

108TH CONGRESS  
1ST SESSION

# S. 151

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## AN ACT

To amend title 18, United States Code, with respect to  
the sexual exploitation of children.

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 “Prosecutorial Remedies  
5       and Tools Against the Exploitation of Children Today Act  
6       of 2003” or “PROTECT Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Obscenity and child pornography are not  
4 entitled to protection under the First Amendment  
5 under *Miller v. California*, 413 U.S. 15 (1973) (ob-  
6 scenity), or *New York v. Ferber*, 458 U.S. 747  
7 (1982) (child pornography) and thus may be prohib-  
8 ited.

9 (2) The Government has a compelling state in-  
10 terest in protecting children from those who sexually  
11 exploit them, including both child molesters and  
12 child pornographers. “The prevention of sexual ex-  
13 ploitation and abuse of children constitutes a gov-  
14 ernment objective of surpassing importance,” *New*  
15 *York v. Ferber*, 458 U.S. 747, 757 (1982) (empha-  
16 sis added), and this interest extends to stamping out  
17 the vice of child pornography at all levels in the dis-  
18 tribution chain. *Osborne v. Ohio*, 495 U.S. 103, 110  
19 (1990).

20 (3) The Government thus has a compelling in-  
21 terest in ensuring that the criminal prohibitions  
22 against child pornography remain enforceable and  
23 effective. “[T]he most expeditious if not the only  
24 practical method of law enforcement may be to dry  
25 up the market for this material by imposing severe  
26 criminal penalties on persons selling, advertising, or

1 otherwise promoting the product.” Ferber, 458 U.S.  
2 at 760.

3 (4) In 1982, when the Supreme Court decided  
4 Ferber, the technology did not exist to: (A) com-  
5 puter generate depictions of children that are indis-  
6 tinguishable from depictions of real children; (B) use  
7 parts of images of real children to create a com-  
8 posite image that is unidentifiable as a particular  
9 child and in a way that prevents even an expert  
10 from concluding that parts of images of real children  
11 were used; or (C) disguise pictures of real children  
12 being abused by making the image look computer  
13 generated.

14 (5) Evidence submitted to the Congress, includ-  
15 ing from the National Center for Missing and Ex-  
16 ploited Children, demonstrates that technology al-  
17 ready exists to disguise depictions of real children to  
18 make them unidentifiable and to make depictions of  
19 real children appear computer generated. The tech-  
20 nology will soon exist, if it does not already, to com-  
21 puter generate realistic images of children.

22 (6) The vast majority of child pornography  
23 prosecutions today involve images contained on com-  
24 puter hard drives, computer disks, or related media.

1           (7) There is no substantial evidence that any of  
2           the child pornography images being trafficked today  
3           were made other than by the abuse of real children.  
4           Nevertheless, technological advances since Ferber  
5           have led many criminal defendants to suggest that  
6           the images of child pornography they possess are not  
7           those of real children, insisting that the government  
8           prove beyond a reasonable doubt that the images are  
9           not computer-generated. Such challenges increased  
10          significantly after the *Ashcroft v. Free Speech Coalition*  
11          decision.

12          (8) Child pornography circulating on the Inter-  
13          net has, by definition, been digitally uploaded or  
14          scanned into computers and has been transferred  
15          over the Internet, often in different file formats,  
16          from trafficker to trafficker. An image seized from  
17          a collector of child pornography is rarely a first-gen-  
18          eration product, and the retransmission of images  
19          can alter the image so as to make it difficult for  
20          even an expert conclusively to opine that a particular  
21          image depicts a real child. If the original image has  
22          been scanned from a paper version into a digital for-  
23          mat, this task can be even harder since proper fo-  
24          rensic assessment may depend on the quality of the  
25          image scanned and the tools used to scan it.

1           (9) The impact on the government’s ability to  
2       prosecute child pornography offenders is already evi-  
3       dent. The Ninth Circuit has seen a significant ad-  
4       verse effect on prosecutions since the 1999 Ninth  
5       Circuit Court of Appeals decision in Free Speech  
6       Coalition. After that decision, prosecutions generally  
7       have been brought in the Ninth Circuit only in the  
8       most clear-cut cases in which the government can  
9       specifically identify the child in the depiction or oth-  
10      erwise identify the origin of the image. This is a  
11      fraction of meritorious child pornography cases. The  
12      National Center for Missing and Exploited Children  
13      testified that, in light of the Supreme Court’s affir-  
14      mation of the Ninth Circuit decision, prosecutors in  
15      various parts of the country have expressed concern  
16      about the continued viability of previously indicted  
17      cases as well as declined potentially meritorious  
18      prosecutions.

