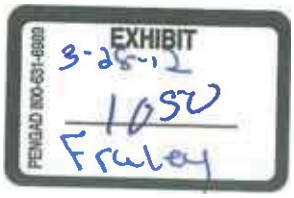
EXHIBIT P

Angel Frolicker

Profile
Wall
Photos
Videos
Friends
Notes
Events
Messages

Aaron Briggs
Aaron Bronow
Aaron Hendrickson
Aaron Seemer
Abi Ludwig
Adam Prometheus
Adam Rappaport
Adele Jerista
Adrian Lipp
Adrian Scharfetter
Adrian Wolf
Akaleka OwlEye
Alana Cini
Aleah Robbins
Alex Mogilevsky
Alexandria Peacock
Alisha Leviten
Alison Park Douglas
Alistair Economakis
Allen Stein
Allie Terrill
Alonzo Holt
Alyssa Royse
Amanda Muir Bearden
Amelia FullOf Grace
Amy Joiner
Amy Palmer
Amy Sellers
Ana Roman
Anastazia Louise
Andie Francoeur
Andras Jones
Andrea Brooks
Andrew J. Tomafsky
Andrew Norton Webber
Andrew Patrick
Andrew SeaMonster
Andrew Sell
Andrew Sorkin
Andrew Splatinum Luck
Andy Everywhere
Andy Zadrozny
Angel Latterell
Angel Welter



Angelina Paloma Severance
Animus Pax
Ann Petrich Sloper
Annah Summers
Anthony Poff
Anthony Wade
Antoniya Ivanova
Argent Lloyd
Ari Joshua
Ariella Shuster
Armitage Shanks
Art Butler
Art Willeau
Arthur Crow
Arturo Rene Rodriguez
Ashley Jordan
Ashley Ross
Atacan Conduroglu
Aumelina Delasiete
Aurora Camille
Ayse Senturk
Balou De La Rosa
Barak Lightning
Barbara Crummins
Baron von Schmitman
Barry Brumitt
Barry Plunker Adams
Bass Drop Washington
Bauble Bob
Becky Kosowski
Becky Robbins
Ben Dion
Ben Kaufman
Ben Rapson
Ben Reagan
Benjamin Lee
Benoit Chanas
Berry Fraley
Beth Dodrill
Bill Irving
Blue Morpheus
Bond Aster
Boom Boom L'Roux
Bosque Forest
Brad Bantel
Brad DeGraf
Brad McCray
Brad Olsen

Bradley Ehrlich
Brandi Morang
Brandon Bozzi
Brandon Lacy
Brandon Rickert
Brannon Ceradsky
Breckenridge Cartwright
Brennan Halterman
Brent Cardwell
Brent Fall
Brent Williamson
Brian Cisneros
Brian Demeerleer
Brian Enoch
Brian Fey
Brian Halpern
Brian Hamblen
Brian Hargis
Brian M. Wise
Brian McGalvern
Brian Parks
Brian Plotnik
Briar Bates
Brite Lite
Brock Hanson
Brooke Sidelinger
Brooklin Kayce
Brooks Cole
Bruce Beeley
Bruce Cameron
Bruce Singleton
Bruce Virginia Haedt
Bryan Brewer
Bryce Mathern
Buddy Foley
Bunny Faja
Buttercup White
Callie Fultz
Candace McNaughton
Candy Owens Anderson
Cara Ford
Carla Delgado
Carla Merrell
Carlos Pecciotto
Carlton Ward
Carly Aniluk
Carly Slater
Carrie Barroll

Carrie Lanza
Carrie Sellar
Casey Dailey
Cat Koehn
Cathy Oryx Fairbanks
Cayetana San Segundo
Celestine Angeline
Celia Marti Herrera
Chad Soto
Chani Durkin
Chantrelle Johanson
Char Easter
Charlie Herrick
Chavon Rose
Cheri Rae
Chivito Cowa
Chloe E Davenport
Chris Christopher
Chris Clark
Chris Daly
Chris Givens
Chris Goforth
Chris Haddad
Chris Kozura
Chris Morris
Christian Jacobsen
Christian Lange
Christine OzzyGirl Wheeler
Christine Schwartz
Christopher Ball
Christopher Chapman
Christopher Curtis
Christopher Rugh
Christy Coates Green
Chrrisstopher Canty
Chryseph Honeybear
Citrus OnthePlaya
CJ Powell
CJ Stone
Clarice Hughes
Clayton Hibbert
Cleo Wolfus
Cliff Goodman
Clover Jarl
Cody Evans
Cody Strauss
Cole Rheal
Commitment Lebel Israel

Compass Noce
Connor Cunliffe
Corey Samuels
Corey W. Sutton
Corprew Reed
Costumes Period
Courtney Bruch
Cracker Mann
Craig Brooke-Weiss
Craig Norberg
Craig Stone
Cree Undolia
Cristy Thomas
Cyn Taylor
Cyndi Boss
Cynthia De Moss
Dalia Topelson
Dan McComb
Dan TheMan Corcoran
Dana Stream
DanceHer IsLove
Dane Ballard
Daniel Cardenas
Daniel Chaim Robbins
Daniel Hay
Daniel Hughes
Daniel J. Callicoat
Daniel Jaeger
Daniel Pinchbeck
Daniel Talsky
Danielle Inghram
Danielle Shearer
Danika Murphy
Danni Keller
Danny Berg
Danny Small
Danny Welsh
Daphna Stein
Daphne Lowe
Dara Ayres
Darla Rewers
Dave Diem Martinez
Dave LeClair
Dave Patterson
Dave Quinn
David Amdal
David Benham
David Braut

David Brunn
David D. Mordekhov
David Delgado
David Grider
David Gross
David Harrison Singleton
David Hodgkins
David Holloway
David Hunt
David J Burger
David Julian
David Keeler
David Lee Poe Jr
David Lerner
David Lockhart
David Marine
David Merwin
David P Best
David Parker
David Pierre-Louis
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Dawn Bustanoby
Dawn Lake
Dawn Sternstein
Dbtabasco Mills
Deana Keys-Lane
Deborah Barnes
Dennis Lee
Deobrat Mishra
Diane Tchakirides
Dimitri Kieffer
Dinesh Sharma
Don Hutton
Donna Ann
Donovan Lavergne
Dorian Dyer
Dorian Graham Muncey
Doris O'Connor
Doug Everywhere
Doug Sims
Douglas Frederick
Dragonfly Watson
Duchess OfMagick

Dunieska Dunka
Dustin Coad
Ed Antkowiak
Edward Shively
Egan Orion
Elena Wat
Eli Muir
Elijah Farrell
Elizabeth Hazlett Porter
Elkini Annapurna Niceling
Ella Rose
Elle Charlesworth
ellery baines
Elvis Titus
Elyse Kane
Em Alla Sevol
Emerald-City Mike
Emilia Kallock
Emily Lauderback
Emily M. Wilson
Emma Lavin
Endearment LadyDear
Enrico Ambrosetti
Epic Loot Guild
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Erin Hilleary
Erin Lafferty
Erin Momany
Erin Pimm
Ernie Edmondson
Ernie Troisi
Espresso Buzz
Et'han Clarkmoore
Etsy Goldstreet
Eugene Bobukh
Eva Luna
Evan Flory-Barnes
Evan Marc Bartholomew
Everett Keithcart
Eytan Hanig

Fabrice Van Putten
Finian McLonergan
Foret Schafer
Francis Sisti
Frankie Giorlando
Franz Loewenherz
Freeman Fly
Freewil Mitchell
FrenchBurners BurningMan France
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Garrett Kelly
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Geo Glyphiks
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Geoff Silver
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Georgette Crush
Gina Burger
Glenn Battin
Gordy Thomas
Grace Stahre
Greg Holloway
Greg Lundgren
Greg Turner
Gregg Prescott
Gregory AlongsideYou Monk
Gus Clark
Gwen Williams
Ha Na Alb
Hal Saperstein
Haley Corriell
Haley George
Hannah Mandala
Heather 'Muse' Rouge
Heather Backues
Heather Catlin Hopkins
Heather K. Taylor
Heather Lambert
Heather Nichols
Heather Ralph
Heather Rouge

Heather Swift
Heidi Jo
Heidi Mae
Hendrik VanRensburg
Hernan Savastano
Heronemo Sheppard
Holly Lane
Honey Badger
Hoosier Pixie
Ian Lord
Igor Peev
Ilen Halogram
Ilya Makedon
Indie Banditas Bazaar
Indigo King
Ines Andrade
Infinite Milam
Ingrid Berry
Iron Monkeys
Isaac Cotec
Ivan Cockrum
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Jacob Aman
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Jacob Caldwell
Jacob Sayles
Jade Nowakowski
Jae Dances
Jaesa Papillon
Jaie Kat
Jake Bartholomy
James Cosgrove
James Crespinel
James Guerci
James R Lathrop
James Szalay
James T Cosgrove
James Van Eaton
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Jana Sorsen
Jana Szabo
Janea Waage
Janet Chieh

Japhet Koteen
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Jason Hinrichs
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Jeffrey Crow
Jeffrey Grossman
Jeffrey Toce
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Jenica Sherman
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Jennifer Hammontree
Jennifer Hill
Jennifer Jo Clark Singleton
Jennifer Keys
Jennifer Manlowe
Jennifer Soderberg
Jenny Brunz Holmes
Jenstar Davis
Jeremiah Smith
Jeremy Beledeiko
Jeremy Derks
Jeremy Faludi
Jeremy Jernigan
Jerimiah Ham
Jerod Kytah
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Jesse Kocher
Jessica Bessette
Jessica Lenard Appolonia
Jessica Rosa

Jibran Bisharat
Jim Carey
Jim Jordan
Jim Jordan
Jim Simmons
Jimmy Gaydos
JoAnna Forwell
Joanna Gentili
Jocelyne Hershey
Joe Dawson
Joe Pemberton
Joel Schlekewey
Joelle Robinson
Joey Gale
Joey Stanker
John Blatt
John Caterpiller
John Cornicello
John Frederick Ames
John Gronquist
John Hames
John Harris
John Jensen
John Lalonde
John Mark
John Michael
John Nichols
John Santelle
John Sockwell
Johnny Gilland
Johnny Rotten
Jon Alexander
Jon Elizondo
Jon Milazzo
Jon Ramer
Jon Taylor
Jonathan Dubman
Jonathan Jaffe
Jonathan Moga
Jonathan Rucker
Jonathan Ryan
Jonathan Weisblatt
Jonathon Moulton
Jordan Hannah
Jordan Schwartz
Jorge Nieves-Rodriguez
Jose Luis Rodriguez
Joseph Byus

Joseph Hellstern
Joseph Lahdenpera Sheedy
Josephine Silverwolf
Josh Larsen
Joshua Katcher
Joshua Mattson
Josie Elizabeth Davis
Joy Bird
Joy Brooke Fairfield
Joy Shumaker
Joyce B. Dudley
João Gabriel Nazareth Amorim
Jules Strong
Juli Adams
Julia Logan Trimarco
Julia Olivia Wharton
Julian Juju Skonberg
Julian Klappenbach
Julie Ann Claybaugh
Julie Riviere
Julie Vithoulkas
Jun Akutsu
Just Sage
Justin Burnett
Justin Jezewski
Justin Melchizadek Holt
Justin Primm
Kadeejah E Streets
Kamala Chambers
Kandyce Crandall
Karen Sloane
Karin Armbrust
Karin Reed
Karina Beeler
Kat O'Sullivan
Kat Smith
Katha Dalton
Kathleen Barnett
Kathy Kim
Katie Lake
Katja Jacob
Katrina Blum
Katrina McCoy
Kay Morrison
Keegan Holden
Keiku Whittier
Keith McGrew
Keith Zang

Kellie Knight
Kelly Roberts
Kelsey Keitges
Ken Poirier
Kenny Ramer
Kenny Telesco
Keridwyn Deller
Kerry Bischoff
Kevin Cook
Kevin Kostelnik
Kevin Long
Kevin MacDonald
Kevin Wanamaker
Kevin Wrenn
Kieran McManus
Kim Larsen
Kimberley Dietemann
Kimberly Jepson
Kimo Muraki
Kiran Notez
Kirsten Mohan
Kriistiin Foss
Kris Hocking
Krista Gurko
Kristen Humphries
Kristen M Vennes
Kristina Kokonis
Kristina Tina Ferry
Kristina Tova Ramer
Kristine Battey
Kriyanna Chimera
Kroydan Kraig Chalem
Ksenia Anske
Kyle LiveN'love
Kyle Rene
Kym Spencer
L Steven 'Sieden
Lance B Young
Lansing Scott
Lara Feltin
Lara Schneider
Lari Peterson
Larry Swanson
Lars Liden
Laughy Mclaugherson
Laura Baumwall
Laura Lamb
Laura Prince

Laura Silverton
Lawrence Genette
Leah Cotler Grossman
Leah Shawn
Lee Morgan
Lee Sandra Robinson
Leianna Love Boley
Leila Dawn
Leo Dirac
Leo Schmidt
Leon Janssen
Lesley Fireweed Gering
Leslie Berman
Leslie Rosen
Leslie Wagenheim
Lily S
Linda Lebellula
Linda Sahlin
Lisa DeMars
Lisa Hammerle
Lisa Jones
Lisa M Harrison
Lisa Mantchev
Lisa Thornhill Richman
Lisa Valent
Lison Smilee
Liz Spain
Liz Tunnell
Lloyd Megan Norton
Loraine Puryear
Lorien Stormfeather
Louisa McCuskey
Lucius Gregory Meredith
Luke Dorsey
Luke Zonka
Lux X. Xul
Lynn Bentley
Lynn Di Nino
Lynne Bruning
Mac McGowan
Mack Moore
Mackenzie Tremblay
Madisun Avenue
Maile Bush
Maizey Holtrop
Maja Zavaljevski
Manita Holtrop
Manuela Horn

Maoquai Chang
Marco Zonka
Mardi Gras Seattle
Maren Patterson
Margit Anderson
Marguerite Lynch
Maria Tiffin
Marianne Dudley
Marie Eye
Marina McDonagh
Marisa Eleni
Marissa Lynne Baratian
Marji Friedmann
Mark Blobfish
Mark Cooper
Mark Dalton
Mark Fry
Mark Lacas
Mark Mcburney
Mark McFly
Mark Novak
Mark Scarboro
Mark Sundlie
Markus Welcker
Marshall Carter
Marta Smith
Martha Early
Martin A. Totusek
Martin Dinn
Martin Pleasant
Martin Toutonghi
Marty Cornfed Moose
Mary Anderson
Mary Enslow
Mary O'Hara
Masha Novak
Matt Cone
Matt Conlon
Matt Freedman
Matt Jones
Matt Jones
Matt Touchette
Matthew Bollen
Matthew Cherkasky
Matthew Edward Hayward
Matthew Louis Senechal
Maura Starr
Maureen Langston

