file archive so that it is publicly accessible, over the  
23                   Internet, using hypertext transfer protocol or any  
24                   successor protocol.



1           “(2) COMMERCIAL PURPOSES; ENGAGED IN THE  
2 BUSINESS.—

3           “(A) COMMERCIAL PURPOSES.—A person  
4 shall be considered to make a communication  
5 for commercial purposes only if such person is  
6 engaged in the business of making such com-  
7 munications.

8           “(B) ENGAGED IN THE BUSINESS.—The  
9 term ‘engaged in the business’ means that the  
10 person who makes a communication, or offers  
11 to make a communication, by means of the  
12 World Wide Web, that includes any material  
13 that is harmful to minors, devotes time, atten-  
14 tion, or labor to such activities, as a regular  
15 course of such person’s trade or business, with  
16 the objective of earning a profit as a result of  
17 such activities (although it is not necessary that  
18 the person make a profit or that the making or  
19 offering to make such communications be the  
20 person’s sole or principal business or source of  
21 income). A person may be considered to be en-  
22 gaged in the business of making, by means of  
23 the World Wide Web, communications for com-  
24 mercial purposes that include material that is  
25 harmful to minors, only if the person knowingly

1 causes the material that is harmful to minors to  
2 be posted on the World Wide Web or knowingly  
3 solicits such material to be posted on the World  
4 Wide Web.

5 “(3) INTERNET.—The term ‘Internet’ means  
6 the combination of computer facilities and electro-  
7 magnetic transmission media, and related equipment  
8 and software, comprising the interconnected world-  
9 wide network of computer networks that employ the  
10 Transmission Control Protocol/Internet Protocol or  
11 any successor protocol to transmit information.

12 “(4) INTERNET ACCESS SERVICE.—The term  
13 ‘Internet access service’ means a service that enables  
14 users to access content, information, electronic mail,  
15 or other services offered over the Internet, and may  
16 also include access to proprietary content, informa-  
17 tion, and other services as part of a package of serv-  
18 ices offered to consumers. Such term does not in-  
19 clude telecommunications services.

20 “(5) INTERNET INFORMATION LOCATION  
21 TOOL.—The term ‘Internet information location tool’  
22 means a service that refers or links users to an on-  
23 line location on the World Wide Web. Such term in-  
24 cludes directories, indices, references, pointers, and  
25 hypertext links.

1           “(6) MATERIAL THAT IS HARMFUL TO MI-  
2           NORS.—The term ‘material that is harmful to mi-  
3           nors’ means any communication, picture, image,  
4           graphic image file, article, recording, writing, or  
5           other matter of any kind that is obscene or that—

6                   “(A) the average person, applying contem-  
7                   porary community standards, would find, taking  
8                   the material as a whole and with respect to mi-  
9                   nors, is designed to appeal to, or is designed to  
10                  pander to, the prurient interest;

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

17                  “(C) taken as a whole, lacks serious lit-  
18                  erary, artistic, political, or scientific value for  
19                  minors.

20           “(7) MINOR.—The term ‘minor’ means any per-  
21           son under 17 years of age.”.

22 **SEC. 103. NOTICE REQUIREMENT.**

23           (a) NOTICE.—Section 230 of the Communications  
24           Act of 1934 (47 U.S.C. 230) is amended—

1           (1) in subsection (d)(1), by inserting “or 231”  
2           after “section 223”;

3           (2) by redesignating subsections (d) and (e) as  
4           subsections (e) and (f), respectively; and

5           (3) by inserting after subsection (c) the follow-  
6           ing new subsection:

7           “(d) OBLIGATIONS OF INTERACTIVE COMPUTER  
8           SERVICE.—A provider of interactive computer service  
9           shall, at the time of entering an agreement with a cus-  
10          tomer for the provision of interactive computer service and  
11          in a manner deemed appropriate by the provider, notify  
12          such customer that parental control protections (such as  
13          computer hardware, software, or filtering services) are  
14          commercially available that may assist the customer in  
15          limiting access to material that is harmful to minors. Such  
16          notice shall identify, or provide the customer with access  
17          to information identifying, current providers of such pro-  
18          tections.”.

19          (b) CONFORMING AMENDMENT.—Section 223(h)(2)  
20          of the Communications Act of 1934 (47 U.S.C. 223(h)(2))  
21          is amended by striking “230(e)(2)” and inserting  
22          “230(f)(2)”.