19           (10) Since the Supreme Court’s decision in  
20      Free Speech Coalition, defendants in child pornog-  
21      raphy cases have almost universally raised the con-  
22      tention that the images in question could be virtual,  
23      thereby requiring the government, in nearly every  
24      child pornography prosecution, to find proof that the

1 child is real. Some of these defense efforts have al-  
2 ready been successful.

3 (11) In the absence of congressional action, this  
4 problem will continue to grow increasingly worse.  
5 The mere prospect that the technology exists to cre-  
6 ate computer or computer-generated depictions that  
7 are indistinguishable from depictions of real children  
8 will allow defendants who possess images of real  
9 children to escape prosecution, for it threatens to  
10 create a reasonable doubt in every case of computer  
11 images even when a real child was abused. This  
12 threatens to render child pornography laws that pro-  
13 tect real children unenforceable. Moreover, imposing  
14 an additional requirement that the Government  
15 prove beyond a reasonable doubt that the defendant  
16 knew that the image was in fact a real child—as  
17 some courts have done—threatens to result in the de  
18 facto legalization of the possession, receipt, and dis-  
19 tribution of child pornography for all except the  
20 original producers of the material.

21 (12) To avoid this grave threat to the Govern-  
22 ment's unquestioned compelling interest in effective  
23 enforcement of the child pornography laws that pro-  
24 tect real children, a statute must be adopted that  
25 prohibits a narrowly-defined subcategory of images.

1           (13) The Supreme Court’s 1982 Ferber deci-  
 2           sion holding that child pornography was not pro-  
 3           tected drove child pornography off the shelves of  
 4           adult bookstores. Congressional action is necessary  
 5           now to ensure that open and notorious trafficking in  
 6           such materials does not reappear, and even increase,  
 7           on the Internet.

8   **SEC. 3. CERTAIN ACTIVITIES RELATING TO MATERIAL CON-**  
 9                           **STITUTING OR CONTAINING CHILD PORNOG-**  
 10                          **RAPHY.**

11       Section 2252A of title 18, United States Code, is  
 12 amended—

13           (1) in subsection (a)—

14                   (A) by striking paragraph (3) and insert-  
 15           ing the following:

16           “(3) knowingly—

17                   “(A) reproduces any child pornography for  
 18           distribution through the mails, or in interstate  
 19           or foreign commerce by any means, including  
 20           by computer; or

21                   “(B) advertises, promotes, presents, dis-  
 22           tributes, or solicits through the mails, or in  
 23           interstate or foreign commerce by any means,  
 24           including by computer, any material or pur-  
 25           ported material in a manner that reflects the

1 belief, or that is intended to cause another to  
 2 believe, that the material or purported material  
 3 is, or contains—

4 “(i) an obscene visual depiction of a  
 5 minor engaging in sexually explicit con-  
 6 duct; or

7 “(ii) a visual depiction of an actual  
 8 minor engaging in sexually explicit con-  
 9 duct;”;

10 (B) in paragraph (4), by striking “or” at  
 11 the end;

12 (C) in paragraph (5), by striking the pe-  
 13 riod at the end and inserting “; or”; and

14 (D) by adding at the end the following:

15 “(6) knowingly distributes, offers, sends, or  
 16 provides to a minor any visual depiction, including  
 17 any photograph, film, video, picture, or computer  
 18 generated image or picture, whether made or pro-  
 19 duced by electronic, mechanical, or other means,  
 20 where such visual depiction is, or appears to be, of  
 21 a minor engaging in sexually explicit conduct—

22 “(A) that has been mailed, shipped, or  
 23 transported in interstate or foreign commerce  
 24 by any means, including by computer;



1           “(B) that was produced using materials  
 2           that have been mailed, shipped, or transported  
 3           in interstate or foreign commerce by any  
 4           means, including by computer; or

5           “(C) which distribution, offer, sending, or  
 6           provision is accomplished using the mails or by  
 7           transmitting or causing to be transmitted any  
 8           wire communication in interstate or foreign  
 9           commerce, including by computer,  
 10          for purposes of inducing or persuading a minor to  
 11          participate in any activity that is illegal.”;