Maureen McCann Goldsmith
Maureen TigerLily Thompson
Max Icon Riggs
Max Igan
Maxx Destrukt Sundquist
Maya Fitzdare
Meagan Lowe
Meg Norris
Megan Damofle
Megan Roe
Mel Sky
Melissa Rowton
Melissa Willoughby
Mellington Leilani Cartwright
Mercedes Carrabba
Mercedes Schmitt
Meredith Edmondson Bowman
Meschel Wallace
Michael Ake
Michael Backues
Michael Herder
Michael Holden
Michael Hyatt
Michael Manahan
Michael Maricle
Michael Mars Riel
Michael Mundy
Michael Paschal
Michael Raven
Michael Suzerris
Michael Tokarz
Michael Tyka
Michele Halfhill
Michelle Agee Sutherland
Miguel Edwards
Miguel Vigil
Miguelito Pelon
Mike Begley
Mike Borozdin
Mike Dotson
Mike Rineer
Mikhail Koulikov
Mikol S
Mindy Arkin Spicer
Miranda Marks
Misty Montaigne
Mixi Plizik

Molly Anderson
Molly M Murphy
Molly Maloney
Molly Morena Meggyesy
Monica Cavagnaro
Monica Gutweis Porter
Monica Schierbaum
Morgan Hammer
Morgan Markowitz
Muvment Lighting
Myles Huddart
Mylinda Sneed
Nadav Nahari
Nadja Haldimann
Naomi Ferrara
Natalia Powers
Natasha Kudashkina
Natasha Leshinsky
Nathan Haneysmith
Nathan Messer
Nathan Salmon
Nathan Tice
Nathan Vetter
Neal Jones
Neda Vaseghi
Neil Crummett
Nicholas Blenkush
Nick Reagan
Nicolas Chanas
Nina Grigoreva
Nina Holmstrom
Nina Von Feldmann
Nityia Przewlocki
Noah Iliinsky
Noah Israel
Noah Wheat
Noam J Gundle
Nona Battistella
Nora Carria
Noreen Shinohara
NorthStar MacKeane
Nova Tron
Nu KlezmerArmy
Ocf Photo-Guy
Ola Czechowska
Oliver Lange
Olivier Bonin MadnomadFilms
Oshadagea Emrys Gosselin
Osiris Indriya

Osiris Indriya
Owm O'Laughlin
Pamela Dales
Pano Kroko
Pat Barbour
Patrick Baudisch
Patrick Girgen
Patrick Kerr
Patrick LiveN'love Haenelt
Patrick McKenny
Patrick Rebar
Patrick Roper
Patty Killian
Paul Barclay
Paul C Campbell
Paul Carlson
Paul Cheoketen Wagner
Paul Dizzyhips Blair
Paul Frett
Paul Haugland
Paul Nyhart
Paul Ross
Paul Sardoch
Paul Sockwell
Paul Trebach
Paula 'Sugar' Fagioli
Paula Sabine Foster
Perry Simpson
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Peter Saxon
Peter Smith
Peter T. Brown
Peter Toms
Phil Landress
Phil Naranjo
Philip Cartwright
Phillip Reay
Pinky Vargas
Pixie Callan
Priscilla Farnsworth
Priscilla Zal
Rachel Ramseur
Rafe Pearlman
Rain Phutureprimitive
Raja Hologram
Rajeev Sudhakar
Ramez Naam
Randy Engstrom

Randy Engstrom
Randy Garbrick
Randy Graham
Randy James
Raven Hutchinson
Ravin Pierre
Raya Tani
Re-bar Seattle
Rebecca Barnett McKinney
Rebecca Bullard
Rebecca Gould
Rebecca Kempe
Regina Tackett Johanns
Reid Heimbeck
Renee Foshee Roberts
Renée Hope
Rex Elliott
Rey Green Ows
Rhea Kulikova
Rhonda Bailey
Riain Callahan
Rich Britton
Richard Bailey
Richard D. Titus
Richard Olason
Rick Levine
Robb Seattle
Robbie Lambert
Robby Hamilton
Robert Allen
Robert Bengtson
Robert Braxton
Robert Cooksey
Robert MacKusick
Robert Strauss
Robin Merritt
Robin West
Robyn Lynn
Rodman Miller
Roman Villagrana
Ron Gilchrist
Rosanne Harriott
Rose Michelle Quick
Rose Robinson
Ross Aroni
Rowan Burkam
Royal Robes
Ruben Ortega
Rudy Uemae

Rudy Harper
Russ Nabare
Ruvane Richman
Ryan Henry Ward
Ryan Teague Hurley
Ryan Trudeau
Ryan Wren Barret
Sabrina L. Matson
Sabrina Matson
Sadee Whip
[redacted]
Saksiri Kridakara
Salim Matt Gras
Sallah Ali Lkc
Sam Lee
Sam O'Hara
Sam Scharf
Sam Trout
Samantha Lamb
Samantha Melissa
Samantha Paxton
Sandra Keller
Sandy Broberg
Sandy Campbell
Sara Cpthl Longley
Sara L. Moore
Sara McChristian
Sara Rubin
Sarah Belle
Sarah Howard
Sarah Lucy Miller
Sarah Marie Johnson
Sarah Takako Skinner
Sasha Leshinsky
Sassi Frass
Satori Laurel
[redacted]
Scot Robinson
Scott Clark Nielsen
Scott Dodson
Scott Haapala
Scott Lipsky
Scott McBride
Scott Northrop
Scott Pauker
Scott Walker
Scottie Swafford
Sean Draine

Sean Jinjarni
Sean Pohtilla
Seattle Pub-Crawl Bunnarchy
Sebastiàn Lange
Segovia Bader
Segue Fischlin III
Selena Forward
Sequoia Anahata
Serge Gubelman
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Shado Norstegaard
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Shakti Parvati
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Shawn Smith
Sheena Aneja
Shelley Cowan
Shelly Farnham
Shelly Simmons Kirk
Shepherd Griffin
Sheri Herndon
Sherry Is Dancing
Sidney Ji
Sierra Tajen
Simon Henneman
Simon Neale
Simon Winder
Solaris DaWay
Soleil Hepner
Sonia Telesco
Sonya Conn Hiltner
Starborne Shows
Steampunk Exhibition Ball
Stephanie Earls
Stephanie Tilston
Stephen Salyer
Steve Barta
Steve Cervenak
Steve Chambers
Steven Bradford
Steven Rogge
Steven Sheev Ray Davis
Steven Wayne
Stuart Prado
Stuart Zobel
Sufi Moon

Sumit Flux Basu
Sunflower Love
SuperGeek League
Susan Baxter
Susan Harper
Susan Pizzazz Bratton
Susan Rubens
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Sweet Chris Bell (chrisbell@f2mail.com)
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T. Quan Pemberton
T.R. Morris
Tab McNabb
Talyaa Liera
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Ted Lockery
Teddy Drake
Teresa Stanker
Theresa Collins
Theron McCollough
Thomas Arthur Hiltner
Thomas Londero
Thomas Michael Peterson
Thomas Park
Thor Mjolnir
Tiberio Simone
Tiffany Markey
Tim Holley
Tim Newsom
Tim Sherer
Timothy Lassley
Todd Hanson
Todd Osborn
Todd Ripley
Todd Stafne
Todd Tee
Tom Hobson
Toni Kohn
Toni Petrinovich
Tony Bone
Tony Nolley
Tor Dietrichson
Traeger Evans
Travis Baron
Travis Morin
Travis Winn

Tricia C. Petersen
Trisha Laroue
Tristan Venture
Tumbling Tumbleweed
Ubong Ikpe
Vala Dawn Stevenson
Van Hernan
Vega Ray
Venita Ramirez
Veronica Fernmoss
Vicki Spears Lofty
Vicki Young
Victoria Alexandra Sasha Petrosyan
Victory Lonnquist
Vincent Villuis
Virginia Kirn
Waid Sainvil
Waid's House
Warren Austin Leyh
Wayo Hogan
Web Head
Westley Hooper
Will Sugg
William De Richter Heintz
William Farmer
William Fulton
William Lyon
Willow Danelle
Wise Choice
Xeno Santos
Yan Leshinsky
Yani Wood
Yevgeniy Lars
Yolanda Aguirre
Yuriko Miyamoto
Yvette Soler
Yvonne Snyder
Zan Edson
Zanetha Matisse
Ze Angel
Zen Taliesin

EXHIBIT Q

II

105TH CONGRESS
2D SESSION

S. 2326

To require the Federal Trade Commission to prescribe regulations to protect the privacy of personal information collected from and about children on the Internet, to provide greater parental control over the collection and use of that information, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 17, 1998

Mr. BRYAN (for himself and Mr. MCCAIN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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A BILL

To require the Federal Trade Commission to prescribe regulations to protect the privacy of personal information collected from and about children on the Internet, to provide greater parental control over the collection and use of that information, and for other purposes.

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 ''Children's Online Privacy Protection Act of 1998''.

SEC. 2. DEFINITIONS.

In this Act:

(1) CHILD.—The term ''child'' means an individual under the age of 16.

(2) CHILDREN.—The term ''children'' means more than 1 child.

(3) COMMERCIAL WEBSITE OPERATOR.—The term ''commercial website operator'' means any person operating a website on the World Wide Webs for commercial purposes, including any person offering products or services for sale though that website, involving commerce—

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

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

(i) and another such territory; or

(ii) and any State or foreign nation; or

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

(4) COMMISSION.—The term ''Commission'' means the Federal Trade Commission.

(5) DISCLOSURE.—The term ''disclosure'' means, with respect to personal information—

(A) the release of information in identifiable form by a person to any other person for any purpose; or

(B) making publicly available information in identifiable form by any means including by a public posting, through the use of a computer on or through—

(i) a home page of a website;

(ii) a pen pal service;

(iii) an electronic mail service;

(iv) a message board; or

(v) a chat room.

(6) FEDERAL AGENCY.—The term ''Federal agency'' means an agency, as that term is defined in section 551(1) of title 5, United States Code.

(7) INTERNET.—The term ''Internet'' means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

(8) PARENT.—The term ''parent'' means a legal guardian, including a biological or adoptive parent.

(9) PERSONAL INFORMATION.—The term ''personal information'' means individually, identifiable information about an individual, including—

(A) a first and last name;

(B) a home or other physical address;

(C) an e-mail address;

(D) a telephone number;

(E) a Social Security number; or

(F) any other information that would facilitate or enable the physical or online locating and contacting of a specific individual, including information that is associated with an identifier described in this paragraph in such manner as to become identifiable to a specific individual.

(10) VERIFIABLE PARENTAL CONSENT.—The term ''verifiable parental consent'' means any reasonable effort (taking into consideration available technology) to ensure that a parent of a child authorizes the disclosure of personal information and subsequent use of that information before that information is collected from that child.

(11) WEBSITE DIRECTED TO CHILDREN.—The term ''website directed to children''—

(A) means a commercial website that is—

(i) targeted to children;

(ii) directed to children by reason of the subject matter, visual content, age of

models, language, characters, tone, message, or any other similar characteristic of the website; or

(iii) used by a commercial website operator to knowingly collect information from children; and

(B) includes any commercial website any portion of which is directed to children, as specified in subparagraph (A).

(12) PERSON.—The term ''person'' means any individual, partnership, corporation, trust, estate, cooperative, association, or other entity.

SEC. 3. REGULATION OF UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN CONNECTION WITH THE COLLECTION AND USE OF PERSONAL INFORMATION FROM AND ABOUT CHILDREN ON THE INTERNET.

(a) REGULATIONS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Commission shall, in a manner consistent with section 553 of title 5, United States Code, prescribe regulations requiring commercial website operators to follow fair information practices in connection with the collection and use of personal information from children.

(2) CONTENTS.—The regulations issued under this subsection shall—

(A) require that any website directed to children that collects personal information from children—

(i) provide clear, prominent, understandable notice of the information collection and use practices of the website operator through the website;

(ii) obtain verifiable parental consent for the collection, use, or disclosure of personal information from children who are under the age of 13;

(iii) use reasonable efforts to provide the parents with notice and an opportunity to prevent or curtail the collection or use of personal information collected from children over the age of 12 and under the age of 17;

(iv) provide a parent—

(I) access to the personal information of the child of that parent collected by that website; and

(II) the opportunity to refuse to permit any further use or future col-

lection of personal information referred to in subclause (I) and notice of that opportunity; and

(B) require that the commercial website operator concerned establish and maintain reasonable procedures to ensure the confidentiality, security, accuracy, and integrity of personal information collected from children through the website.

(b) ENFORCEMENT.—

(1) TREATMENT OF REGULATIONS.—A regulation prescribed under subsection (a) shall be treated as a rule defining an unfair or deceptive act or practice under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(2) ENFORCEMENT.—Subject to section 6, a violation of a regulation prescribed under subsection (a) shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act.

SEC. 4. SAFE HARBORS.

(a) IN GENERAL.—In prescribing regulations under section 3, the Commission shall provide incentives for efforts of self-regulation by commercial website operators to

implement the protections described in subsection (a) of that section.

(b) SAFE HARBORS.—The incentives referred to in subsection (a) shall include provisions for ensuring that a person will be deemed to be in compliance with the requirements of the regulations under section 3 if that person applies guidelines that—

(1) are issued by appropriate representatives of the computer industry; and

(2) are approved by the Commission upon making a determination that the guidelines meet the requirements of the regulations issued under section 3.

SEC. 5. ACTIONS BY STATES.

(a) IN GENERAL.—

(1) CIVIL ACTIONS.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person in a practice that violates any regulation of the Commission prescribed under section 3, the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

(A) enjoin that practice;

(B) enforce compliance with the regulation;

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

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

(2) NOTICE.—

(A) IN GENERAL.—Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Commission—

(i) written notice of that action; and

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

(B) EXEMPTION.—

(i) IN GENERAL.—Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the attorney general determines that it is not feasible to provide the notice described in that subparagraph before the filing of the action.

(ii) NOTIFICATION.—In an action described in clause (i), the attorney general of a State shall provide notice and a copy

of the complaint to the Commission at the same time as the attorney general files the action.

(b) INTERVENTION.—

(1) IN GENERAL.—On receiving notice under paragraph (2), the Commission shall have the right to intervene in the action that is the subject of the notice.

(2) EFFECT OF INTERVENTION.—If the Commission intervenes in an action under subparagraph (A), the Commission shall have the right—

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

(B) to file a petition for appeal.

(c) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this Act shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

(1) conduct investigations;

(2) administer oaths or affirmations; or

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

(d) ACTIONS BY THE COMMISSION.—In any case in which an action is instituted by or on behalf of the Com-

mission for violation of any regulation prescribed under section 3, no State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action for violation of that regulation.

(e) VENUE; SERVICE OF PROCESS.—

(1) VENUE.—Any action brought under subsection (a) may be brought in the district court of the United States—

(A) in which the defendant—

(i) is found;

(ii) is an inhabitant; or

(iii) transacts business; or

(B) that otherwise meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

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

(A) is an inhabitant; or

(B) may be found.

(f) ACTIONS BY OTHER STATE OFFICIALS.—

(1) IN GENERAL.—Nothing in this section may be construed to prohibit a State official from proceeding a court of the State in accordance with the

laws of that State on the basis of an alleged violation of any civil or criminal law of that State.

(2) CERTAIN ACTIONS IN STATE COURTS.—In addition to any actions brought by an attorney general of a State under subsection (a), an action described in paragraph (1) may be brought by any other officer of that State who is authorized by the State to bring such an action in that State on behalf of the residents of the State.

SEC. 6. ADMINISTRATION AND APPLICABILITY OF ACT.