1 **SEC. 104. STUDY BY COMMISSION ON ONLINE CHILD PRO-**  
2 **TECTION.**

3 (a) **ESTABLISHMENT.**—There is hereby established a  
4 temporary Commission to be known as the Commission  
5 on Online Child Protection (in this section referred to as  
6 the “Commission”) for the purpose of conducting a study  
7 under this section regarding methods to help reduce access  
8 by minors to material that is harmful to minors on the  
9 Internet.

10 (b) **MEMBERSHIP.**—The Commission shall be com-  
11 posed of 19 members, as follows:

12 (1) **INDUSTRY MEMBERS.**—The Commission  
13 shall include—

14 (A) 2 members who are engaged in the  
15 business of providing Internet filtering or block-  
16 ing services or software;

17 (B) 2 members who are engaged in the  
18 business of providing Internet access services;

19 (C) 2 members who are engaged in the  
20 business of providing labeling or ratings serv-  
21 ices;

22 (D) 2 members who are engaged in the  
23 business of providing Internet portal or search  
24 services;

1 (E) 2 members who are engaged in the  
2 business of providing domain name registration  
3 services;

4 (F) 2 members who are academic experts  
5 in the field of technology; and

6 (G) 4 members who are engaged in the  
7 business of making content available over the  
8 Internet.

9 Of the members of the Commission by reason of  
10 each subparagraph of this paragraph, an equal num-  
11 ber shall be appointed by the Speaker of the House  
12 of Representatives and by the Majority Leader of  
13 the Senate.

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

16 (A) The Assistant Secretary (or the Assist-  
17 ant Secretary's designee).

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

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

22 (c) STUDY.—

23 (1) IN GENERAL.—The Commission shall con-  
24 duct a study to identify technological or other meth-  
25 ods that—

1 (A) will help reduce access by minors to  
2 material that is harmful to minors on the Inter-  
3 net; and

4 (B) may meet the requirements for use as  
5 affirmative defenses for purposes of section  
6 231(c) of the Communications Act of 1934 (as  
7 added by this Act).

8 Any methods so identified shall be used as the basis  
9 for making legislative recommendations to the Con-  
10 gress under subsection (d)(3).

11 (2) SPECIFIC METHODS.—In carrying out the  
12 study, the Commission shall identify and analyze  
13 various technological tools and methods for protect-  
14 ing minors from material that is harmful to minors,  
15 which shall include (without limitation)—

16 (A) a common resource for parents to use  
17 to help protect minors (such as a “one-click-  
18 away” resource);

19 (B) filtering or blocking software or serv-  
20 ices;

21 (C) labeling or rating systems;

22 (D) age verification systems;

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

1 (F) any other existing or proposed tech-  
2 nologies or methods for reducing access by mi-  
3 nors to such material.

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

7 (A) the cost of such technologies and  
8 methods;

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

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

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

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

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

21 (d) REPORT.—Not later than 1 year after the enact-  
22 ment of this Act, the Commission shall submit a report  
23 to the Congress containing the results of the study under  
24 this section, which shall include—



1           (1) a description of the technologies and meth-  
2           ods identified by the study and the results of the  
3           analysis of each such technology and method;

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

7           (3) recommendations for legislative or adminis-  
8           trative actions to implement the conclusions of the  
9           committee; and

10          (4) a description of the technologies or methods  
11          identified by the study that may meet the require-  
12          ments for use as affirmative defenses for purposes of  
13          section 231(c) of the Communications Act of 1934  
14          (as added by this Act).

15          (e) STAFF AND RESOURCES.—The Assistant Sec-  
16          retary for Communication and Information of the Depart-  
17          ment of Commerce shall provide to the Commission such  
18          staff and resources as the Assistant Secretary determines  
19          necessary for the Commission to perform its duty effi-  
20          ciently and in accordance with this section.

21          (f) TERMINATION.—The Commission shall terminate  
22          30 days after the submission of the report under sub-  
23          section (d).

1 (g) INAPPLICABILITY OF FEDERAL ADVISORY COM-  
2 MITTEE ACT.—The Federal Advisory Committee Act (5  
3 U.S.C. App.) shall not apply to the Commission.

