

107TH CONGRESS  
1ST SESSION

# H. R. 2472

To protect children from unsolicited e-mail smut containing sexually oriented advertisements offensive to minors.

---

## IN THE HOUSE OF REPRESENTATIVES

JULY 11, 2001

Ms. LOFGREN introduced the following bill; which was referred to the Committee on Science, and in addition to the Committees on Energy and Commerce, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

## A BILL

To protect children from unsolicited e-mail smut containing sexually oriented advertisements offensive to minors.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Protect Children From  
5       E-Mail Smut Act of 2001”.

6       **SEC. 2. CONGRESSIONAL FINDINGS AND POLICY.**

7       (a) FINDINGS.—The Congress finds the following:

8               (1) Congress recognized that the Nation had a  
9       compelling interest in preventing minors from being

1 exposed to mailings containing sexually oriented ad-  
2 vertisements when it enacted title 39, United States  
3 Code, section 3010, and title 18, United States  
4 Code, sections 1735 and 1737.

5 (2) Congress required anyone sending a mailing  
6 containing sexually oriented advertisements to place  
7 a mark or notice prescribed by the Postal Service on  
8 the mailing envelope or cover.

9 (3) E-mails may contain the same kind of sexu-  
10 ally oriented advertisements harmful to minors but  
11 there is presently no comparable requirement that e-  
12 mails contain any marking or notice to alert the re-  
13 cipient that the e-mail contains sexually oriented ad-  
14 vertisements.

15 (4) Requiring a marking or notice that an e-  
16 mail contains sexually oriented advertisements will  
17 enable the parents of minors to take the necessary  
18 steps to block such material and thus protect their  
19 children from being exposed to such sexually ori-  
20 ented advertisements.

21 (5) The National Institute of Standards and  
22 Technology (hereinafter in this Act referred to as  
23 NIST), a nonregulatory agency within the Com-  
24 merce Department's Technology Administration, is  
25 technologically competent to prescribe marks or

1 other signifiers that an e-mail contains sexually ori-  
2 ented advertisements.

3 (b) CONGRESSIONAL DETERMINATION OF PUBLIC  
4 POLICY.—On the basis of the findings in subsection (a),  
5 the Congress determines that—

6 (1) there is substantial government interest in  
7 the regulation of unsolicited e-mails containing sexu-  
8 ally oriented advertisements that are forwarded to  
9 children; and

10 (2) the best method to regulate such unsolicited  
11 e-mails is to enable the children or parents acting on  
12 behalf of the children to screen or block such unso-  
13 licited e-mails using marks or signifiers prescribed  
14 by the NIST.

15 **SEC. 3. CRIMINAL PROHIBITION AGAINST SENDING SEXU-**  
16 **ALLY ORIENTED MATERIAL TO CHILDREN**  
17 **WITHOUT THE PRESCRIBED MARKINGS OR**  
18 **NOTICE.**

19 (a) IN GENERAL.—Not later than 120 days after the  
20 date of the enactment of this Act, the NIST shall pre-  
21 scribe marks or notices to be included or affixed to any  
22 e-mail that contains a sexually oriented advertisement for-  
23 warded to children. Such marks shall, to the extent pos-  
24 sible, be made so that they may not be removed or altered.

1           (b) PUNISHMENT.—Whoever willfully and knowingly  
2 forwards to a minor an e-mail, that is carried on an instru-  
3 mentality in or affecting interstate or foreign commerce,  
4 that includes sexually oriented advertisements but does  
5 not include the mark or notice as prescribed by the NIST  
6 in subsection (a) of this section shall be fined under this  
7 Act or imprisoned not more than 1 year, or both.

8           (c) PUNISHMENT.—Whoever reproduces or manufac-  
9 tures any sexually related mail matter, intending or know-  
10 ing that such matter will be forwarded to a minor in an  
11 e-mail in violation of subsection (b) of this section, shall  
12 be fined under this Act or imprisoned not more than 5  
13 years, or both, for the first offense, and shall be fined  
14 under this Act or imprisoned not more than 10 years, or  
15 both, for any second, or subsequent offense. As used in  
16 this section the term “sexually related mail matter” means  
17 any matter described in subsection (d) of this section.

18           (d) DEFINITION.—The term “sexually oriented ad-  
19 vertisement” means any advertisement that depicts, in ac-  
20 tual or simulated form, or explicitly describes, in a pre-  
21 dominantly sexual context, human genitalia, any act of  
22 natural or unnatural sexual intercourse, any act of sadism  
23 or masochism, or any other erotic subject directly related  
24 to the foregoing. Material otherwise within the definition  
25 of this subsection shall be deemed not to constitute a sexu-

1 ally oriented advertisement if it constitutes only a small  
2 and insignificant part of the whole, the remainder of which  
3 is not primarily devoted to sexual matters.

4 **SEC. 4. CIVIL RELIEF: DAMAGES.**

5 (a) IN GENERAL.—Any parent of a minor may sue  
6 and recover damages and attorney’s fees and court costs  
7 from whomever violates any provision of this Act. In lieu  
8 of actual damages, the parent may recover \$10,000 for  
9 each and every violation.

10 (b) LIMITATION.—The parent shall not have a cause  
11 of action against the electronic mail service provider for  
12 merely transmitting the offending e-mail.

13 (c) CONFIDENTIAL PROCEDURE.—At the request of  
14 any party to an action brought pursuant to this section,  
15 the court may, in its discretion, conduct all legal pro-  
16 ceedings in such a way as to protect the secrecy and secu-  
17 rity of the computer, computer network, computer data,  
18 computer program, and computer software involved in  
19 order to prevent possible recurrence of the same or a simi-  
20 lar act by another person and to protect any trade secrets  
21 of any party.

22 (d) EFFECT ON ADDITIONAL REMEDIES.—This sec-  
23 tion does not limit any parent’s right to pursue any addi-  
24 tional civil remedy otherwise allowed at law or equity.

○