(a) IN GENERAL.—Except as otherwise provided, this Act shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

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

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

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

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial

lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act (12 U.S.C. 601 et seq. and 611 et seq.), by the Board; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;

(3) the Federal Credit Union Act (12 U.S.C. 1751 et seq.), by the National Credit Union Administration Board with respect to any Federal credit union;

(4) part A of subtitle VII of title 49, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that part;

(5) the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.) (except as provided in section

406 of that Act (7 U.S.C. 226, 227)), by the Secretary of Agriculture with respect to any activities subject to that Act; and

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

(c) EXERCISE OF CERTAIN POWERS.—For the purpose of the exercise by any agency referred to in subsection (a) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this Act shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this Act, any other authority conferred on it by law.

(d) ACTIONS BY THE COMMISSION.—The Commission shall prevent any person from violating a rule of the Commission under section 3 in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.)

were incorporated into and made a part of this Act. Any entity that violates such rule shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this Act.

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

SEC. 7. REVIEW.

(a) IN GENERAL.—Not later than 5 years after the effective date of the regulations initially issued under section 3, the Commission shall—

(1) review the implementation of this Act, including the effect of the implementation of this Act on practices relating to the disclosure of information relating to children; and

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

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EXHIBIT R

CONGRESSIONAL RECORD -- SENATE

105th Congress, 2nd Session

144 Cong Rec S 12785

October 21, 1998

REFERENCE: Vol. 144, No. 151

SECTION: Senate

SPEAKER: Mr. SMITH of Oregon; Mrs. FEINSTEIN; Mr. CRAIG; Mr. BRYAN; Mrs. BOXER; Mr. BREAUX; Mr. CONRAD; Mr. ROBB; Mr. FAIRCLOTH; Mr. STEVENS; Mr. LEAHY

TEXT:

With fixed cash payments, landlords are in a great position to put the pressure on and claim a lot of that money in the form of rent for next year. Again, farmers fortunate enough to produce a good crop and whose commodities already have high prices and who are not suffering will still get a payment. This scheme makes no sense whatsoever. And yet it is strictly the triumph of ideology over practicality. The Republican ideology is not to have any farm income safety net and if there is a crisis to throw money at it.

So what we have done for the farm crisis is we have just thrown a lot of money at it. Well, that will help for this year, but it still won't be as good as what we proposed. Equally important, this bill does nothing toward restoring a farm income safety net for the longer term. What we proposed would have provided more income support for farmers and done so in a way that helps farmers deal with the practical reality of commodity markets. But, no, the Republican majority's ideology said we are going to stick with Freedom to Farm no matter what. And yet we know that a majority of farmers, a majority, a huge majority of the farmers wanted to take the caps off of marketing loan rates and they wanted to have some storage payments. Why? [*12785]

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So they could take the bumper crop we are having this year, store it, wait for the grain prices to go up and market it later on.

Well, this bill gives them nothing in this regard. Oh, they will get a payment this fall. But it will not be as much income protection as what we would have provided by taking the caps off of the marketing loan rates. Will it help? Sure, it will help. But it is a wasteful and fundamentally unsound way of helping our farmers.

Well, as I said, Republicans just decided to throw money at the problem-a triumph of ideology over practicality.

One last point. One of my biggest concerns about this bill is the $9 billion add-on to the Pentagon budget-$9 billion thrown in at the last minute. Despite the rhetoric from the Republican side, precious little of this fiscally irresponsible

add-on is targeted at troop readiness and other emergencies in the military.

Congressional leadership talks a lot about shortages of spare parts and about troop pay problems. So where are the proposals to fix the Pentagon's antiquated supply system? Where are the proposals to increase pay for the troops? Not in this bill. But there is $1 billion for star wars. There are billions more in pork barrel projects not requested by the Pentagon. And at the same time that this bill piles on the Pentagon pork, it is shortchanging reform. The General Accounting Office and the Pentagon's own inspector general constantly report rampant waste and mismanagement in the military's purchasing and supply system, yet this bill lets the waste and mismangement continue unchecked, and throws in a few more gold-plated weapons systems to boot.

What a boondoggle. What a boondoggle. We talk about troop readiness, so where does this bill put the money? It puts it into star wars. It puts it into pork projects that the Pentagon doesn't want, some more gold-plated weapons systems, but precious little in fact, for troop readiness.

I have mixed feelings about this 40-pound, 4,000-page whopper that we have before us. It has some important provisions that we worked together on in a bipartisan fashion-to improve medical research, for example, and to improve education. A number of the components of this bill truly will improve the lives of hard-working American families, but the bill also has a number of awful provisions, add-ons, fiscally irresponsible giveaways.

In the end, I will vote for it because I believe the good does outweigh the bad, but I want to be clear that if this bill were in the many separate pieces of legislation as it should have been, a lot of them I would have voted against, and I don't think a lot of them would ever have gotten through this body.

As I have said earlier, and as many of my colleagues have said, this process which we just went through is bad for Americans. This is no way to do the Nation's business. The Republican leadership, as I said earlier, has treated our taxpayer dollars cavalierly. This is no way to flagrantly throw around the hard-earned tax dollars of the taxpayers of this country, to throw it away on boondoggles, to throw it away on items that were never debated or saw the light of day in the Senate or the House.

I can only hope that the next Congress will not go through this exercise again. I hope the leadership of the next Congress will get the appropriations bills through on time, will debate these matters openly so that we can have the opportunity to discuss them openly, so we will know what is in the bills before we vote on them. I think Senator Robert Byrd of West Virginia said it best-as I read in the newspaper. He said, "Only God knows what's in this bill."

Well, I don't know, Mr. President, I don't know if we will ever know what all is in this bill, but I am certain, certain as I am standing here, we are going to see inquiring reporters, investigative journalists who will begin looking at this bill. They will begin looking at all of those hidden items, and I bet you piece by piece, bit by bit, it is going to come out, maybe next month, maybe in January, maybe in March, all of the little hidden things that were in there. And I say, shame on this Congress, shame on the leadership for treating the American taxpayers this way. We have got to do better in the way we do the Nation's business.

Mr. President, I yield the floor.

opposition to deletion of the agjobs amendment

Mr. SMITH of Oregon. Mr. President, as we take up the Omnibus appropriations bill, I would like to take this opportunity to express my extreme disappointment that the Agricultural Job Opportunity Benefits and Security Act amendment, known as AgJOBS, was eliminated from the Omnibus bill.

The bipartisan AgJOBS amendment received a veto proof majority vote of 68-31 when it was added to the Commerce, Justice, State Appropriations bill earlier this year. We had a golden opportunity to reform the current bureaucratic H-2A immigrant visa program that has made fugitives out of farmworkers and felons out of farmers. The

amendment would have created a workable system for recruiting farm workers domestically and preventing our American crops from rotting in the fields.

Unfortuantely, the Clinton Administration was content with the status quo and threatened to veto the Omnibus bill if the balanced AgJOBS amendment was included.

Mr. President, I find the Administration's veto threat quite troubling since the Omnibus appropriations bill contains a multi-billion dollar disaster relief package for traditional program-crop agriculture to help deal with losses sustained as a result of the world financial crisis.

The disaster relief goes to producers who already have a long history of reliance on federal assistance, yet the farm disaster bill does nothing to help producers of labor intensive commodities-fruits, vegetables, and horticultural specialties-who are not supported by the government and who are facing a crisis of nationwide labor shortages created by our own government. This crisis has been exacerbated by our current unworkable legal foreign worker program.

A farmworker shortage ultimately affects America's ability to compete in the world agriculture market. According to the United States Department of Agriculture data, about three off-farm jobs are sustained by each on-farm production job. Therefore, nearly three times as many U.S. workers will lose their U.S. jobs as the number of foreign farmworkers kept out of the United States increases.

Mr. President, I also cannot understand the inconsistency of the Administration enacting the H-1B high-tech worker bill and not enacting H-2A reform as embodied in our AgJOBS bill.

Our AgJOBS bill contains worker benefits far in excess of those provided by the H-1B high-tech worker bill. Our bill guarantees above-prevailing wages for lower wage occupations, free housing to both U.S. and foreign workers recruited from outside the local area, reimbursement of inbound and return transportation costs to both U.S. and foreign workers recruited from outside the local area, and penalties that include lifetime program debarment for violations. The H-1B requires only the prevailing wage without any housing or transportation benefits and provides a maximum penalty of a 3-year debarment.

Mr. President, we cannot continue to allow our farmers and farmworkers to be trapped in a system that rewards illegal labor practices and punishes the most vulnerable.

As we address reform of the H-2A immigrant visa program early next year, I hope my colleagues will work with me to finally safeguard basic human rights, provide a reliable documented work force for farmers, and reward legal conduct to both farmers and farmworkers.

QUINCY LIBRARY GROUP LEGISLATION

Mrs. FEINSTEIN. Mr. President, I am very pleased that the Quincy Library Group bill has been included in the omnibus appropriations bill. This legislation embodies the consensus proposal of the Quincy Library Group, a coalition of environmentalists, timber industry representatives, and local elected officials in Northern California, who came together to resolve their long-standing conflicts over timber management on the national forest lands in their area.

The Quincy Library Group legislation is a real victory for local consensus decision making. It proves that even some of the most intractable environmental issues can be resolved if [*12786]

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people work together toward a common goal.

I first met the Quincy Library Group back in 1992 when I was running for the Senate, and was then very impressed with what they were trying to do.

The members of the Quincy Library Group had seen first hand the conflict between timber harvesting and jobs, environmental laws and protection of their communities and forests, and the devastation of massive forest fires. Their overriding concern was that a catastrophic fire could destroy both the natural environment and the potential for jobs and economic stability in their community. They were also concerned the ongoing stalemate over forest management was ultimately harming both the environment and their local economy.

The group got together and talked things out. They decided to meet in a quiet, non-confrontational environment-the main room of the Quincy Public Library. They began their dialogue in the recognition that they shared the common goal of fostering forest health, keeping ecological integrity, assuring an adequate timber supply for area mills, and providing economic stability for their community.

One of the best articles I have read about the Quincy Library Group process recently appeared in the Washington Post. Mr. President, I ask unanimous consent that this article be printed in the Record at the end of my statement.

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

(See exhibit 1.)

Mrs. FEINSTEIN. Mr. President, after dozens of meetings and a year and a half of negotiation, the Quincy Library Group developed an alternative management plan for the Lassen National Forest, Plumas National Forest, and the Sierraville Ranger District of the Tahoe National Forest.

In the last 5 years, the group has tried to persuade the U.S. Forest Service to administratively implement the plan they developed. While the Forest Service was interested in the plan developed, they were unwilling to fully implement it. Negotiations and discussions began in Congress. This legislation is the result.

the quincy library group legislation

Specifically, the legislation directs the Secretary of Agriculture to implement the Quincy Library Group's forest management proposal on designated lands in the Plumas, Lassen and Tahoe National Forests for five years as a demonstration of community-based consensus forest management. I would like to thank Senators Murkowski, Bumpers, and Craig, Representatives Herger and Miller, as well as the Clinton Administration, for the thoughts they contributed to the development of the final bill.

The legislation establishes significant new environmental protections in the Quincy Library Group project area. It protects hundreds of thousands of acres of environmentally sensitive lands, including all California spotted owl habitat, as well as roadless areas. Placing these areas off limits to logging and road construction protects many areas that currently are not protected, including areas identified as old-growth and sensitive watersheds in the Sierra Nevada Ecosystem Project report.

However, in the event that any sensitive old growth is not already included in the legislation's off base areas, the Senate Energy and Natural Resources Committee provided report language when the legislation was reported last year, as I requested, directing the Forest Service to avoid conducting timber harvest activities or road construction in these late successful old-growth areas. The legislation also requires a program of riparian management, including wide protection zones and streamside restoration projects.

The bottom line is that the Quincy Library Group legislation will provide strong protections for the environment while preserving the job base in the Northern Sierra-not just in one single company, but across 35 area businesses, many of them small and family-owned.

The Quincy Library Group legislation is strongly supported by local environmentalists, labor unions, elected officials, the timber industry, and 27 California counties. The House approved the Quincy Library Group legislation by

a vote of 429 to one last year. The Senate Energy Committee reported the legislation last October. The legislation has been the subject of Congressional hearings and the focus of nationwide public discussion.

I thank my colleagues for ensuring that this worthy pilot project has a chance.

Exhibit No. 1

[From the Washington Post, Oct. 11, 1998]

Grass-Roots Seeds of Compromise

(By Charles C. Mann and Mark L. Plummer)

Every month since 1993, about 30 environmentalists, loggers, biologists, union representatives and local government officials have met the library of Quincy-a timber town in northern California that has been the site of a nasty 15-year battle over logging.

Out of these monthly meetings has emerged a plan to manage 2.4 million acres of the surrounding national forests. Instead of leaving the forests' ecological fate solely to Washington-based agencies and national interest groups, the once-bitter adversaries have tried to forge a compromise solution on the ground-a green version of Jeffersonian democracy. When the House of Representatives, notorious for its discord on environmental legislation, approved the plan 429-1 in July 1997, the Quincy Library Group became the symbol for a promising new means of resolving America's intractable environmental disputes.

The Quincy Library Group is one of scores of citizens' associations that in the past decade have brought together people who previously met only in court. Sometimes called "community-based conservation" groups, they include the Friends of the Cheat River, a West Virginia coalition working to restore a waterway damaged by mining runoff; the Applegate Partnership, which hopes to restore a watershed in southwestern Oregon while keeping timber jobs alive, and Envision Utah, which tries to foster consensus about how to manage growth in and around Salt Lake City.

Like many similar organizations, the Quincy Library Group was born of frustration. In the 1980s, Quincy-based environmental advocates, led by local attorney Michael B. Jackson, attempted with varying success to block more than a dozen U.S. Forest Service timber sales in the surrounding Plumas, Lassen and Tahoe national forests. The constant battles tied the federal agency in knots and almost shut down Sierra Pacific Industries, the biggest timber company there, imperiling many jobs. The atmosphere was "openly hostile, with agitators on both sides," says Linda Blum, a local activist who joined forces with Jackson in 1990 and aroused so much opprobrium that Quincy radio hosts denounced her on the air for taking food from the mouths of the town's children.

Worn down and dismayed by the hostility in his community, Jackson was ready to try something different. He got a chance to do so late in 1992, when Bill Coates, a Plumas County supervisor, invited the factions to talk to each other, face to face. Coates suggested that the group work from forest-management plans proposed by several local environmental organizations in the mid-1980s. By early 1993, they were meeting at the library and soon put together a new proposal. (The Forest Service eventually had to drop out because the Federal Advisory Committee Act, which places cumbersome requirements on groups who meet with federal agencies.) Under this proposal, timber companies could continue thinning and selectively logging in up to 70,000 acres per year, about the same area being logged in 1993 but drastically lower than the 1990 level. Riverbanks and roadless areas, almost half the area covered by the plan, would be off-limits.

The Quincy group asked the Forest Service to incorporate its proposal into the official plans for the three national forests, but never got a definite answer. Convinced that the agency was too dysfunctional to respond, in 1996 the group took its plan to their congressman, Wally Herger, a conservative Republican. Herger introduced the Quincy proposal in the House, hoping to instruct the agency to heed the wishes of local communities. It passed overwhelmingly-perhaps the

only time that Reps. Helen Chenoweth (R-Idaho), a vehement property-rights advocate, and George Miller (D-Calif.) one of the greenest legislators on Capitol Hill, have agreed on an environmental law. Then the bill went to the Senate-and slammed into resistance from big environmental lobbies.