4 **SEC. 105. EFFECTIVE DATE.**

5 This title and the amendments made by this title  
6 shall take effect 30 days after the date of enactment of  
7 this Act.

8 **TITLE II—CHILDREN’S ONLINE**  
9 **PRIVACY PROTECTION**

10 **SEC. 201. DEFINITIONS.**

11 In this title:

12 (1) CHILD.—The term “child” means an indi-  
13 vidual under the age of 13.

14 (2) OPERATOR.—The term “operator” means  
15 any person operating a website on the World Wide  
16 Web or any online service for commercial purposes,  
17 including any person offering products or services  
18 for sale through that website or online service, in-  
19 volving commerce—

20 (A) among the several States or with 1 or  
21 more foreign nations;

22 (B) in any territory of the United States  
23 or in the District of Columbia, or between any  
24 such territory and—

25 (i) another such territory; or

1 (ii) any State or foreign nation; or

2 (C) between the District of Columbia and  
3 any State, territory, or foreign nation.

4 For purposes of this title, the term “operator” does  
5 not include any non-profit entity that would other-  
6 wise be exempt from coverage under section 5 of the  
7 Federal Trade Commission Act (15 U.S.C. 45).

8 (3) COMMISSION.—The term “Commission”  
9 means the Federal Trade Commission.

10 (4) DISCLOSURE.—The term “disclosure”  
11 means, with respect to personal information—

12 (A) the release of personal information col-  
13 lected from a child in identifiable form by an  
14 operator for any purpose, except where such in-  
15 formation is provided to a person other than  
16 the operator who provides support for the inter-  
17 nal operations of the website and does not dis-  
18 close or use that information for any other pur-  
19 pose; and

20 (B) making personal information collected  
21 from a child by a website or online service di-  
22 rected to children or with actual knowledge that  
23 such information was collected from a child,  
24 publicly available in identifiable form, by any

1 means including by a public posting, through  
2 the Internet, or through—

- 3 (i) a home page of a website;
- 4 (ii) a pen pal service;
- 5 (iii) an electronic mail service;
- 6 (iv) a message board; or
- 7 (v) a chat room.

8 (5) FEDERAL AGENCY.—The term “Federal  
9 agency” means an agency, as that term is defined  
10 in section 551(1) of title 5, United States Code.

11 (6) INTERNET.—The term “Internet” means  
12 collectively the myriad of computer and tele-  
13 communications facilities, including equipment and  
14 operating software, which comprise the inter-  
15 connected world-wide network of networks that em-  
16 ploy the Transmission Control Protocol/Internet  
17 Protocol, or any predecessor or successor protocols  
18 to such protocol, to communicate information of all  
19 kinds by wire or radio.

20 (7) PARENT.—The term “parent” includes a  
21 legal guardian.

22 (8) PERSONAL INFORMATION.—The term “per-  
23 sonal information” means individually identifiable  
24 information about an individual collected online, in-  
25 cluding—

- 1 (A) a first and last name;
- 2 (B) a home or other physical address in-
- 3 cluding street name and name of a city or town;
- 4 (C) an e-mail address;
- 5 (D) a telephone number;
- 6 (E) a Social Security number;
- 7 (F) any other identifier that the Commis-
- 8 sion determines permits the physical or online
- 9 contacting of a specific individual; or
- 10 (G) information concerning the child or the
- 11 parents of that child that the website collects
- 12 online from the child and combines with an
- 13 identifier described in this paragraph.

14 (9) VERIFIABLE PARENTAL CONSENT.—The

15 term “verifiable parental consent” means any rea-

16 sonable effort (taking into consideration available

17 technology), including a request for authorization for

18 future collection, use, and disclosure described in the

19 notice, to ensure that a parent of a child receives no-

20 tice of the operator’s personal information collection,

21 use, and disclosure practices, and authorizes the col-

22 lection, use, and disclosure, as applicable, of per-

23 sonal information and the subsequent use of that in-

24 formation before that information is collected from

25 that child.

1           (10) WEBSITE OR ONLINE SERVICE DIRECTED  
2 TO CHILDREN.—

3           (A) IN GENERAL.—The term “website or  
4 online service directed to children” means —

5                   (i) a commercial website or online  
6 service that is targeted to children; or

7                   (ii) that portion of a commercial  
8 website or online service that is targeted to  
9 children.