12          (2) in subsection (b)(1), by striking “para-  
 13          graphs (1), (2), (3), or (4)” and inserting “para-  
 14          graph (1), (2), (3), (4), or (6)”;

15          (3) by striking subsection (c) and inserting the  
 16          following:

17          “(c) Affirmative Defense.—It shall be an affirmative  
 18          defense to a charge of violating paragraph (1), (2), (3),  
 19          (4), or (5) of subsection (a) that—

20               “(1)(A) the alleged child pornography was pro-  
 21               duced using an actual person or persons engaging in  
 22               sexually explicit conduct; and

23               “(B) each such person was an adult at the time  
 24               the material was produced; or

1           “(2) the alleged child pornography was not pro-  
2           duced using any actual minor or minors.

3 No affirmative defense under subsection (c)(2) shall be  
4 available in any prosecution that involves child pornog-  
5 raphy as described in section 2256(8)(C). A defendant  
6 may not assert an affirmative defense to a charge of vio-  
7 lating paragraph (1), (2), (3), (4), or (5) of subsection  
8 (a) unless, within the time provided for filing pretrial mo-  
9 tions or at such time prior to trial as the judge may direct,  
10 but in no event later than 10 days before the commence-  
11 ment of the trial, the defendant provides the court and  
12 the United States with notice of the intent to assert such  
13 defense and the substance of any expert or other special-  
14 ized testimony or evidence upon which the defendant in-  
15 tends to rely. If the defendant fails to comply with this  
16 subsection, the court shall, absent a finding of extraor-  
17 dinary circumstances that prevented timely compliance,  
18 prohibit the defendant from asserting such defense to a  
19 charge of violating paragraph (1), (2), (3), (4), or (5) of  
20 subsection (a) or presenting any evidence for which the  
21 defendant has failed to provide proper and timely notice.”.

22 **SEC. 4. ADMISSIBILITY OF EVIDENCE.**

23           Section 2252A of title 18, United States Code, is  
24 amended by adding at the end the following:

1       “(e) ADMISSIBILITY OF EVIDENCE.—On motion of  
 2 the government, in any prosecution under this chapter, ex-  
 3 cept for good cause shown, the name, address, social secu-  
 4 rity number, or other nonphysical identifying information,  
 5 other than the age or approximate age, of any minor who  
 6 is depicted in any child pornography shall not be admis-  
 7 sible and may be redacted from any otherwise admissible  
 8 evidence, and the jury shall be instructed, upon request  
 9 of the United States, that it can draw no inference from  
 10 the absence of such evidence in deciding whether the child  
 11 pornography depicts an actual minor.”.

12 **SEC. 5. DEFINITIONS.**

13       Section 2256 of title 18, United States Code, is  
 14 amended—

15           (1) in paragraph (1), by inserting before the  
 16 semicolon the following: “and shall not be construed  
 17 to require proof of the actual identity of the per-  
 18 son”;

19           (2) in paragraph (2)—

20               (A) by striking “means actual” and insert-  
 21 ing the following: “means—

22                   “(A) actual”;

23               (B) in subparagraphs (A), (B), (C), (D),  
 24 and (E), by indenting the left margin 2 ems to  
 25 the right and redesignating subparagraphs (A),

1 (B), (C), (D), and (E) as clauses (i), (ii), (iii),  
 2 (iv), and (v), respectively;

3 (C) in subparagraph (A)(v), as redesign-  
 4 nated, by inserting “or” after the semicolon;  
 5 and

6 (D) by adding at the end the following:

7 “(B)(i) actual sexual intercourse, including  
 8 genital-genital, oral-genital, anal-genital, or  
 9 oral-anal, whether between persons of the same  
 10 or opposite sex, or lascivious simulated sexual  
 11 intercourse where the genitals, breast, or pubic  
 12 area of any person is exhibited;

13 “(ii) actual or lascivious simulated—

14 “(I) bestiality;

15 “(II) masturbation; or

16 “(III) sadistic or masochistic abuse;

17 or

18 “(iii) actual lascivious or simulated lasciv-  
 19 ious exhibition of the genitals or pubic area of  
 20 any person;”;

21 (3) in paragraph (8)—

22 (A) by striking subparagraph (B) and in-  
 23 serting the following:

1 “(B) the production of such visual depic-  
 2 tion involves the use of an identifiable minor  
 3 engaging in sexually explicit conduct; or”;

4 (B) in subparagraph (C)—

5 (i) by inserting after “is engaging in  
 6 sexually explicit conduct” the following: “,  
 7 except that the term ‘identifiable minor’ as  
 8 used in this subparagraph shall not be con-  
 9 strued to include the portion of the defini-  
 10 tion contained in paragraph (9)(B)”;

11 (ii) by striking “or” at the end; and  
 12 (C) by striking subparagraph (D); and

13 (4) by striking paragraph (9), and inserting the  
 14 following:

15 “(9) ‘identifiable minor’—

16 “(A)(i) means a person—

17 “(I)(aa) who was a minor at the time  
 18 the visual depiction was created, adapted,  
 19 or modified; or

20 “(bb) whose image as a minor was  
 21 used in creating, adapting, or modifying  
 22 the visual depiction; and

23 “(II) who is recognizable as an actual  
 24 person by the person’s face, likeness, or  
 25 other distinguishing characteristic, such as

1 a unique birthmark or other recognizable  
2 feature; and

3 “(ii) shall not be construed to require  
4 proof of the actual identity of the identifiable  
5 minor; or

6 “(B) means a computer image, computer  
7 generated image, or digital image—

8 “(i) that is of, or is virtually indistin-  
9 guishable from that of, an actual minor;  
10 and

11 “(ii) that depicts sexually explicit con-  
12 duct as defined in paragraph (2)(B); and  
13 “(10) ‘virtually indistinguishable’—

14 “(A) means that the depiction is such that  
15 an ordinary person viewing the depiction would  
16 conclude that the depiction is of an actual  
17 minor; and

18 “(B) does not apply to depictions that are  
19 drawings, cartoons, sculptures, diagrams, ana-  
20 tomical models, or paintings depicting minors  
21 or adults or reproductions of such depictions.”.

1 **SEC. 6. OBSCENE VISUAL REPRESENTATIONS OF THE SEX-**  
 2 **UAL ABUSE OF CHILDREN.**

3 (a) IN GENERAL.—Chapter 110 of title 18, United  
 4 States Code, is amended by inserting after section 2252A  
 5 the following:

6 **“§ 2252B. Obscene visual representations of the sex-**  
 7 **ual abuse of children**

8 “(a) IN GENERAL.—Any person who, in a cir-  
 9 cumstance described in subsection (d), knowingly pro-  
 10 duces, distributes, receives, or possesses with intent to dis-  
 11 tribute, a visual depiction of any kind, including a draw-  
 12 ing, cartoon, sculpture, or painting, that—

13 “(1)(A) depicts a minor engaging in sexually  
 14 explicit conduct; and

15 “(B) is obscene; or

16 “(2)(A) depicts an image that is, or appears to  
 17 be, of a minor engaging in graphic bestiality, sadis-  
 18 tic or masochistic abuse, or sexual intercourse, in-  
 19 cluding genital-genital, oral-genital, anal-genital, or  
 20 oral-anal, whether between persons of the same or  
 21 opposite sex; and

22 “(B) lacks serious literary, artistic, political, or  
 23 scientific value;

24 or attempts or conspires to do so, shall be subject to the  
 25 penalties provided in section 2252A(b)(1), including the  
 26 penalties provided for cases involving a prior conviction.

1       “(b) ADDITIONAL OFFENSES.—Any person who, in  
 2 a circumstance described in subsection (d), knowingly pos-  
 3 sesses a visual depiction of any kind, including a drawing,  
 4 cartoon, sculpture, or painting, that—

5           “(1)(A) depicts a minor engaging in sexually  
 6 explicit conduct; and

7           “(B) is obscene; or

8           “(2)(A) depicts an image that is, or appears to  
 9 be, of a minor engaging in graphic bestiality, sadis-  
 10 tic or masochistic abuse, or sexual intercourse, in-  
 11 cluding genital-genital, oral-genital, anal-genital, or  
 12 oral-anal, whether between persons of the same or  
 13 opposite sex; and

14           “(B) lacks serious literary, artistic, political, or  
 15 scientific value;

16 or attempts or conspires to do so, shall be subject to the  
 17 penalties provided in section 2252A(b)(2), including the  
 18 penalties provided for cases involving a prior conviction.