From the start, the Quincy group had kept in touch with the Wilderness Society, the Natural Resources Defense Council and the Sierra Club. The three organizations offered comments, and the Quincy group incorporated some. Still, the national groups continued to balk, instead submitting detailed criteria necessary to "merit" their support. When the Quincy plan became proposed legislation, the national groups stepped up their attacks. The Quincy approach, said Sierra Club legal director Debbie Sease, had a "basic underlying flaw" using a cooperative, local decision-making process to manage national assets. Jay Watson, regional director of the Wilderness Society, said: "Just because a group of local people can come to agreement doesn't mean that it is good public policy." And because such parochial efforts are inevitably ill-informed and always risk domination by rich, sophisticated industry representatives, the Audubon Society warned, they are "not necessarily equipped [*12787]

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to view the bigger picture." Considering this bigger picture, it continued, "is the job of Congress, and of watchdog groups like the National Audubon Society."

Many local groups regard national organizations as more interested in protecting their turf than in achieving solutions that advance conservation. "It's interesting to me that it has to be top-down," said Jack Shipley, a member of the Applegate Partnership. "It's a power issue, a control issue." The big groups' insistence on veto power over local decision-making "sounds like the old rhetoric-either their way or no way," Shipley says. "No way" may be the fate of the Quincy bill. Pressured by environmental lobbies, Sen. Barbara Boxer (D-Calif.) placed a hold on it in the Senate.

Despite the group's setback, community-based conservation efforts like Quincy provide a glimpse of the future. Under the traditional approach to environmental management, decisions have been delegated to impartial bureaucracies-the Forest Service, for example, for national forests. Based on the scientific evaluations of ecologists and economists, the agencies then formulate the "right" policies, preventing what James Madison called "the mischief of faction."

But today, according to Mark Sagoff of the University of Maryland Institute for Philosophy and Public Policy, it is the bureaucrats who are beset by factions; big business and environmental lobbies. For these special-interest groups, he argues, "deliberating with others to resolve problems undermines the group's mission, which is to press its purpose or concern as far as it can in a zero-sum game with its political adversaries." The system "benefits the lawyers, lobbyists and expert witnesses who serve in various causes as mercenaries," he says, "but it produces no policy worth a damn."

In contrast, community-based conservation depends on all sides acknowledging the legitimacy of each other's values. Participants are not guaranteed to get exactly what they want; no one has the power to stand by and judge the "merit" of the results. Although ecology and economics play central roles, ecologists and economists have no special place. Like everyone else, they must sit at the table as citizens, striving to make their community and its environment a better place to live.

In short, Quincy's efforts and those like it represent a new type of environmentalism: republican environmentalism, with a small "r." This new approach cannot address global problems like climate change. Nor should it be routinely accepted if a local group decides on irrevocable changes in areas of paramount national interest-filling in the Grand Canyon, say. But even if some small town would be foolish enough to decide to do something destructive, there's a whole framework of national environment laws that would prevent it from happening. And, despite the resistance of the national organizations, the environmental movement should not reject this new approach out of hand. Efforts to protect the environment over the past 25 years have produced substantial gains, but have lately degenerated into a morass of litigation and lobbying. Community-based conservation has the potential to change things on the ground, where it matters most.

Mr. CRAIG. It is agreed that certain language added to the Quincy Library Group Forest Recovery and Economic Stability Act after the bill was proposed by Congressman Wally Herger related to grazing within the pilot project areas may have introduced ambiguities that could lead to adverse effects. Is there any intent for the Quincy Library Group legislation to negatively impact grazing in general?

Mrs. FEINSTEIN. No, neither the authors of the bill, nor the Quincy Library Group ever intended to negatively impact grazing generally.

Mr. CRAIG. What does "specific location" as referred to in subsection (c)(2)(C) of the legislation mean? Can the riparian management or SAT guidelines referred to by this legislation be applied to the entire pilot project area?

Mrs. FEINSTEIN. The only location where these guidelines would apply to grazing is where cattle are actually in the work area and at the same time a QLG activity is taking place. The QLG resource management activities include building defensible profile zones, single or group tree selection thinning, and riparian management projects.

Mr. CRAIG. Will the SAT riparian management guidelines referred to in this measure apply to riparian management projects outside of the pilot project area or to grazing activities within the pilot project area where no riparian management activities are taking place?

Mrs. FEINSTEIN. Under the terms of this bill the SAT guidelines affecting grazing will apply only to the specific work area location and only at the specific time that projects are conducted within the pilot project area. The applicability of these guidelines outside of the pilot project area is not addressed by this legislation.

Children's Online Privacy

Mr. BRYAN. Mr. President, the Children's Online Privacy Act was reported out of Committee by voice vote. Because of time constraints at the end of the session, we have been unable to file a Committee Report before offering it as an amendment on the Senate floor. Accordingly, I wish to take this opportunity to explain the purpose and some of the important features of the amendment.

In a matter of only a few months since Chairman McCain and I introduced this bill last summer, we have been able to achieve a remarkable consensus. This is due in large part to the recognition by a wide range of constituencies that the issue is an important one that requires prompt attention by Congress. It is also due to revisions to our original bill that were worked out carefully with the participation of the marketing and online industries, the Federal Trade Commission, privacy groups, and First Amendment organizations.

The goals of this legislation are: (1) to enhance parental involvement in a child's online activities in order to protect the privacy of children in the online environment; (2) to enhance parental involvement to help protect the safety of children in online fora such as chatrooms, home pages, and pen-pal services in which children may make public postings of identifying information; (3) to maintain the security of personally identifiable information of children collected online; and (4) to protect children's privacy by limiting the collection of personal information from children without parental consent. The legislation accomplishes these goals in a manner that preserves the interactivity of children's experience on the Internet and preserves children's access to information in this rich and valuable medium.

I ask unanimous consent that a summary of the bill's provisions be printed in the Record.

There being no objection, the summary was ordered to be printed in the Record, as follows:

Sec. 1301. Short Title

This Act may be cited as the "Children's Online Privacy Protection Act of 1998."

Sec. 1302. Definitions

(1) Child: The amendment applies to information collected from children under the age of 13.

(2) Operator: The amendment applies to "operators." This term is defined as the person or entity who both operates an Internet website or online service and collects information on that site either directly or through a subcontractor. This definition is intended to hold responsible the entity that collects the information, as well as the entity on whose behalf the information is collected. This definition, however, would not apply to an online service to the extent that it does not collect or use the information.

The amendment exempts nonprofit entities that would not be subject to the FTC Act. The exception for a non-profit entity set forth in Section 202(2)(B) applies only to a true not-for-profit and would not apply to an entity that operates for its own profit or that operates in substantial part to provide profits to or enhance the profitability of its members.

(7) Parent: The term "parent" includes "legal guardian."

(8) Personal Information: This is an online children's privacy bill, and its reach is limited to information collected online from a child.

The amendment applies to individually identifying information collected online from a child. The definition covers the online collection of a first and last name, address including both street and city/town (unless the street address alone is provided in a forum, such as a city-specific site, from which the city or town is obvious), e-mail address or other online contact information, phone number, Social Security number, and other information that the website collects online from a child and combines with one of these identifiers that the website has also collected online. Thus, for example, the information "Andy from Las Vegas" would not fall within the amendment's definition of personal information. In addition, the amendment authorizes the FTC to determine through rulemaking whether this definition should include any other identifier that permits the physical or online contacting of a specific individual.

It is my understanding that "contact" of an individual online is not limited to e-mail, but also includes any other attempts to communicate directly with a specific, identifiable individual. Anonymous, aggregate information-information that cannot be linked by the operator to a specific individual-is not covered by this definition.

(9) Verifiable Parental Consent: The amendment establishes a general rule that "verifiable parental consent" is required before a [*12788]

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web site or online service may collect information online from children, or use or disclose information that it has collected online from children. The amendment makes clear that parental consent need not be obtained for each instance of information collection, but may, with proper notice, be obtained by the operator for future information collection, use and disclosure. Where parental consent is required under the amendment, it means any reasonable effort, taking into consideration available technology, to provide the parent of a child with notice of the website's information practices and to ensure that the parent authorizes collection, use and disclosure, as applicable, of the personal information collected from that child.

The FTC will specify through rulemaking what is required for the notice and consent to be considered adequate in light of available technology. The term should be interpreted flexibly, encompassing "reasonable effort" and "taking into consideration available technology." Obtaining written parental consent is only one type of reasonable effort authorized by this legislation. "Available technology" can encompass other online and electronic methods of obtaining parental consent. Reasonable efforts other than obtaining written parental consent can satisfy the standard. For example, digital signatures hold significant promise for securing consent in the future, as does the World Wide Web Consortium's Platform for Privacy Preferences. In addition, I understand that the FTC will consider how schools, libraries and other public institutions that provide Internet access to children may accomplish the goals of this Act.

As the term "reasonable efforts" indicates, this is not a strict liability standard and looks to the reasonableness of the

efforts made by the operator to contact the parent.

(10) Website Directed to Children: This definition encompasses a site, or that portion of a site or service, which is targeted to children under age 13. The subject matter, visual content, age of models, language, or other characteristics of the site or service, as well as off-line advertising promoting the website, are all relevant to this determination. For example, an online general interest bookstore or compact disc store will not be considered to be directed to children, even though children visit the site. However, if the operator knows that a particular visitor from whom it is collecting information is a child, then it must comply with the provisions of this amendment. In addition, if that site has a special area for children, then that portion of the site will be considered to be directed to children.

The amendment provides that sites or services that are not otherwise directed to children should not be considered directed to children solely because they refer or link users to different sites that are directed to children. Thus a site that is directed to a general audience, but that includes hyperlinks to different sites that are directed to children, would not be included in this definition but the child oriented linked sites would be. By contrast, a site that is a child-oriented directory would be considered directed to children under this standard. However, it would be responsible for its own information practices, not those of the sites or services to which it offers hyperlinks or references.

(12) Online Contact Information: This term means an e-mail address and other substantially similar identifiers enabling direct online contact with a person.

Sec. 1303. Regulation of Unfair and Deceptive Acts and Practices

This subsection directs the FTC to promulgate regulations within one year of the date of enactment prohibiting website or online service operators or any person acting on their behalf from violating the prohibitions of subsection (b). The regulations shall apply to any operator of a website or online service that collects personal information from children and is directed to children, or to any operator where that operator has actual knowledge that it is collecting personal information from a child.

The regulations shall require that these operators adhere to the statutory requirements set forth in Section 203(b)(1):

1. Notice.-Operators must provide notice on their sites of what personal information they are collecting online from children, how they are using that information, and their disclosure practices with regard to that information. Such notice should be clear, prominent and understandable. However, providing notice on the site alone is not sufficient to comply with the other provisions of Section 202 that require the operator to make reasonable efforts to provide notice in obtaining verifiable parental consent, or the provisions of Section 203 that require reasonable efforts to give parents notice and an opportunity to refuse further use or maintenance of the personal information collected from their child. These provisions require that the operator make reasonable efforts to ensure that a parent receives notice, taking into consideration available technology.

2. Prior Parental Consent.-As a general rule, operators must obtain verifiable parental consent for the collection, use or disclosure of personal information collected online from a child.

3. Disclosure and Opt Out for a Parent Who Has Provided Consent.-Subsection 203(b)(1)(B) creates a mechanism for a parent, upon supplying proper identification, to obtain: (1) disclosure of the specific types of personal information collected from the child by the operator; and (2) disclosure through a "means that is reasonable under the circumstances" of the actual personal information the operator has collected from that child. It would be inappropriate for operators to be liable under another source of law for disclosures made in a good faith effort to fulfill the disclosure obligation under this subsection. Accordingly, subsection 203(a)(2) provides that operators are immune from liability under either federal or state law for any disclosure made in good faith and following procedures that are reasonable. If the FTC has not issued regulations, I expect that such procedures would be judged by a court based upon their reasonableness.

Subsection 203(b)(1)(B) also gives that parent the ability to opt out of the operator's further use or maintenance in retrievable form, or future online collection of information from that child. The opt out of future collection operates as a revocation of consent that the parent has previously given. It does not prohibit the child from seeking to provide information to the operator in the future, nor the operator from responding to such a request by seeking (and obtaining) parental consent. In addition, the opt out requirement relates only to the online site or sites for which the information was collected and maintained, and does not apply to different sites which the operator separately maintains.

Subsection 203(b)(3) provides that if a parent opts out of use or maintenance in retrievable form, or future online collection of personal information, the operator of the site or service in question may terminate the service provided to that child.

4. Curbing Inducements to Disclose Personal Information.-Subsection 203(b)(1)(C) prohibits operators from inducing a child to disclose more personal information than reasonably necessary in order to participate in a game, win a prize, or engage in another activity.

5. Security Procedures.-Subsection 203(b)(1)(D) requires that an operator establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected online from children by that operator.

Exceptions to Parental Consent: Subsection 203(b)(2) is intended to ensure that children can obtain information they specifically request on the Internet but only if the operator follows certain specified steps to protect the child's privacy. This subsection permits an operator to collect online contact information from a child without prior parental consent in the following circumstances: (A) collecting a child's online contact information to respond on a one-time basis to a specific request of the child; (B) collecting a parent's or child's name and online contact information to seek parental consent or to provide parental notice; (C) collecting online contact information to respond directly more than once to a specific request of the child (e.g., subscription to an online magazine), when such information is not used to contact the child beyond the scope of that request; (D) the name and online contact information of the child to the extent reasonably necessary to protect the safety of a child participant in the site; and (E) collection, use, or dissemination of such information as necessary to protect the security or integrity of the site or service, to take precautions against liability, to respond to judicial process, or, to the extent permitted under other provisions of law, to provide information to law enforcement agencies or for an investigation related to public safety.

For each of these exceptions the amendment provides additional protections to ensure the privacy of the child. For a one-time contact, the online contact information collected may be used only to respond to the child and then must not be maintained in retrievable form. In cases where the site has collected the parents' online contact information in order to obtain parental consent, it must not maintain that information in retrievable form if the parent does not respond in a reasonable period of time. Finally, if the child's online contact information will be used, at the child's request, to contact the child more than once, the site must use reasonable means to notify parents and give them the opportunity to opt out.

In addition, subsection (C)(ii) also allows the FTC the flexibility to permit the site to recontact the child without notice to the parents, but only after the FTC takes into consideration the benefits to the child of access to online information and services and the risks to the security and privacy of the child associated with such access.

Paragraph (D) clarifies that websites and online services offering interactive services directed to children, such as monitored chatrooms and bulletin boards, that require registration but do not allow the child to post personally identifiable information, may request and retain the names and online contact information of children participating in such activities to the extent necessary to protect the safety of the child. However, the company may not use such information except in circumstances where the company believes that the safety of a child participating on that site is threatened, and the company must provide direct parental notification with the opportunity for the parent to opt out of retention of the information. For example, there have been instances in which children have threatened suicide or discussed family abuse in such fora. Under these circumstances, an operator may use the name and online contact

information of the child in order to be able to get help for the child. [*12789]

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Throughout this section, the amendment uses the term "not maintained in retrievable form." It is my intent in using this language that information that is "not maintained in retrievable form" be deleted from the operator's database. This language simply recognizes the technical reality that some information that is "deleted" from a database may linger there in non-retrievable form.