10           (B) LIMITATION.—A commercial website  
11 or online service, or a portion of a commercial  
12 website or online service, shall not be deemed  
13 directed to children solely for referring or link-  
14 ing to a commercial website or online service di-  
15 rected to children by using information location  
16 tools, including a directory, index, reference,  
17 pointer, or hypertext link.

18           (11) PERSON.—The term “person” means any  
19 individual, partnership, corporation, trust, estate, co-  
20 operative, association, or other entity.

21           (12) ONLINE CONTACT INFORMATION.—The  
22 term “online contact information” means an e-mail  
23 address or another substantially similar identifier  
24 that permits direct contact with a person online.

1 **SEC. 202. REGULATION OF UNFAIR AND DECEPTIVE ACTS**  
2 **AND PRACTICES IN CONNECTION WITH THE**  
3 **COLLECTION AND USE OF PERSONAL INFOR-**  
4 **MATION FROM AND ABOUT CHILDREN ON**  
5 **THE INTERNET.**

6 (a) ACTS PROHIBITED.—

7 (1) IN GENERAL.—It is unlawful for an opera-  
8 tor of a website or online service directed to chil-  
9 dren, or any operator that has actual knowledge that  
10 it is collecting personal information from a child, to  
11 collect personal information from a child in a man-  
12 ner that violates the regulations prescribed under  
13 subsection (b).

14 (2) DISCLOSURE TO PARENT PROTECTED.—  
15 Notwithstanding paragraph (1), neither an operator  
16 of such a website or online service nor the operator's  
17 agent shall be held to be liable under any Federal  
18 or State law for any disclosure made in good faith  
19 and following reasonable procedures in responding to  
20 a request for disclosure of personal information  
21 under subsection (b)(1)(B)(iii) to the parent of a  
22 child.

23 (b) REGULATIONS.—

24 (1) IN GENERAL.—Not later than 1 year after  
25 the date of the enactment of this Act, the Commis-

1 sion shall promulgate under section 553 of title 5,  
2 United States Code, regulations that—

3 (A) require the operator of any website or  
4 online service directed to children that collects  
5 personal information from children or the oper-  
6 ator of a website or online service that has ac-  
7 tual knowledge that it is collecting personal in-  
8 formation from a child—

9 (i) to provide notice on the website of  
10 what information is collected from children  
11 by the operator, how the operator uses  
12 such information, and the operator's dis-  
13 closure practices for such information; and

14 (ii) to obtain verifiable parental con-  
15 sent for the collection, use, or disclosure of  
16 personal information from children;

17 (B) require the operator to provide, upon  
18 request of a parent whose child has provided  
19 personal information to that website or online  
20 service—

21 (i) a description of the specific types  
22 of personal information collected from the  
23 child by that operator;

24 (ii) notwithstanding any other provi-  
25 sion of law, the opportunity at any time to



1           refuse to permit the operator’s further use  
2           or maintenance in retrievable form, or fu-  
3           ture online collection, of personal informa-  
4           tion on that child; and

5                   (iii) a means that is reasonable under  
6           the circumstances for the parent to obtain  
7           any personal information collected from  
8           that child;

9           (C) prohibit conditioning a child’s partici-  
10          pation in a game, the offering of a prize, or an-  
11          other activity on the child disclosing more per-  
12          sonal information than is reasonably necessary  
13          to participate in such activity;

14                  (D) require the operator of such a website  
15          or online service to establish and maintain rea-  
16          sonable procedures to protect the confidential-  
17          ity, security, and integrity of personal informa-  
18          tion collected from children; and

19                  (E) permit the operator of such a website  
20          or online service to collect, use, and disseminate  
21          such information as is necessary—

22                          (i) to protect the security or integrity  
23                          of its website;

24                          (ii) to take precautions against liabil-  
25                          ity;

1 (iii) to respond to judicial process;

2 and

3 (iv) to provide information to law en-  
4 forcement agencies or for an investigation  
5 on a matter related to public safety.