19       “(c) NONREQUIRED ELEMENT OF OFFENSE.—It is  
 20 not a required element of any offense under this section  
 21 that the minor depicted actually exist.

22       “(d) CIRCUMSTANCES.—The circumstance referred  
 23 to in subsections (a) and (b) is that—

24           “(1) any communication involved in or made in  
 25 furtherance of the offense is communicated or trans-



1       ported by the mail, or in interstate or foreign com-  
2       merce by any means, including by computer, or any  
3       means or instrumentality of interstate or foreign  
4       commerce is otherwise used in committing or in fur-  
5       therance of the commission of the offense;

6               “(2) any communication involved in or made in  
7       furtherance of the offense contemplates the trans-  
8       mission or transportation of a visual depiction by the  
9       mail, or in interstate or foreign commerce by any  
10      means, including by computer;

11              “(3) any person travels or is transported in  
12      interstate or foreign commerce in the course of the  
13      commission or in furtherance of the commission of  
14      the offense;

15              “(4) any visual depiction involved in the offense  
16      has been mailed, or has been shipped or transported  
17      in interstate or foreign commerce by any means, in-  
18      cluding by computer, or was produced using mate-  
19      rials that have been mailed, or that have been  
20      shipped or transported in interstate or foreign com-  
21      merce by any means, including by computer; or

22              “(5) the offense is committed in the special  
23      maritime and territorial jurisdiction of the United  
24      States or in any territory or possession of the  
25      United States.

1       “(e) AFFIRMATIVE DEFENSE.—It shall be an affirm-  
 2     ative defense to a charge of violating subsection (b) that  
 3     the defendant—

4               “(1) possessed less than 3 such visual depic-  
 5     tions; and

6               “(2) promptly and in good faith, and without  
 7     retaining or allowing any person, other than a law  
 8     enforcement agency, to access any such visual  
 9     depiction—

10              “(A) took reasonable steps to destroy each  
 11     such visual depiction; or

12              “(B) reported the matter to a law enforce-  
 13     ment agency and afforded that agency access to  
 14     each such visual depiction.

15       “(f) DEFINITIONS.—For purposes of this section—

16              “(1) the term ‘visual depiction’ includes unde-  
 17     veloped film and videotape, and data stored on a  
 18     computer disk or by electronic means which is capa-  
 19     ble of conversion into a visual image, and also in-  
 20     cludes any photograph, film, video, picture, digital  
 21     image or picture, computer image or picture, or  
 22     computer generated image or picture, whether made  
 23     or produced by electronic, mechanical, or other  
 24     means;

1 “(2) the term ‘sexually explicit conduct’ has the  
2 meaning given the term in section 2256(2); and

3 “(3) the term ‘graphic’, when used with respect  
4 to a depiction of sexually explicit conduct, means  
5 that a viewer can observe any part of the genitals  
6 or pubic area of any depicted person or animal dur-  
7 ing any part of the time that the sexually explicit  
8 conduct is being depicted.”.

9 (b) TECHNICAL AND CONFORMING AMENDMENT.—  
10 The section analysis for chapter 110 of title 18, United  
11 States Code, is amended by inserting after the item relat-  
12 ing to section 2252A the following:

“2252B. Obscene visual representations of the sexual abuse of children.”.

13 (c) SENTENCING GUIDELINES.—

14 (1) CATEGORY.—Except as provided in para-  
15 graph (2), the applicable category of offense to be  
16 used in determining the sentencing range referred to  
17 in section 3553(a)(4) of title 18, United States  
18 Code, with respect to any person convicted under  
19 section 2252B of such title, shall be the category of  
20 offenses described in section 2G2.2 of the Sen-  
21 tencing Guidelines.

22 (2) RANGES.—The Sentencing Commission may  
23 promulgate guidelines specifically governing offenses  
24 under section 2252B of title 18, United States Code,  
25 if such guidelines do not result in sentencing ranges

1       that are lower than those that would have applied  
2       under paragraph (1).

3   **SEC. 7. RECORDKEEPING REQUIREMENTS.**

4       Section 2257 of title 18, United States Code, is  
5   amended—

6           (1) in subsection (d)(2), by striking “of this  
7       section” and inserting “of this chapter or chapter  
8       71,”;

9           (2) in subsection (h)(3), by inserting “, com-  
10      puter generated image, digital image, or picture,”  
11      after “video tape”; and

12          (3) in subsection (i)—

13           (A) by striking “not more than 2 years”  
14           and inserting “not more than 5 years”; and

15           (B) by striking “5 years” and inserting  
16           “10 years”.