Enforcement.-Subsection 203(c) provides that violations of the FTC's regulations issued under this amendment shall be treated as unfair or deceptive trade practices under the FTC Act. As discussed below, State Attorneys General may enforce violations of the FTC's rules. Under subsection 203(d), state and local governments may not, however, impose liability for activities or actions covered by the amendment if such requirements would be inconsistent with the requirements under this amendment or Commission regulations implementing this amendment.

Sec. 1304. Safe harbors

This section requires the FTC to provide incentives for industry self-regulation to implement the requirements of Section 203(b). Among these incentives is a safe harbor through which operators may satisfy the requirements of Section 203 by complying with self-regulatory guidelines that are approved by the Commission under this section.

This section requires the Commission to make a determination as to whether self-regulatory guidelines submitted to it for approval meet the requirements of Commission regulations issued under Section 203. The Commission will issue, through rulemaking, regulations setting forth procedures for the submission of self-regulatory guidelines for Commission approval. The regulations will require that such guidelines provide the privacy protections set forth in Section 203. The Commission will assess all elements of proposed self-regulatory guidelines, including enforcement mechanisms, in light of the circumstances attendant to the industry or sector that the guidelines are intended to govern.

The amendment provides that, once guidelines are approved by the Commission, compliance with such guidelines shall be deemed compliance with Section 203 and the regulations issued thereunder.

The amendment requires the Commission to act upon requests for approval of guidelines for safe harbor treatment within 180 days of the filing of such requests, including a period for public notice and comment, and to set forth its conclusions in writing. If the Commission denies a request for safe harbor treatment or fails to act on a request within 180 days, the amendment provides that the party that sought Commission approval may appeal to a United States district court as provided for in the Administrative Procedure Act, 5 U.S.C. 706.

Sec. 1305. Actions by States.

State Attorneys General may file suit on behalf of the citizens of their state in any U.S. district court of jurisdiction with regard to a practice that violates the FTC's regulations regarding online children's privacy practices. Relief may include enjoining the practice, enforcing compliance, obtaining compensation on behalf of residents of the state, and other relief that the court considers appropriate.

Before filing such an action, an attorney general must provide the FTC with written notice of the action and a copy of the complaint. However, if the attorney general determines that prior notice is not feasible, it shall provide notice and a copy of the complaint simultaneous to filing the action. In these actions, state attorneys general may exercise their power under state law to conduct investigations, take evidence, and compel the production of evidence or the appearance of witnesses.

After receiving notice, the FTC may intervene in the action, in which case it has the right to be heard and to file an appeal. Industry associations whose guidelines are relied upon as a defense by any defendant to the action may file as

amicus curiae in proceedings under this section.

If the FTC has filed a pending action for violation of a regulation prescribed under Section 3, no state attorney general may file an action.

Sec. 1306. Administration and applicability

FTC Enforcement: Except as otherwise provided in the amendment, the FTC shall conduct enforcement proceedings. The FTC shall have the same jurisdiction and enforcement authority with respect to its rules under this amendment as in the case of a violation of the Federal Trade Commission Act, and the amendment shall not be construed to limit the authority of the Commission under any other provisions of law.

Enforcement by Other Agencies: In the case of certain categories of banks, enforcement shall be carried out by the Office of the Comptroller of the Currency; the Federal Reserve Board; the Board of Directors of the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, and the Farm Credit Administration. The Secretary of Transportation shall have enforcement authority with regard to any domestic or foreign air carrier, and the Secretary of Agriculture where certain aspects of the Packers and Stockyards Act apply.

Sec. 1307. Review.

Within 5 years of the effective date for this amendment, the Commission shall conduct a review of the implementation of this amendment, and shall report to Congress.

Sec. 1308. Effective date

The enforcement provisions of this amendment shall take effect 18 months after the date of enactment, or the date on which the FTC rules on the first safe harbor application under section 204 if the FTC does not rule on the first such application filed within one year after the date of enactment, whichever is later. However, in no case shall the effective date be later than 30 months after the date of enactment of this Act.

Section 110

Mr. D'AMATO. Mr. President, I am pleased that this Omnibus Appropriations Bill will include a delay of the implementation of Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

The 1996 immigration law mandated the implementation of an exit-entry system at all U.S. borders by September 30, 1998. If implemented, the impact of this provision would be devastating, causing insufferable delays at the U.S.-Canadian border, particularly in my own state of New York. Trade, tourism and international relations would all suffer.

Last year, I joined with Senator Spencer Abraham and other colleagues to introduce the Border Improvement and Immigration Act of 1997 (S. 1360) which would maintain current cross-border traffic along the northern border and I testified at a Senate Subcommittee hearing on the repercussions of implementing Section 110 on New York. On April 23, 1998, the Senate Judiciary Committee considered and marked up the bill. The bill approved by the Committee allows land border and seaports to be exempt from the new system. The full Senate passed S. 1360 in July 1998 and also voted in support of a full repeal of Section 110.

However, as the date of implementation grew closer, Congress enacted a two and a half year delay, which is included in the Omnibus Consolidated and Emergency Supplemental Appropriation Act for Fiscal Year 1999. While we have some "breathing room", rest assured that I will continue to press for a full repeal of Section 110. I thank my colleagues for working with Senator Abraham and I on this important provision.

Mrs. BOXER. Mr. President, I have decided to vote for the omnibus appropriations bill because it contains many

things which are very beneficial to the people and the economy of my state of California, and it includes two of my top priorities-afterschool programs and the Salton Sea Restoration Act.

I want to make it clear, however, that the process that brought us this bill is severely flawed. While the Senate Appropriations Committee, on which I sit, did its work and reported each appropriations bill to the full Senate, the leaders of this Congress failed to do the appropriations work. This omnibus bill is not the right way to legislate.

I also want to say that I strongly object to the environmental riders in the bill, including legislation that will double the timber cut in several national forests in California. I realize that some of the riders were dropped from the final legislation and others were negotiated to have less impact, but the presence of any riders that harm our environment is unacceptable to me.

First, let me say what I like about the omnibus legislation:

education

The most significant achievement of the bill is its emphasis on funding for public education, including:

$129 million to recruit, hire and train 3,500 teachers for California schools in order to reduce class size in the primary grades.

$20 million to expand afterschool programs for 25,000 children in California. This is a $16 million increase for California. I am particularly gratified by the outcome here because I believe it reflects my bill, the "Afterschool Education and Safety Act", and the amendment I successfully attached to the Senate Budget Resolution calling for more afterschool funding.

$77 million, a $12 million increase, for technology in schools programs, to help train teachers, and ensure computer literacy and access to Internet for California students.

$875 million to California schools, a $35 million increase over last year, for disadvantaged students under the Title I program. Senator Feinstein and I worked very hard for this increase. [*12790]

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$550 million for California Head Start programs, to serve 3,280 more California children than last year for a total of more than 80,000.

$58 million, an increase of $3.6 million, through the Goals 2000 program to promote higher academic standards, increase student achievement, and help 12000 California schools implement school reforms.

$26 million for California through the "America Reads" program, to help children in grades K-3 improving reading skills-all new funds.

The largest Pell Grant ever to California: $920 million, an increase of $43 million over last year, to increase the maximum grant to college students to $3,125, 36% higher than maximum award last year.

health

The bill provides funding for several federal programs that are very important in my state, and the omnibus funding levels will result in great benefits to California:

$2.3 billion, a $300 million increase, for medical research grants to California universities and research institutions through the National Institutes of Health (est.)

$238 million , a $43 million increase, for the Ryan White Care Act for health care services to Californians with HIV and AIDS.

At least $13 million for HIV/AIDS prevention and treatment for minority communities.

An increase of between $11 and 21 million in funding for Housing Opportunities for Persons With Aids (HOPWA) who have limited financial resources.

In addition, the bill accelerates the implementation of the health insurance premium tax deduction for the self-employed. By 2003, the deduction will be 100 percent.

The omnibus legislation also requires federal health plans to provide coverage for contraceptive drugs and devices.

Finally, the bill increases funding for the Centers for Disease Control by $226 million over last year-even more than the president's request-and specifies funds for important priorities such as childhood immunization ($421 million), breast and cervical cancer screening ($159 million), and chronic and environmental disease ($294 million).

economy

The legislation extends provisions of current law that help California's economy, including:

The Research and Experimentation Tax Credit, which is of great importance to California's high tech and bio tech companies.

The Work Opportunity Tax Credit, which encourages businesses to hire disadvantaged workers.

The Trade Adjustment Assistance program, which helps workers and businesses adversely affected by free trade agreements.

The Generalized System of Preferences authority of the President, which allows him to extend duty-free treatment on imports from certain development countries.

There are a number of other funding provisions that are beneficial to my state's businesses and industries, and our economy, including:

$204 million for the Advanced Technology Program, an increase of $11 million over last year, to develop cutting edge technologies. California receives more than any other state.

$100 million for "Next Generation Internet", a federal program to connect universities to the Internet and to one another. Many California universities are part of this program: UCLA, Stanford, Berkeley, UC-Davis, UC-Irvine, UC-San Diego, Calif. Tech, and Cal State, and others.

A 3-year moratorium on new taxes on Internet activities.

Full funding for the international Monetary Fund.

About double the number of visas available to foreign high tech, high skilled workers under the H-1B program. The bill raises the annual cap from 65,000 to 115,000 for next 2 years.

An increase in the Federal Housing Administration's loan limit from $86,000 to $109,000, which will give more housing ownership opportunities to Californians.

$283 million nationally for 50,000 Welfare to Work Housing Vouchers for families trying to make transition to jobs. This new program will help them get housing closer to jobs.

Agriculture

The bill includes a number of important funding and legislative provisions for California farm interests:

Extension of time for California citrus growers to conduct scientific review of whether Argentine citrus should be permitted into the U.S.

Continued affordability for California farmers for crop insurance.

$500,000 for pest control research that affects citrus fruit trees.

$90 million for the Market Access Program, which benefits California companies that sell product overseas.

In addition, the bill provides an increase of $75 million-to $633 million-for the Food Safety Initiative, to help implement improvements in surveillance of food borne illnesses, education about proper food handling, research, and inspection of imported and domestic foods.

environment

The omnibus bill includes some good things for California, including:

Salton Sea legislation to require a Department of Interior study on options for restoring the Sea. The bill also provides $14.4 million to fund research and restoration activities.

$10,000 for an appraisal of the Bolsa Chica mesa.

$2 million for land acquisition in the Santa Monica Mountains National Recreation Area.

$273,000 for operations at the Manzanar National Historic Site

Continuation for the moratorium on new Outer Continental Shelf oil/mineral leases and drilling.

$1 million for land acquisition in the San Bernardino National Forest.

More generally, the bill provides a substantial increase for global climate change programs to more than $1 billion, a 25.6 percent increase over 1998. It also funds the President's Clean Water Action Plan at $1.7 billion-a 16.1 percent increase over 1998. This 5-year program helps communities and farmers clean up waterways which are currently deemed unswimmable and unfishable.

infrastructure

The bill provides a total of $293 million for California transportation projects, including $70 million for Los Angeles Metropolitan Transportation Authority Red Line, $40 million for the BART-to-San Francisco Airport line, and $17 million for the Santa Monica Bus Transitway for a dedicated highway express lane for buses.

Other major California projects that are funded include $50 million for Los Angeles River flood control, $52 million for Port of Los Angeles expansion, $6 million for Port of Long Beach expansion, and $1.5 million for Marina Del Rey dredging (Boxer request)

community development and services

Allows LA City and County to use up to 25 percent of Los Angeles Community Development Block Grant for public services, such as job training, child care, crime and drug abuse prevention-federal cap normally is 15 percent. This gives LA more flexibility in deciding how to spend the CDBG funds.

Funds the Low Income Home Energy Assistance program at $1.1 billion nationally. Last year, the program benefited 300,000 low income families in California.

Summer Youth Employment program is funded at $871 million, same as last year, nationwide. Last year, California received $140.1 million, creating 70,510 jobs for economically disadvantaged youth.

crime

The omnibus appropriations bill funds the COPS program with an additional $1.4 billion nationwide. This will allow the hiring of an additional 1,700 new police in California. The bill also includes $2 million for the "Tools for Tolerance" program, a new grant under the Byrne Grant program for the Simon Wiesenthal Center in Los Angeles. This program helps police officers learn how they can reduce prejudice in their communities.

immigration assistance to states

The legislation includes about $585 million to states as reimbursement for the cost of incarcerating illegal immigrants. California receives about half the national total. The bill also includes roughly $150 million to reduce backlog at INS in processing requests by legal immigrants to become U.S. citizens. Forty percent of the current backlog is in California.

These are all good provisions that will be of benefit to my state. However, I am very disappointed that the omnibus bill contains a number of harmful provisions, as well, including: [*12791]

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Legislation to allow doubling the cut of timber in 2\1/2\ national forests in California.

An 8-month delay of implementation of new oil valuation royalty rules, which deprives California schools of funds they are entitled to.

Zero funding for the U.N. Fund for Population Activities-international family planning assistance.

Continuation of the prohibition, except in cases of life endangerment, rape or incest, on the use of any federal funds for abortion services.

Continuaiton of the ban on federal employee health benefit plans for covering abortion services except in cases of life endangerment, rape or incest.

The bill provides about $8 million in "emergency" fiscal year 1999 spending for defense and national security. The Joint Chiefs of Staff have said there are billions in the defense budget for items not requested by them. I believe they are right and that some of the unrequested items could have been cut to offset needed additional defense funds included in the omnibus bill.

Mr. President, for the good that is in the bill, I will vote for it. However, it is my strong feeling that this "omnibus, consolidated, emergency, supplemental" bill is not a good way to put together the budget of the United States. Too many decisions-important decisions that affect millions of Americans-were left to the end of the year and made by just a handful of people, rather than being considered carefully and thoroughly over a period of months, in open committee and floor debates. I hope that this process will not be repeated in future years.

Overall, I remain strongly and deeply committed to a budget and legislative agenda that puts top priority on education for all American children, health research that will make life better for all Americans, technology development to keep America's economy the strongest in the world, and infrastructure that promotes safety, economic activity, and higher quality of life for all our people.

INTERNET MORATORIUM ACT

Mr. BREAUX. Mr. President, I am pleased that the Internet Moratorium Act is included in the 1998 omnibus appropriations bill. Present federal law neither authorizes, nor imposes, nor ratifies any excise, sales, or domain registration tax on Internet use for electronic interstate commerce, and only one fee for the Intellectual Infrastructure Fund. This temporary moratorium will prevent federal and state governments from implementing or enforcing taxes imposed on Internet commerce over the next three years. We would also like to clarify that this Congress has not ratified or authorized any federal taxes on Internet domain name registrations. The U.S. Federal Court has stated that Section 8003 ratifies what was previously declared to be an unconstitutional tax. However, it was never intended to ratify a tax on the Internet; it only speaks to a fee for the Intellectual Infrastructure Fund. Because the fee constitutes an unconstitutional tax, it was not ratified by section 8003. I am confident that this moratorium will enable Congress to develop a coherent national strategy of appropriate taxation of business transactions conducted over the Internet without hindering business opportunities and would also like to reiterate that this Congress has never ratified an unconstitutional tax on the Internet.