6 (2) WHEN CONSENT NOT REQUIRED.—Verifi-  
7 able parental consent under paragraph (1)(A)(ii) is  
8 not required in the case of—

9 (A) online contact information collected  
10 from a child that is used only to respond di-  
11 rectly on a one-time basis to a specific request  
12 from the child and is not used to recontact the  
13 child and is not maintained in retrievable form  
14 by the operator;

15 (B) a request for the name or online con-  
16 tact information of a parent or child that is  
17 used for the sole purpose of obtaining parental  
18 consent or providing notice under this section  
19 and where such information is not maintained  
20 in retrievable form by the operator if parental  
21 consent is not obtained after a reasonable time;

22 (C) online contact information collected  
23 from a child that is used only to respond more  
24 than once directly to a specific request from the

1 child and is not used to recontact the child be-  
2 yond the scope of that request—

3 (i) if, before any additional response  
4 after the initial response to the child, the  
5 operator uses reasonable efforts to provide  
6 a parent notice of the online contact infor-  
7 mation collected from the child, the pur-  
8 poses for which it is to be used, and an op-  
9 portunity for the parent to request that the  
10 operator make no further use of the infor-  
11 mation and that it not be maintained in re-  
12 trievable form; or

13 (ii) without notice to the parent in  
14 such circumstances as the Commission  
15 may determine are appropriate, taking into  
16 consideration the benefits to the child of  
17 access to information and services, and  
18 risks to the security and privacy of the  
19 child, in regulations promulgated under  
20 this subsection; or

21 (D) the name of the child and online con-  
22 tact information (to the extent necessary to  
23 protect the safety of a child participant in the  
24 site)—

1 (i) used only for the purpose of pro-  
2 tecting such safety;

3 (ii) not used to recontact the child or  
4 for any other purpose; and

5 (iii) not disclosed on the site,

6 if the operator uses reasonable efforts to pro-  
7 vide a parent notice of the name and online  
8 contact information collected from the child, the  
9 purposes for which it is to be used, and an op-  
10 portunity for the parent to request that the op-  
11 erator make no further use of the information  
12 and that it not be maintained in retrievable  
13 form.

14 (c) ENFORCEMENT.—Subject to sections 203 and  
15 205, a violation of a regulation prescribed under sub-  
16 section (a) shall be treated as a violation of a rule defining  
17 an unfair or deceptive act or practice prescribed under sec-  
18 tion 18(a)(1)(B) of the Federal Trade Commission Act  
19 (15 U.S.C. 57a(a)(1)(B)).

20 (d) INCONSISTENT STATE LAW.—No State or local  
21 government may impose any liability for commercial ac-  
22 tivities or actions by operators in interstate or foreign  
23 commerce in connection with an activity or action de-  
24 scribed in this title that is inconsistent with the treatment  
25 of those activities or actions under this section.

1 **SEC. 203. SAFE HARBORS.**

2 (a) GUIDELINES.—An operator may satisfy the re-  
3 quirements of regulations issued under section 202(b) by  
4 following a set of self-regulatory guidelines, issued by rep-  
5 resentatives of the marketing or online industries, or by  
6 other persons, approved under subsection (b).

7 (b) INCENTIVES.—

8 (1) SELF-REGULATORY INCENTIVES.—In pre-  
9 scribing regulations under section 202, the Commis-  
10 sion shall provide incentives for self-regulation by  
11 operators to implement the protections afforded chil-  
12 dren under the regulatory requirements described in  
13 subsection (b) of that section.

14 (2) DEEMED COMPLIANCE.—Such incentives  
15 shall include provisions for ensuring that a person  
16 will be deemed to be in compliance with the require-  
17 ments of the regulations under section 202 if that  
18 person complies with guidelines that, after notice  
19 and comment, are approved by the Commission upon  
20 making a determination that the guidelines meet the  
21 requirements of the regulations issued under section  
22 202.

23 (3) EXPEDITED RESPONSE TO REQUESTS.—The  
24 Commission shall act upon requests for safe harbor  
25 treatment within 180 days of the filing of the re-

1       quest, and shall set forth in writing its conclusions  
2       with regard to such requests.

3       (c) APPEALS.—Final action by the Commission on a  
4 request for approval of guidelines, or the failure to act  
5 within 180 days on a request for approval of guidelines,  
6 submitted under subsection (b) may be appealed to a dis-  
7 trict court of the United States of appropriate jurisdiction  
8 as provided for in section 706 of title 5, United States  
9 Code.