17   **SEC. 8. SERVICE PROVIDER REPORTING OF CHILD POR-**  
18                           **NOGRAPHY AND RELATED INFORMATION.**

19       Section 227 of the Victims of Child Abuse Act of  
20   1990 (42 U.S.C. 13032) is amended—

21           (1) in subsection (b)(1), by inserting “or a vio-  
22       lation of section 2252B of that title” after “of that  
23       title”;

24           (2) in subsection (c), by inserting “or pursuant  
25       to” after “to comply with”;

1 (3) by amending subsection (f)(1)(D) to read as  
 2 follows:

3 “(D) where the report discloses a violation  
 4 of State criminal law, to an appropriate official  
 5 of a State or subdivision of a State for the pur-  
 6 pose of enforcing such State law.”;

7 (4) by redesignating paragraph (3) of sub-  
 8 section (b) as paragraph (4); and

9 (5) by inserting after paragraph (2) of sub-  
 10 section (b) the following new paragraph:

11 “(3) In addition to forwarding such reports to  
 12 those agencies designated in subsection (b)(2), the  
 13 National Center for Missing and Exploited Children  
 14 is authorized to forward any such report to an ap-  
 15 propriate official of a state or subdivision of a state  
 16 for the purpose of enforcing state criminal law.”.

17 **SEC. 9. CONTENTS DISCLOSURE OF STORED COMMUNICA-**  
 18 **TIONS.**

19 Section 2702 of title 18, United States Code, is  
 20 amended—

21 (1) in subsection (b)—

22 (A) in paragraph (5), by striking “or” at  
 23 the end;

24 (B) in paragraph (6)—

- 1 (i) in subparagraph (A)(ii), by insert-
- 2 ing “or” at the end;
- 3 (ii) by striking subparagraph (B); and
- 4 (iii) by redesignating subparagraph
- 5 (C) as subparagraph (B);
- 6 (C) by redesignating paragraph (6) as
- 7 paragraph (7); and
- 8 (D) by inserting after paragraph (5) the
- 9 following:
- 10 “(6) to the National Center for Missing and
- 11 Exploited Children, in connection with a report sub-
- 12 mitted under section 227 of the Victims of Child
- 13 Abuse Act of 1990 (42 U.S.C. 13032); or”; and
- 14 (2) in subsection (c)—
- 15 (A) in paragraph (4), by striking “or” at
- 16 the end;
- 17 (B) by redesignating paragraph (5) as
- 18 paragraph (6); and
- 19 (C) by inserting after paragraph (4) the
- 20 following:
- 21 “(5) to the National Center for Missing and
- 22 Exploited Children, in connection with a report sub-
- 23 mitted under section 227 of the Victims of Child
- 24 Abuse Act of 1990 (42 U.S.C. 13032); or”.

1 **SEC. 10. EXTRATERRITORIAL PRODUCTION OF CHILD POR-**  
 2 **NOGRAPHY FOR DISTRIBUTION IN THE**  
 3 **UNITED STATES.**

4 Section 2251 of title 18, United States Code, is  
 5 amended—

6 (1) by striking “subsection (d)” each place that  
 7 term appears and inserting “subsection (e)”;

8 (2) by redesignating subsections (c) and (d) as  
 9 subsections (d) and (e), respectively; and

10 (3) by inserting after subsection (b) the fol-  
 11 lowing:

12 “(c)(1) Any person who, in a circumstance described  
 13 in paragraph (2), employs, uses, persuades, induces, en-  
 14 tices, or coerces any minor to engage in, or who has a  
 15 minor assist any other person to engage in, any sexually  
 16 explicit conduct outside of the United States, its territories  
 17 or possessions, for the purpose of producing any visual de-  
 18 piction of such conduct, shall be punished as provided  
 19 under subsection (e).

20 “(2) The circumstance referred to in paragraph (1)  
 21 is that—

22 “(A) the person intends such visual depiction to  
 23 be transported to the United States, its territories or  
 24 possessions, by any means, including by computer or  
 25 mail; or

1           “(B) the person transports such visual depic-  
 2           tion to the United States, its territories or posses-  
 3           sions, by any means, including by computer or  
 4           mail.”.