INCLUSION OF NORTH DAKOTA IN THE MIDWEST HIDTA

Mr. CONRAD. Mr. President, I rise today to thank the conferees who worked on the fiscal year 1999 omnibus appropriations bill for retention of my amendment calling for inclusion of North Dakota in the Midwest High Intensity Drug Trafficking Area, or HIDTA.

As North Dakota Attorney General Heidi Heitkamp and US Attorney John Schneider have pointed out, North Dakota-like other Midwestern states-has been inundated by a relentlessly rising tide of methamphetamine trafficking, production, and abuse. Unless action is taken swiftly, the Attorney General and US Attorney warn that North Dakota is at high risk to attract a meth manufacturing industry.

This is because my state's sparse population, great size, and abandoned buildings offer excellent locations for meth laboratories. Counter-drug operations in the southwestern US are also forcing this easily-relocated industry to find alternative production locations.

The numbers speak for themselves. There were no meth purchases by undercover agents in North Dakota in 1993. By 1997, there were 181 meth-related cases reported by state and federal law enforcement. In 1993, meth-related cases represented only 6 percent of the drug-related workload of the Office of the US Attorney. In five short years this number has skyrocketed to 75 percent. It is undeniable that increased production of meth in North Dakota along with associated trafficking has contributed to a spike of violent crime.

This unacceptable increase in meth-driven crime in North Dakota is placing a growing burden on North Dakota law enforcement, and represents a growing danger to the people of my state. It demands an immediate-and coordinated-federal response. Similar problems in the states of South Dakota, Iowa, Nebraska, Missouri, and Kansas were countered with the formation of the Midwest HIDTA.

North Dakota meets all the statutory criteria for inclusion in the Midwest HIDTA. In the words of Heitkamp and Schneider, joining the HIDTA will allow federal, state, and local law enforcement to "work together to disrupt, dismantle, and destroy street and mid-level elements of methamphetamine organizations and/or groups operating in North Dakota, the Midwest, and Canada."

During floor consideration of the Treasury-Postal appropriations bill, I was pleased to work on this matter with the distinguished leadership of the Treasury-Postal Appropriations Subcommittee, Senators Campbell and Kohl. I greatly appreciate their good work in conference to retain my amendment. I am also pleased that the conference report includes additional funding for the new HIDTAs designated in this legislation, and I urge the Administration to consider favorably North Dakota's request for $1.97 million in fiscal year 1999 funding for integration of my state into the Midwest HIDTA.

Mr. President, passage of the omnibus bill is an important step in getting tough on methamphetamine in my state. It is simply imperative that there be coordinated federal, state, and local law enforcement response to North Dakota's drug crisis, and I again thank Senators Campbell and Kohl for their assistance in making this a reality.

District of Columbia Appropriations

Mr. ROBB. Mr. President, I rise to bring to the Senate's attention to a matter of concern to the government of the District of Columbia and to commuters in the capital area.

Each workday, about one thousand people a day use an informal carpool system to get in and out of the nation's capital. These commuters gather in "slug lines" at unofficial pick up points to catch rides with others driving into the District. At the end of the day, these "slugs" catch rides home.

Nearly everyone benefits from this system. The drivers get to work more quickly because they get to use the carpool lane. The "slugs" get a free ride. Other drivers benefit from reduce traffic. And all of us benefit from less pollution due to increased carpooling.

Not everyone is happy with the slugs however. The District of Columbia police have raised concerns that drivers picking up slugs will slow traffic or create a safety hazard. As reported in recent articles in the Washington Post, city police officers have ticketed these drivers and considered forcing the commuters to find a new pick up point. Fortunately, District Police Chief Ramsey has decided against his approach. Instead, he will study the traffic situation along 14th Street to see how we can improve the flow of traffic.

I welcome this approach. We may be able to address the District's concerns about safety and traffic congestion while preserving the slug lines. I've asked the managers of the legislation to consider this problem during conference, and if possible, to include language directing the Department of the Interior and the District of Columbia Department of Public Works to study the feasibility of providing commuter pick-up lanes to serve commuters in the busy 14th Street Corridor south of Constitution Avenue. The Interior Department and the District would report to the Appropriations Committees of the Senate and House of Representatives on their joint recommendations [*12792]

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to address this matter. Even if conference report language could not be included, I believe the idea of the study, with recommendations would be helpful.

I would like to emphasize that many of these commuters are Federal employees, and so I think it's appropriate to get the federal government involved. I am certainly willing to work with the District Government to seek federal funds or easements to create commuter pick up lanes, and I hope the District will look closely at this option. I think it could be a triple play-a win with respect to the District's safety concerns, a win for drivers on our congested highways, and of course, a win for the slugs.

Mr. President, I would appreciate hearing the comments of the joint managers on this issue, and I yield the floor.

Mr. FAIRCLOTH. I think the Senator has a workable plan to move this toward a solution, and I urge the Department of the Interior and the District Government to study the matter and report back to us early next year.

Mrs. BOXER. I thank the Senator from Virginia for raising this issue. The commuter lane proposal sounds like an excellent compromise, and I hope Interior and the District will begin looking at this option immediately.

As the ranking Democrat of the D.C. I would like to thank Senator Faircloth for his efforts as Chairman of the D.C. Appropriations Subcommittee. He has worked hard to address the District's financial ills, and I am pleased that we have begun to make some progress for the District to resolve its serious financial problems.

In fact, the fiscal well being of the District has improved dramatically. The District ended fiscal year 1997 with a budget surplus of almost $186 million. The June, 1998 projections suggest that the District may have a surplus of $302 million for fiscal year 1998.

The fiscal year 1999 D.C. Appropriations includes $494.59 million in Federal Funds. This amount represents an increase of $8.39 million above the President's Budget request for the District of Columbia. It is $38.4 million below the FY 1998 level.

With regard to the District of Columbia Funds, the legislation largely reflects the consensus budget formulated by the Mayor, the City Council, and the Control Board.

It is important to note that because of abuses of taxpayer funds, there is no appropriation to the Advisory Neighborhood Commissions (ANCs) as provided for in the consensus budget. However, this deletion of funds does not preclude the District from including funds for the commissions in future budgets so long as there are sufficient safeguards to protect taxpayers' interests.

Mr. President, with respect to specific provisions of this bill, there are some good things, but there are also some bad provisions.

On the plus side, this bill includes a $25 million federal payment for management reform. Within these funds, special attention will be given to fire and emergency medical services, the reopening of the Chief Medical Officer's laboratory, and implementation of a high-speed city-owned fiber network for voice and data services.

The bill provides funds for the repair and maintenance of public safety facilities in the District. The Federal highway funds made available to the District include $98 million for local streets.

The bill includes a $25 million federal contribution to the Washington Metropolitan Area Transit Authority for improvements to the Metrorail station at the site of the proposed Washington Convention Center project.

I am pleased that the bill sets aside $5 million to address the chronic need for additional community-based housing facilities for seriously and chronically mentally ill individuals in the District.

The bill also provides an appropriation to the Children's National Medical Center for the Community Pediatric Health Initiative. This reestablishes an important public-private partnership to provide pediatric services to high risk children in medically under-served areas.

The bill requires the Control Board to report to Congress on the status of any agreements between the District and all non-profit organizations that provide medical and social services to the District's residents. This will ensure that the District re-evaluates the decisions to terminate support and where possible renew support for these critical programs, including those of Children's Hospital.

I am especially pleased that funding for homeless programs in the District will remain level for fiscal year 1999. In previous years, these programs were threatened with funding cuts and I am happy that these cuts are no longer being proposed.

Finally, I am pleased that this legislation does not divert any funds from the District of Columbia Public School system for private school vouchers as was included in the D.C. Appropriations bill passed by the House of Representatives.

Mr. President, unfortunately this legislation includes a number of objectionable provision which violate the principle of home rule and infringe on the rights of District residents.

Again this year, the bill includes a ban on the use of local funds for abortions, and a ban on the use of local funds to

expand health care benefits to unmarried couples. I continue in my strong opposition to these provisions.

I also have serious concerns about the provision to cap the funds available to reimburse attorneys who represent children who obtain special education placements in hearing sunder the Individuals with Disabilities Education Act. This provision will seriously inhibit the ability of children with special needs to obtain their legal right to an education.

I am disappointed by the inclusion of a provision that prohibits the District from using funds to provide assistance to any civil action to require Congress to provide the District of Columbia with voting representation.

The bill also includes a repeal of a recently enacted residency requirement, a matter of some controversy.

I know that the Administration strongly objects to several provisions in the bill, including a ban on funds to organizations that participate in needle exchange programs.

All of these provisions are unnecessary and inappropriate intrusions into the District's own priorities and the rights of its citizens.

Overall, I support the proposed allocation of funds for the District of Columbia, but I am disappointed by the many inappropriate riders in this legislation. Without these provisions, this would have been a much better bill.

Again, I would like to recognize Chairman Faircloth, and to acknowledge the hard work of the staff for this bill: Mary Beth Nethercutt of the Majority Staff, Minority Deputy Staff Director, Terry Sauvain; Liz Blevins and Neyla Arnas of the Committee staff; and Danielle Drissel of my legislative staff.

I would especially like to express my appreciation to Senator Byrd, the Ranking Democrat of the Committee on Appropriations, for assigning his Deputy Staff Director, Terry Sauvain, to serve as Minority Clerk of the D.C. Appropriations Subcommittee. Terry is a long time appropriations staff member who is a consummate professional and a pleasure to work with, and I have really enjoyed and counted on his advice and council.

Glacier Bay National Park and Preserve Commercial Fishing

Mr. STEVENS. Mr. President, the omnibus package, H.R. 4328, includes a measure involving commercial fishing in Glacier Bay and Upper Dundas Bay within Glacier Bay National Park and Preserve. While working on this in the past weeks, a fisherman commented to my office that the choices presented are like choosing whether to cut off your finger, hand, or arm. In short, because the Department of the Interior has taken the position that commercial fishing in Glacier Bay and Dundas Bay should end, there simply has been no solution that Alaskans can fully support. In the omnibus bill we have chosen the lesser of evils.

Without Congressional action, the National Park Service would have gone forward with regulations to phase out fishing in the Bay over 15 years and eventually ban it altogether. The National Park Service would also have blocked Dungeness crab fishermen who fish in Upper Dundas Bay and the Beardslee Islands, the so-called wilderness waters, from continuing a fishery that has existed for nearly 20 years [*12793]

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with no evidence of environmental damage. Whether the Service would have ever agreed to a fair plan to compensate these crabbers is doubtful. Discussions have been ongoing for three years without the Park Service putting a compensation plan on the table.

Without Congressional action, the Service might have proceeded with plans to shut down the scallop fishery, stop flounder fishing, close out crabbing, and block fisheries outside Glacier Bay itself, again relying on what it believes are its inherent powers to stop commercial activities in parks, the spirit and letter of the Alaska National Lands Conservation Act to the contrary. In my opinion and the opinion of the State of Alaska, the Service has no such

authority because regulation of fisheries is a state prerogative in Alaska as well as the rest of the nation. Furthermore, the Alaska Department of Law maintains that the submerged land within Glacier Bay and, as a result, the water column above it, both fall under the jurisdiction of the State of Alaska under the Submerged Lands Act and the Alaska Statehood Act.

When this issue was brought before this Congress, I supported Senator Murkowski's amendment to the Interior Appropriations bill to block the Park Service's planned regulations to give us more time to work out a solution. I also cosponsored Senator Murkowski's bill to resolve this problem once and for all. Unfortunately, because of Administration opposition, the bill did not pass Congress, leaving us with the provision for a moratorium on regulations in the Interior bill.

As we approached the end of the fiscal year, the Administration became more vocally opposed to allowing traditional fisheries in Glacier Bay to continue even though there is no scientific evidence that either the fisheries or other resources which depend on them are in trouble. For example, whale counts are actually up in Glacier Bay, an indication that there is an abundance of fish upon which to feed. Secretary Babbitt threatened to recommend a veto of the bill if the provision blocking the Park Service's fishing ban was included in the spending bills.

At the same time, the Congressional leadership stepped up efforts to develop an omnibus spending package the President would sign. As much as they supported the Delegation's efforts in Glacier Bay, the Congressional leadership were not willing to give the President any excuse to veto bills and shut down the government to divert attention from other matters. I was asked to try to work out a solution that the President would accept. We worked for nearly a week to develop a plan; and after consultation with fishermen, crabbers, and the other members of the Delegation, I reluctantly concluded that this proposal was better than taking no action at all.

The plan we developed allows the fishermen who have historically operated in Glacier Bay to continue to fish for the rest of their lives. We had sought the right to allow fishermen to pass on their permits to their children or assignees, but that was rejected by the Interior Department. Had the regulations gone forward in their current form, all fishermen would have been banned from the Bay in 15 years.

The proposal also offers a compensation package to the five or six crabbers who will be forced out of designated wilderness areas in Glacier Bay and Upper Dundas Bay. It will compensate them for their permit and lost income for six years or $400,000, which ever is greater. In addition, if a fisherman chooses to be compensated for his or her permit and lost income, he or she may also sell to the Secretary his or her boat and gear for additional compensation. Each crabber will obviously have the option of keeping their boat and gear and fishing elsewhere. Lost income is net after expenses which should be calculated by taking gross receipts and subtracting the cost of insurance, crew, fuel, and bait. Paper losses such as depreciation used for Internal Revenue purposes only, should not be subtracted in calculating net income.

The crabbers will have until February 1st to file a claim and the Interior Department will then have six months to act on those claims. There will be an appeals process with a right to go to court if no agreement is reached on an acceptable compensation plan. The office of the Assistant Secretary for Parks and Wildlife has pledged to me to expedite this process so the Dungeness crabbers will be compensated as quickly as possible.

The compromise that was reached also maintains the State of Alaska's prerogatives with respect to state management of the state's fisheries. There will be a cooperative management plan developed jointly by the Interior Department and the State of Alaska. As that plan is developed, I have been assured by the Secretary's office that the Glacier Bay Working Group representing the fishing industry will be consulted. There will be a full public process including hearings, testimony, and an opportunity to comment on any proposed plan.

In addition, the legislation includes a savings clause to clarify that nothing in the Act undermines the power and authority of the State of Alaska to manage fisheries in the State. Finally, I want to make clear that unless explicitly provided in the Act, the legislation is not intended to amend the Alaska National Interest Lands Conservation Act which

generally and specifically governs management of Glacier Bay National Park and Preserve as well as subsistence and commercial fishing.

With respect to subsistence fishing, while the Interior Department would not agree to explicitly allow subsistence activities, I was assured by the Secretary's office that personal use fisheries could continue, most notably for the people of Hoonah who have had a long running dispute with the Park Service on this issue. I was advised that the Park Service is authorized under National Park Service Organic Act to recognize a state-run personal use fishery.

Of critical importance is the status of the outer waters of Glacier Bay. The original proposal made by the Interior Department offered no assurance that commercial fishing could continue outside the Bay itself. Language was specifically included to address this shortcoming, making it clear that commercial fishing is authorized under law and will continue to be permitted in the outer waters. Although the Secretary, acting jointly in consort with the State of Alaska, through the cooperative management plan, may retain the right to protect park resources, that goal must be achieved through reasonable regulation. For example, an area around a seal rookery may be closed to salmon fishing to protect that specific location, but the rest of the outside waters must remain open to salmon fishing.