10 **SEC. 204. ACTIONS BY STATES.**

11       (a) IN GENERAL.—

12           (1) CIVIL ACTIONS.—In any case in which the  
13 attorney general of a State has reason to believe  
14 that an interest of the residents of that State has  
15 been or is threatened or adversely affected by the  
16 engagement of any person in a practice that violates  
17 any regulation of the Commission prescribed under  
18 section 202(b), the State, as *parens patriae*, may  
19 bring a civil action on behalf of the residents of the  
20 State in a district court of the United States of ap-  
21 propriate jurisdiction to—

22                   (A) enjoin that practice;

23                   (B) enforce compliance with the regulation;

1 (C) obtain damage, restitution, or other  
2 compensation on behalf of residents of the  
3 State; or

4 (D) obtain such other relief as the court  
5 may consider to be appropriate.

6 (2) NOTICE.—

7 (A) IN GENERAL.—Before filing an action  
8 under paragraph (1), the attorney general of  
9 the State involved shall provide to the Commis-  
10 sion—

11 (i) written notice of that action; and

12 (ii) a copy of the complaint for that  
13 action.

14 (B) EXEMPTION.—

15 (i) IN GENERAL.—Subparagraph (A)  
16 shall not apply with respect to the filing of  
17 an action by an attorney general of a State  
18 under this subsection, if the attorney gen-  
19 eral determines that it is not feasible to  
20 provide the notice described in that sub-  
21 paragraph before the filing of the action.

22 (ii) NOTIFICATION.—In an action de-  
23 scribed in clause (i), the attorney general  
24 of a State shall provide notice and a copy  
25 of the complaint to the Commission at the

1 same time as the attorney general files the  
2 action.

3 (b) INTERVENTION.—

4 (1) IN GENERAL.—On receiving notice under  
5 subsection (a)(2), the Commission shall have the  
6 right to intervene in the action that is the subject  
7 of the notice.

8 (2) EFFECT OF INTERVENTION.—If the Com-  
9 mission intervenes in an action under subsection(a),  
10 it shall have the right—

11 (A) to be heard with respect to any matter  
12 that arises in that action; and

13 (B) to file a petition for appeal.

14 (3) AMICUS CURIAE.—Upon application to the  
15 court, a person whose self-regulatory guidelines have  
16 been approved by the Commission and are relied  
17 upon as a defense by any defendant to a proceeding  
18 under this section may file amicus curiae in that  
19 proceeding.

20 (c) CONSTRUCTION.—For purposes of bringing any  
21 civil action under subsection (a), nothing in this title shall  
22 be construed to prevent an attorney general of a State  
23 from exercising the powers conferred on the attorney gen-  
24 eral by the laws of that State to—

25 (1) conduct investigations;



1 (2) administer oaths or affirmations; or

2 (3) compel the attendance of witnesses or the  
3 production of documentary and other evidence.

4 (d) ACTIONS BY THE COMMISSION.—In any case in  
5 which an action is instituted by or on behalf of the Com-  
6 mission for violation of any regulation prescribed under  
7 section 202, no State may, during the pendency of that  
8 action, institute an action under subsection (a) against  
9 any defendant named in the complaint in that action for  
10 violation of that regulation.

11 (e) VENUE; SERVICE OF PROCESS.—

12 (1) VENUE.—Any action brought under sub-  
13 section (a) may be brought in the district court of  
14 the United States that meets applicable require-  
15 ments relating to venue under section 1391 of title  
16 28, United States Code.

17 (2) SERVICE OF PROCESS.—In an action  
18 brought under subsection (a), process may be served  
19 in any district in which the defendant—

20 (A) is an inhabitant; or

21 (B) may be found.

22 **SEC. 205. ADMINISTRATION AND APPLICABILITY OF ACT.**

23 (a) IN GENERAL.—Except as otherwise provided, this  
24 title shall be enforced by the Commission under the Fed-  
25 eral Trade Commission Act (15 U.S.C. 41 et seq.).