I view this compromise as an insurance policy, a safety net that offers better protection to Glacier Bay's fishermen than was offered by the draft Park Service regulations. But I do not view it as the end of the story. There are provisions I do not like.

Senator Murkowski has already indicated his intention to introduce legislation on this issue and hold hearings in the Senate Energy Committee which he chairs. I also have indications that Congressman Young, the Chairman of the House Resources Committee, has similar plans. The Secretary of the Interior agreed to extend the comment period on the pending agency regulations until January 15, 1999.

One issue that has not been addressed in this legislative compromise are the losses of local communities and fish processing companies. The Interior Department acknowledges that this is a shortcoming and has pledged to work with me and the rest of the Delegation to address this issue. I pledge to work with local communities and processors in the months ahead.

Internet Speech Regulation

Mr. LEAHY. Mr. President, last week's Washington Post proclaimed in one headline, "High Tech is King of the Hill," citing the passage of several bills which I actively supported, including restricting Internet taxes, enhancing protection for copyrighted works online, and encouraging companies to share information to avoid Year 2000 computer failures. Yet, anyone familiar with the Internet proposals buried in the Omnibus Appropriations measure would be writing a different headline this week.

Certain provisions in this huge spending bill repeat the mistakes about regulating speech on the Internet that the last Congress made when it passed the Communications Decency Act, the [*12794]

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"CDA-I." I opposed the CDA from the start as fatally flawed and flagrantly unconstitutional. I predicted that the CDA would not pass constitutional muster and, along with Senator Feingold, sought to repeal the CDA so that we would not have to wait for the Supreme Court to fix our mistake.

We did not fix the mistake and so, as I predicted, the Supreme Court eventually did our work for us. All nine Justices agreed that the CDA was, at least in part, unconstitutional. Justice Stevens, writing for seven members of the Court, called the CDA "patently invalid" and warned that it cast a "dark shadow over free speech" and "threaten[ed] to torch a large segment of the Internet community." Reno v. ACLU, 117 S.Ct. 2329, 2350 (1997). The Court's decision came as no surprise to me, and should have come as no surprise to the 84 members of the Senate who supported the legislation.

We had been warned by constitutional scholars and Internet experts that the approach we were taking in the CDA would not stand up in court and did not make sense for the Internet. In the end, three district court panels and the Supreme Court all ultimately agreed in striking down the CDA-I as an unconstitutional restriction on free expression.

Congress is about to make the same mistake again by including in the Omnibus Appropriations bill the "Child Online Protection Act," or "CDA-II." I have spoken before, on July 21, 1998, about my opposition to a version of this legislation that was included, without debate, on the annual funding bill for the Commerce, State and Justice Departments.

My opposition to these efforts to regulate Internet speech should not be misunderstood. I join with the sponsors of these measures in wanting to protect children from harm. I prosecuted child abusers as State's Attorney in Vermont, and have worked my entire professional life to protect children from those who would prey on them. In fact, earlier this month, the Congress passed the Hatch-Leahy-DeWine version of the "Protection of Children from Sexual Predator Act," H.R. 3494, to enhance our Federal laws outlawing child pornography. We should act whenever possible to protect our children, but we have a duty to ensure that the means we use to protect our children do not do more harm than good. As the Supreme Court made clear when it struck down CDA-I, laws that prohibit protected speech do not become constitutional merely because they were enacted for the important purpose of protecting children.

CDA-II makes a valiant effort to address many of the Supreme Court's technical objections to the CDA. Nevertheless, while narrower than its CDA-I predecessor, this legislation continues to suffer from substantial constitutional and practical defects. The core holding of the CDA-I case was that "the vast democratic fora of the Internet" deserves the highest level of protection from government intrusion-the highest level of First Amendment scrutiny. Courts will assess the constitutionality of laws that regulate speech over the Internet by the same demanding standards that have traditionally applied to laws affecting the press.

The CDA-II provisions included in the Omnibus Appropriations bill do not meet those standards.

CDA-II would penalize the posting "for commercial purposes" on the World Wide Web of any material that is "harmful to minors." Penalties include fines of up to $50,000 per day of violation, up to 6 months' imprisonment and, under a separate section of the bill, forfeiture of eligibility for the Internet tax moratorium. Like the old CDA-I, this new provision creates an affirmative defense for those who restrict access by requiring use of a credit card, debit account, adult access code, adult personal identification number, a digital certificate verifying age, or other reasonable measures. This new criminal prohibition raises a number of constitutional and practical issues that have been entirely ignored by this Congress.

First, the scope of CDA-II is unclear. The prohibition applies to anyone "engaged in the business" of making any communication for commercial purposes by means of the World Wide Web. Vendors selling pornographic material from Web sites are clearly covered, but also many other unsuspecting persons and businesses operating Web sites will likely fall under this prohibition. Under new section 231(e)(2)(B) of title 47, U.S.C., "it is not necessary that the person make a profit" or that the Web site "be the person's sole or principal business or source of income." Does CDA-II cover companies that offer free Web sites, but charge for their off-line services? If CDA-II does not apply in that circumstance, would the measure have the unintended effect of encouraging the posting of "harmful" materials on the Web for free? Does CDA-II apply to a business that merely advertises on the Web? Does CDA-II apply to public service postings sponsored by businesses on the Web?

In the face of this uncertainty, entrepreneurs, small businesses and other companies who maintain a Web site as a way to enhance their business may face criminal liability if they post material-for free, for advertising, or for a fee-which some community in this country may perceive to be "harmful to minors."

Second, CDA-II adopts a "harmful to minors" standard that will likely be found unconstitutional. CDA-II defines "material that is harmful to minors" as what the "average person, applying contemporary community standards," would

find, taken as a whole and with respect to minors, is designed to appeal to the prurient interest, depicts in a manner patently offensive to minors actual or simulated sexual acts or contact, and lacks serious literary, artistic, political or scientific value. The provision further defines a "minor" to be "any person under 17 years of age."

The "17 year old" age cutoff in CDA-II makes this measure significantly more restrictive than the "harmful to minors" statutes adopted in most states, including in my home state of Vermont. Most state "harmful to minors" statutes restrict materials that would be harmful to minors under the age of 18. These statutes are interpreted to prohibit only that material which would be harmful for the oldest minor. Thus, by setting the age at "under 17," CDA-II would prohibit material on the Web that is inappropriate or harmful for 16 year olds. Consequently, CDA-II would impose more restrictions on the material that can be freely accessible on the World Wide Web than most states impose on materials available for sale in bookstores, news stands, and movie theaters within their borders.

Yet, unlike books, magazines, movies or even broadcasts, where the vendor can control the physical places to which the material is distributed, a person posting material on a Web site cannot restrict access to only Internet users from certain geographic regions. Indeed, Web site operators often cannot determine the region of the country, or the world, from which users are initiating their access.

As a consequence, Web site operators will have to tailor the material accessible on their sites to content that would pass muster in the most conservative community in the country for children 16 years old and younger. The standards of every other community would be discounted. Thus, the bill's core effect will be to set-for the first time-a single, national harmful to minors standard for material on the World Wide Web. Moreover, this standard will be more restrictive than those already in place in most states.

This result runs counter to existing "harmful to minors" law as articulated by the Supreme Court. The Supreme Court has never approved of a single, national obscenity standard, nor has it approved a "harmful to minors" statute based on a national, as opposed to local, standard. On the contrary, the Supreme Court in Miller v. California, 413 U.S. 15, 30-32 (1973), stated that:

our Nation is simply too big and too diverse ... to reasonably expect that such standards could be articulated for all 50 States in a single formulation. ... It is neither realistic nor constitutionally sound to read the First Amendment as requiring that the people of Maine or Mississippi accept public depiction of conduct found tolerable in Las Vegas, or New York City.

Reducing the material available on the Web to that which only the most conservative community in the country deems to be appropriate for 16-year-olds, could very well remove material that is both constitutionally protected and socially valuable. The online publication of the Starr report, in whole or in part, Robert Mappelthorpe's pictures, or PG, PG-13, and certainly R- [*12795]

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rated movies or TV shows would be suspect.

CDA-II provides an affirmative defense for online publishers of such material that demand credit card numbers or other adult identification. A similar defense did not save CDA-I, however, and remains insufficient to reduce the significant burden on protected speech that the new prohibition imposes. The Supreme Court noted in analyzing this defense in CDA-I, that such a requirement would "`completely bar adults who do not have a credit card and lack the resources to obtain one from accessing any blocked material.'" 117 S.Ct at 2337.

In addition to burdening the speech rights of adults, the Supreme Court questioned the effectiveness of this defense in CDA-I to protect children, stating:

... it is not economically feasible for most noncommercial speakers to employ such verification ... Even with respect to commercial pornographers that would be protected by the defense, the Government failed to adduce any evidence

that these verification techniques actually preclude minors from posing as adults. Given that the risk of criminal sanctions `hovers over each content provider, like the proverbial sword of Damocles,' the District Court correctly refused to rely on unproven future technology to save the statute." 117 S.Ct. at 2349-50.

The technology required to exercise the affirmative defense remains practically difficult and prohibitively expensive for many Web sites. As a result, just as the Supreme Court found with CDA-I, CDA-II would effectively chill the publication of a large amount of valuable, constitutionally-protected speech on popular commercial web sites such as CNN.com, amazon.com, or the New York Times online. As the Court restated in its decision on CDA-I, "`[t]he level of discourse reaching a mailbox simply cannot be limited to that which would be suitable for a sandbox.'" 117 S.Ct. at 2346.

Third, CDA-II will be ineffective at protecting children. In evaluating whether the burdens that CDA-II will place on Web publishers are justified, we must take a realistic look at how well these new restrictions will work to protect children from harmful online materials. As the Supreme Court noted, adult identification or verification techniques can be falsely used by children to gain access to forbidden material.

In addition, CDA-II is limited to activity on the Web, presumably to capture the material that the Supreme Court believed was susceptible to use of verified credit cards. Those of us who use the Internet recognize that the Web is merely one of several Internet protocols, although the one most amenable to pictorial or graphic displays. Limiting the reach of this measure to the Web excludes newsgroups, FTP sites, e-mail, chat rooms, private electronic bulletin board systems (BBS), and gopher sites, where children may continue to access harmful materials. Indeed, I am concerned that the unintended consequence of applying CDA-II's ill-considered speech restrictions on the Web will simply force Internet content providers and users to use or develop other protocols with which they would be able to exercise their First Amendment rights unfettered by the threat of criminal prosecution.

Those of us who use the Internet and the World Wide Web also recognize that this is a global medium, not just a network under United States control. Indeed, a large percentage of content on the Internet originates outside the United States, and is as accessible over the Web as material posted next door. Objectionable material is likely to come from outside the United States and be unreachable by American laws.

The Justice Department, in a letter dated October 5, 1998, on CDA-II that I would ask to be included in the record, stated, "the practical or legal difficulty in addressing these considerable alternative sources from which children can obtain pornography raises questions about the efficacy of the [CDA-II] and the advisability of expending scarce resources on its enforcement."

The warning by the Justice Department that this measure will detract from current efforts to stop the distribution of illegal child pornography has apparently gone unheeded by Congress. The Justice Department has made clear that CDA-II would "divert the resources that are used for important initiatives such as Innocent Images," a successful online undercover program to stop child predators and pornographers. The work that the Justice Department has done in going after the worst offenders, highlighted by the recent international crack down on child-pornography, should not be diluted by broadening their enforcement load to embrace an unconstitutional standard.

Fourth, Congress simply has not done its homework to consider alternative effective means to protect children from harmful online materials. The Senate is considering CDA-II, including its creation of a new Federal crime, as part of an omnibus spending measure. Until recently the Senate had rules and precedent against this kind of legislating on an appropriations bill. Under Republican leadership, that discipline has been lost and we are left to consider significant legislative proposals as part of annual appropriations. These matters are far-reaching. They deserve full debate and Senate consideration before good intentions lead the Senate to take another misstep in haste.

The Congress has not held hearings on the CDA-II provisions before us. The Senate Commerce Committee hearing in February, 1998, elicited only the testimony of this measure's primary sponsor about a prior version of the bill, and no

other testimony about its constitutionality. The Congress has made only the most minimal efforts to determine whether technical tools or this measure would be the least restrictive means of protecting children. There has been no study, no discussion, and no comparison of the effectiveness of various approaches, their likely impact on speech, and their appropriateness for the Internet.

Ironically, CDA-II puts the proverbial cart-before-the-horse by enacting new speech restrictions at the same time the bill establishes a "Commission on Online Child Protection" to study the technical means available to protect children from harmful material. While the selection of the members of this Commission is left solely to Republican congressional leadership, we should at least hear from the Commission before legislating. As the letter from the Department of Justice advises, "Congress should wait until the Commission has completed its study and made its legislative recommendations before determining whether a criminal enactment would be necessary, and if so, how such a statute should be crafted." This approach would allow Congress to create a record on the most effective means to solve the problem instead of passing an ineffective law.

In striking the CDA-I as unconstitutional, the Supreme Court specifically cited "the absence of any detailed findings by the Congress, or even hearings addressing the special problems of the CDA" as grounds for its finding "that the CDA is not narrowly tailored if that requirement has any meaning at all." 117 S.Ct. at 2348. The Congress is repeating this mistake here, since it has again not established a record showing that the extraordinary restrictions on Internet expression proposed in the CDA-II are the least restrictive way to achieve our goal of protecting children online. Congress is required to establish such a record if it seeks to impose these sorts of burdens of the speech of our citizens.

Experts have told us that there are better ways to protect children that have less of an impact on constitutionally protected speech, including the use of blocking and filtering tools that give parents the ability to control access to harmful content both within and outside of the United States. Harvard Law School Professor Larry Lessig, who is an expert on both constitutional law and Internet law, has described at least one less restrictive alternative-the use of voluntary "kid certificates" online-that would have the same effect Congress is trying to achieve while placing far less of a burden on free speech. I ask that his letter be made part of the Record.

It is precisely because these less restrictive means exist, and because Congress has not shown otherwise, that the CDA-II is most likely to fail in the courts.

Finally, there are constructive steps that Congress can and should take. Although CDA-II would not solve the problems facing parents and educators on how to protect their children from [*12796]

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harmful and inappropriate online material, there are several steps that Congress could take which would prove more effective.

We should hear from the Commission on Online Child Protection that is authorized in this bill to study the technical means available to protect children from harmful material.

We should do more to protect children's privacy. The Omnibus appropriations bill contains a provision authorizing the FTC to require parental consent from children to give out personal information to Web sites aimed at children or where the age of child has been collected. These privacy provisions have broad support and could be a way for Congress effectively and constitutionally to protect children online without detracting from the current mission of law enforcement.

We should not rush to legislate when non-legislative solutions may be more effective and consistent with our constitutional principles. Instead of trying to create a national harmful to minors standard, Congress should encourage companies and non-profit organizations who have responded to this problem with wide-ranging efforts to create child-friendly content collections, teach children about appropriate online behavior, and develop voluntary,

user-controlled, technology tools that offer parents the ability to protect their own children from inappropriate material. Unlike legislative approaches, these bottom-up solutions are voluntary. They protect children and assist parents and care-takers regardless of whether the material to be avoided is on an American or foreign Web site. They respond to local and family concerns, and they avoid government decisions about content.

We can and must do better than CDA-II. This measure will do almost nothing to protect children from harmful material online, but will divert Federal enforcement resources, restrict constitutionally-protected free speech online and set a dangerous precedent for Federal regulation of the Internet. Perhaps worst of all, it will create the illusion of a solution. This Congress should not be in the business of lulling parents into a false sense of security while in fact doing nothing to protect children online.

Many members who have supported CDA-II are no doubt motivated by the same thing that motivates me in this area: a desire to protect children online. I am afraid, however, that we have not taken the time to craft a legislative solution that will actually help solve this problem. The Congress has been put on notice that our approach will not work, and will probably end up in court for yet another battle. We should not run another ambiguous speech regulation up the flagpole and expect the courts to salute. We owe it to the millions of Americans who use the Web not to make the same mistake a second time.

Now, Mr. President, I ask unanimous consent that a letter from Acting Attorney General Anthony Sutin from the Department of Justice and a letter from Harvard University Professor Lawrence Lessig in opposition to the Child Online Protection Act be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

U.S. Department of Justice,

Office of Legislative Affairs,

Washington, DC, October 5, 1998.

Hon. Thomas Bliley,

Chairman, Committee on Commerce,

House of Representatives, Washington, DC.

This letter sets forth the views of the Department of Justice on H.R. 3783, the "Child Online Protection Act" ("the COPA"), as ordered reported. We share the Committee's goal of empowering parents and teachers to protect minors from harmful material that is distributed commercially over the World Wide Web. However, we would like to bring to your attention certain serious concerns we have about the bill.

The principal provision of the COPA would establish a new federal crime under section 231 of Title 47 of the United States Code. Subsection 231(a)(1) would provide that:

"Whoever, in interstate or foreign commerce, by means of the World Wide Web, knowingly makes any communication for commercial purposes that includes any material that is harmful to minors without restricting access to such material by minors pursuant to subsection (c) shall be fined not more than $50,000, imprisoned not more than 6 months, or both."

Subsection 231(a)(2), in turn, would provide for additional criminal fines of $50,000 for "each day" that someone "intentionally violates" 231(a)(1); and 231(a)(3) would provide for additional civil fines of $50,000 for "each day" that a person violated 231(a)(1). Subsection 231(b) would exempt certain telecommunications carriers and other service providers from the operation of 231(a)(1). Subsection 231(c)(1) would establish what is denominated an "affirmative

defense":

"(1) Defense.-It is an affirmative defense to prosecution under this section that the defendant, in good faith, has restricted access by minors to material that is harmful to minors-

"(A) by requiring use of a credit card, debit account, adult access code, or adult personal identification number; or

"(B) by any other reasonable measures that are feasible under available technology."

Subsection 231(e) would define, inter alia, the following terms in the criminal prohibition: (i) "by means of the World Wide Web"; (ii) "commercial purposes"; (iii) "material that is harmful to minors," and "minor." See proposed 231(e) (1), (2), (6) & (7). In particular, "material that is harmful to minors" would be defined as:

"... any communication, picture, image, graphic image file, article, recording, writing, or other matter of any kind that-

"(A) the average person, applying contemporary community standards, would find, taking the material as a whole and with respect to minors, that such material is designed to appeal to or panders to the prurient interest;

"(B) depicts, describes, or represents, in a patently offensive way with respect to minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals or female breast; and

"(C) taken as a whole, lacks serious literary, artistic, political, or scientific value for minors."

The Department's enforcement of a new criminal prohibition such as that proposed in the COPA could require an undesirable diversion of critical investigative and prosecutorial resources that the Department currently invests in combating traffickers in hard-core child pornography, in thwarting child predators, and in prosecuting large-scale and multidistrict commercial distributors of obscene materials. For example, presently the Department devotes a significant percentage of our resources in this area to the highly successful Innocent Images online undercover operations, begun in 1995 by the FBI. Through this initiative, FBI agents and task force officers go on-line, in an undercover capacity, to identify and investigate those individuals who are victimizing children through the Internet and on-line service providers. Fifty-five FBI field offices and a number of legal attaches are assisting and conducting investigations in direct support of the Innocent Images initiative. To ensure that the initiative remains viable and productive, the Bureau's efforts include the use of new technology and sophisticated investigative techniques, and the coordination of this national investigative effort with other federal agencies that have statutory investigative authority. We also have allocated significant resources for the training of state and local law enforcement agents who must become involved in our effort. To date, the Innocent Images national initiative has resulted in 196 indictments, 75 informations, 207 convictions, and 202 arrests. In addition, 456 evidentiary searches have been conducted.

We do not believe that it would be wise to divert the resources that are used for important initiatives such as Innocent Images to prosecutions of the kind contemplated under the COPA. Such a diversion would be particularly ill-advised in light of the uncertainty concerning whether the COPA would have a material effect in limiting minors' access to harmful materials. There are thousands of newsgroups and Internet relay chat channels on which anyone can access pornography; and children would still be able to obtain ready access to pornography from a myriad of overseas web sites. The COPA apparently would not attempt to address those sources of Internet pornography, and admittedly it would be difficult to do so because restrictions on newsgroups and chat channels could pose constitutional questions, and because any attempt to regulate overseas web sites would raise difficult questions regarding extraterritorial enforcement. The practical or legal difficulty in addressing these considerable alternative sources from which children can obtain pornography raises questions about the efficacy of the COPA and the advisability of expending scarce resources on its enforcement.

Second, such a provision would likely be challenged on constitutional grounds, since it would be a content-based restriction applicable to "the vast democratic fora of the Internet," a "new marketplace of ideas" that has enjoyed a "dramatic expansion" in the absence of significant content-based regulation. Reno v. ACLU, 117 S. Ct. 2329, 2343, 2351 (1997). As the Court in ACLU suggested, id. at 2341 (discussing Ginsberg v. New York, 390 U.S. 629 (1968)), it may be that Congress could, consistent with the First Amendment, enact an Internet version of a "variable obscenity," harmful-to-minors prohibition, analogous to state-law statutes prohibiting bookstores from displaying to minors certain materials that are obscene as to such minors. See, e.g., American Booksellers v. Webb, 919 F.2d 1493 (11th Cir. 1990), cert denied, 500 U.S. 942 (1991); American Booksellers Ass'n v. Virginia, 882 F.2d 125 (4th Cir. 1989), cert denied, 494 U.S. 1056 (1990), Davis-Kidd Booksellers, Inc. v. McWherter, 866 S.W.2d 520 [*12797]

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(Tenn. 1993). However, it is not certain how the constitutional analysis might be affected by adaptation of such a scheme from the bookstore context in which it previously has been employed to the unique media of the Internet. Because it may be more difficult for Internet content providers to segregate minors from adults than it is for bookstore operators to do the same, and because the Internet is, in the Court's words, a "dynamic, multifaceted category of communication" that permits "any person with a phone line" to become "a town crier with a voice that resonates farther than it could from any soapbox," ACLU, 117 S. Ct. at 2344, the Court is likely to examine very carefully any content-based restrictions on the Internet.

The decision in ACLU suggests that the constitutionality of an Internet-based "harmful-to-minors" statute likely would depend, principally, on how difficult and expensive it would be for persons to comply with the statute without sacrificing their ability to convey protected expression to adults and to minors. And the answer to that question might depend largely on the ever-changing state of technology, the continuing progress that the private sector makes in empowering parents and teachers to protect minors from harmful material, and the scope and detail of the record before Congress. In this regard, it is notable that the COPA also would establish a Commission (see 6) to study the ways in which the problem could most effectively be addressed in a time of rapidly evolving technologies. In light of the difficult constitutional issues, we believe that Congress should wait until the Commission has completed its study and made its legislative recommendations before determining whether a criminal enactment would be necessary, and if so, how such a statute should be crafted.

Finally, the COPA as drafted contains numerous ambiguities concerning the scope of its coverage. Such ambiguities not only might complicate and hinder effective prosecution; they also might "render [the legislation] problematic for purposes of the First Amendment," by "undermin[ing] the likelihood that the [bill] has been carefully tailored to the congressional goal of protecting minors from potentially harmful materials." ACLU, 117 S. Ct. 2344. Among the more confusing or troubling ambiguities are the following:

"(a) While the COPA mentions that minors' access to materials on the Internet `can frustrate parental supervision or control' over their children, 2(1), the only `compelling interest' that the COPA would invoke as a justification for its prohibition is `the protection of the physical and psychological well-being of minors by shielding them from materials that are harmful to them,' id. 2(2). The constitutionality of the bill would be enhanced if Congress were to identify as the principal compelling interest the facilitation of parents' control over their children's upbringing, in addition to the government's independent interest in keeping certain materials from minors regardless of their parents' views. See, e.g., ACLU, 117 S. Ct. at 2341 (noting that the statute in Ginsberg presented fewer constitutional problems than the Communications Decency Act because in the former, but not the latter, parents' consent to, or participation in, the communication would avoid application of the statute).

"(b) While the bill would not appear to apply to material posted to the Web from outside the United States, that question is not clear; and the extraterritoriality of the prohibition might affect the efficacy and constitutionality of the statute. See ACLU, 117 S. Ct. at 2347 n. 45.

"(c) It is unclear what difference is intended in separately prohibiting `knowing' violations (proposed 231(a)(1)) and

`intentional' violations (proposed "231(a)(2)); and there is no indication why the two distinct penalty provisions are necessary or desirable. Moreover, it is not clear, in subsection (a)(1), which elements are modified by the "knowingly" requirement. For example, must the government prove that the defendant knew that the communication contained the harmful-to-minors material? That the defendant knew the materials were, in fact, harmful to minors? Nor is it clear what it would mean, in the context of distribution of the targeted materials over the World Wide Web, to violate subsection (a)(1) "intentionally."

"(d) Proposed 231(a)(3) would provide for civil penalties; but that section does not indicate how such penalties are to be imposed and enforced-e.g., who would be responsible for bringing civil actions. In this regard, we should note that if Congress were to eliminate criminal penalties altogether, in favor of civil penalties, that would improve the likelihood that the statute eventually would be found constitutional. See, e.g., ACLU, 117 S. Ct. at 2342 (distinguishing the civil penalties upheld in the "indecency" statute at issue in FCC v. Pacifica Foundation, 438 U.S. 726 (1978), from the criminal penalties in the CDA).

"(e) The titles of 3 of the bill, and of proposed 231 of Title 47, refer to materials "sold by means of the World Wide Web"; and yet the prohibition itself does not appear to prohibit merely the "sale" of harmful material, although it is limited to communications "for commercial purposes."

"(f) One of the elements of the basic prohibition in proposed 231(a)(1) would be that the defendant made the communication "without restricting access to such material by minors pursuant to subsection (c)." Yet subsection (c) itself would provide that such a restriction of access is an affirmative defense. This dual status of the "restricting access' factor appears to create a redundancy; at the very least, it leaves unclear important questions regarding burdens of proof with respect to whether a defendant adequately restricted access.

"(g) The COPA definition of "materials that is harmful to minors" would be similar to the "variable obscenity" state-law definitions that courts have upheld in cases (cited above) involving restrictions on the display of certain material to minors in bookstores. Those state statutes have, in effect, adopted the "obscenity as to minors" criteria approved in Ginsberg as modified in accordance with the Supreme court's more recent obscenity standards announced in Miller v. California, 413 U.S. 15, 14 (19873). But the COPA's definition would, in several respects, be different from the definitions typically used in those state statutes, and the reasons for such divergence are not clear. Is the definition intended to be coterminous with, broader, or narrower than, the standards approved in the cases involving state-law display statutes? The breadth and clarity of the coverage of the COPA's "harmful to minors" standards could have a significant impact on the statute's constitutionality.

"(h) Particular ambiguity infects the first of the three criteria for "material that is harmful to minors," proposed 231(e)(6)(A). (i) The words "that such material" appear extraneous. (ii) It is unclear whether "is designed to" is supposed to modify "panders to," and, if not, whether the "panders to" standard is supposed to reflect the intended or the actual effect of the expression "with respect to minors." (iii) Which "contemporary community standards" would be dispositive? Those of the judicial district (or some other geographical "community") in which the expression is "posted"? Of the district or local community in which the jury sits? Of some "community" in cyberspace? Some other "community"? Resolution of this question might well affect the statute's constitutionality. See ACLU, 117 S. Ct. at 2345 n.39.

"(i) Must the material, taken as a whole, "lack serious literary, artistic, political, or scientific value" for all minors, for some minors, or for the "average" or "reasonable" 16-year-old minor? See, e.g., American booksellers, 919 F2d at 1504-05 (under a variable obscenity statute, "if any reasonable minor, including a seventeen-year-old, would find serious value, the material is not `harmful to minors'"); Davis-Kidd Booksellers, 866 S.W. 2d at 528 (same); American Booksellers Ass'n, 882 F.2d at 127 (sustaining constitutionality of a state variable obscenity statute after state court had concluded that a book does not satisfy the third prong of the statute if it is "found to have a serious literary, artistic, political or scientific value for a legitimate minority of normal, older adolescents").

"(j) In the definition of "engaged in the business" (proposed 231(e)(2)(B)), it is not clear what is intended by the reference to "offering to make such communications." Also unclear is the effect of the modifier "knowingly" in that same definition's clarification that a person may be considered to be "engaged in the business of making, by means of the World Wide Web, communications for commercial purposes that include material that is harmful to minors only if the person knowingly causes the material that is harmful to minors to be posted on the World Wide Web or knowingly solicits such material to be posted on the World Wide Web." Must the person know that the material is posted on the Web? That the material is harmful to minors? That he or she "cause[d]" the material to be posted?"

In addition, we have concerns with certain facets of the proposed Commission on Online Child Protection, which would be established under 6 of the bill. The Commission would be composed of fourteen private persons engaged in business, appointed in equal measures by the Speaker of the House and the Majority Leader of the Senate, as well as three "ex officio" federal officials (or their designees): the Assistant Secretary of Commerce, the Attorney General and the Chairman of the Federal Trade Commission. The principal duty of the Commission, see 6(c)(1), would be:

"... to conduct a study ... to identify the technological or other methods to help reduce success by minors to material that is harmful to minors on the Internet, [and] which methods, if any-

"(A) that the Commission determines meet the requirements for use as affirmative defenses for purposes of section 231(a) ... ; or

"(B) may be used in any other manner to help reduce such access."

If subsection (A) of this provision were construed to permit or to require the Commission to "determine," as a matter of law, which methods would satisfy the affirmative defense established in 23(c), it would violate the constitutional separation of powers because most of the Commission members would be appointed by congressional officials and would not be appointed in conformity with the Appointments Clause of the Constitution, article II, section 2, clause 2. Accordingly, we would urge deletion of the portion of 6(c)(1) that follows the word "Internet." For similar reasons, we urge deletion of 6(d)(4), which would require the Commission, as part of the report it submits to Congress, to describe "the technologies or methods identified by the study that may be used as affirmative defenses for purposes of section 231(c) ..." (Even if such a delegation of responsibility to the proposed Commission [*12798]

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were otherwise permissible, it would be unwise, in our view, as a matter of policy to permit the Commission-in essence-to make such determination about a criminal offense.)

Thank you for the opportunity to present our views on this matter. The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the presentation of this report.

Sincerely,

LOAD-DATE: August 29, 2009