1 (b) PROVISIONS.—Compliance with the requirements  
2 imposed under this title shall be enforced under—

3 (1) section 8 of the Federal Deposit Insurance  
4 Act (12 U.S.C. 1818), in the case of—

5 (A) national banks, and Federal branches  
6 and Federal agencies of foreign banks, by the  
7 Office of the Comptroller of the Currency;

8 (B) member banks of the Federal Reserve  
9 System (other than national banks), branches  
10 and agencies of foreign banks (other than Fed-  
11 eral branches, Federal agencies, and insured  
12 State branches of foreign banks), commercial  
13 lending companies owned or controlled by for-  
14 eign banks, and organizations operating under  
15 section 25 or 25(a) of the Federal Reserve Act  
16 (12 U.S.C. 601 et seq. and 611 et. seq.), by the  
17 Board; and

18 (C) banks insured by the Federal Deposit  
19 Insurance Corporation (other than members of  
20 the Federal Reserve System) and insured State  
21 branches of foreign banks, by the Board of Di-  
22 rectors of the Federal Deposit Insurance Cor-  
23 poration;

24 (2) section 8 of the Federal Deposit Insurance  
25 Act (12 U.S.C. 1818), by the Director of the Office

1 of Thrift Supervision, in the case of a savings asso-  
2 ciation the deposits of which are insured by the Fed-  
3 eral Deposit Insurance Corporation;

4 (3) the Federal Credit Union Act (12 U.S.C.  
5 1751 et seq.) by the National Credit Union Adminis-  
6 tration Board with respect to any Federal credit  
7 union;

8 (4) part A of subtitle VII of title 49, United  
9 States Code, by the Secretary of Transportation  
10 with respect to any air carrier or foreign air carrier  
11 subject to that part;

12 (5) the Packers and Stockyards Act, 1921 (7  
13 U.S.C. 181 et. seq.) (except as provided in section  
14 406 of that Act (7 U.S.C. 226, 227)), by the Sec-  
15 retary of Agriculture with respect to any activities  
16 subject to that Act; and

17 (6) the Farm Credit Act of 1971 (12 U.S.C.  
18 (2001 et seq.) by the Farm Credit Administration  
19 with respect to any Federal land bank, Federal land  
20 bank association, Federal intermediate credit bank,  
21 or production credit association.

22 (c) EXERCISE OF CERTAIN POWERS.—For the pur-  
23 pose of the exercise by any agency referred to in sub-  
24 section (a) of its powers under any Act referred to in that  
25 subsection, a violation of any requirement imposed under

1 this title shall be deemed to be a violation of a requirement  
2 imposed under that Act. In addition to its powers under  
3 any provision of law specifically referred to in subsection  
4 (a), each of the agencies referred to in that subsection may  
5 exercise, for the purpose of enforcing compliance with any  
6 requirement imposed under this title, any other authority  
7 conferred on it by law.

8 (d) ACTIONS BY THE COMMISSION.—The Commis-  
9 sion shall prevent any person from violating a rule of the  
10 Commission under section 202 in the same manner, by  
11 the same means, and with the same jurisdiction, powers,  
12 and duties as though all applicable terms and provisions  
13 of the Federal Trade Commission Act (15 U.S.C. 41 et  
14 seq.) were incorporated into and made a part of this title.  
15 Any entity that violates such rule shall be subject to the  
16 penalties and entitled to the privileges and immunities  
17 provided in the Federal Trade Commission Act in the  
18 same manner, by the same means, and with the same ju-  
19 risdiction, power, and duties as though all applicable terms  
20 and provisions of the Federal Trade Commission Act were  
21 incorporated into and made a part of this title.

22 (e) EFFECT ON OTHER LAWS.—Nothing contained in  
23 this title shall be construed to limit the authority of the  
24 Commission under any other provisions of law.

1 **SEC. 206. REVIEW.**

2 Not later than 5 years after the effective date of the  
3 regulations initially issued under section 202, the Commis-  
4 sion shall—

5 (1) review the implementation of this title, in-  
6 cluding the effect of the implementation of this title  
7 on practices relating to the collection and disclosure  
8 of information relating to children, children’s ability  
9 to obtain access to information of their choice online,  
10 and on the availability of websites directed to chil-  
11 dren; and

12 (2) prepare and submit to Congress a report on  
13 the results of the review under paragraph (1).

14 **SEC. 207. EFFECTIVE DATE.**

15 Sections 202(a), 204, and 205 of this title take effect  
16 on the later of—

17 (1) the date that is 18 months after the date  
18 of enactment of this Act; or

19 (2) the date on which the Commission rules on  
20 the first application for safe harbor treatment under  
21 section 203 if the Commission does not rule on the  
22 first such application within one year after the date  
23 of enactment of this Act, but in no case later than

1 the date that is 30 months after the date of enact-  
2 ment of this Act.

Passed the House of Representatives October 7,  
1998.

Attest:

*Clerk.*