5   **SEC. 11. CIVIL REMEDIES.**

6           Section 2252A of title 18, United States Code, as  
 7           amended by this Act, is amended by adding at the end  
 8           the following:

9           “(f) CIVIL REMEDIES.—

10           “(1) IN GENERAL.—Any person aggrieved by  
 11           reason of the conduct prohibited under subsection  
 12           (a) or (b) may commence a civil action for the relief  
 13           set forth in paragraph (2).

14           “(2) RELIEF.—In any action commenced in ac-  
 15           cordance with paragraph (1), the court may award  
 16           appropriate relief, including—

17           “(A) temporary, preliminary, or permanent  
 18           injunctive relief;

19           “(B) compensatory and punitive damages;  
 20           and

21           “(C) the costs of the civil action and rea-  
 22           sonable fees for attorneys and expert wit-  
 23           nesses.”.



1 **SEC. 12. ENHANCED PENALTIES FOR RECIDIVISTS.**

2 Sections 2251(d), 2252(b), and 2252A(b) of title 18,  
3 United States Code, are amended by inserting “chapter  
4 71,” before “chapter 109A,” each place it appears.

5 **SEC. 13. SENTENCING ENHANCEMENTS FOR INTERSTATE**  
6 **TRAVEL TO ENGAGE IN SEXUAL ACT WITH A**  
7 **JUVENILE.**

8 Pursuant to its authority under section 994(p) of title  
9 18, United States Code, and in accordance with this sec-  
10 tion, the United States Sentencing Commission shall re-  
11 view and, as appropriate, amend the Federal Sentencing  
12 Guidelines and policy statements to ensure that guideline  
13 penalties are adequate in cases that involve interstate  
14 travel with the intent to engage in a sexual act with a  
15 juvenile in violation of section 2423 of title 18, United  
16 States Code, to deter and punish such conduct.

17 **SEC. 14. MISCELLANEOUS PROVISIONS.**

18 (a) APPOINTMENT OF TRIAL ATTORNEYS.—

19 (1) IN GENERAL.—Not later than 6 months  
20 after the date of enactment of this Act, the Attorney  
21 General shall appoint 25 additional trial attorneys to  
22 the Child Exploitation and Obscenity Section of the  
23 Criminal Division of the Department of Justice or to  
24 appropriate U.S. Attorney’s Offices, and those trial  
25 attorneys shall have as their primary focus, the in-

1 investigation and prosecution of Federal child pornog-  
 2 raphy laws.

3 (2) AUTHORIZATION OF APPROPRIATIONS.—

4 There are authorized to be appropriated to the De-  
 5 partment of Justice such sums as may be necessary  
 6 to carry out this subsection.

7 (b) REPORT TO CONGRESSIONAL COMMITTEES.—

8 (1) IN GENERAL.—Not later than 9 months  
 9 after the date of enactment of this Act, and every  
 10 2 years thereafter, the Attorney General shall report  
 11 to the Chairpersons and Ranking Members of the  
 12 Committees on the Judiciary of the Senate and the  
 13 House of Representatives on the Federal enforce-  
 14 ment actions under chapter 110 of title 18, United  
 15 States Code.

16 (2) CONTENTS.—The report required under  
 17 paragraph (1) shall include—

18 (A) an evaluation of the prosecutions  
 19 brought under chapter 110 of title 18, United  
 20 States Code;

21 (B) an outcome-based measurement of per-  
 22 formance; and

23 (C) an analysis of the technology being  
 24 used by the child pornography industry.

1       (c) SENTENCING GUIDELINES.—Pursuant to its au-  
 2 thority under section 994(p) of title 18, United States  
 3 Code, and in accordance with this section, the United  
 4 States Sentencing Commission shall review and, as appro-  
 5 priate, amend the Federal Sentencing Guidelines and pol-  
 6 icy statements to ensure that the guidelines are adequate  
 7 to deter and punish conduct that involves a violation of  
 8 paragraph (3)(B) or (6) of section 2252A(a) of title 18,  
 9 United States Code, as created by this Act. With respect  
 10 to the guidelines for section 2252A(a)(3)(B), the Commis-  
 11 sion shall consider the relative culpability of promoting,  
 12 presenting, describing, or distributing material in violation  
 13 of that section as compared with solicitation of such mate-  
 14 rial.

15 **SEC. 15. AUTHORIZATION OF INTERCEPTION OF COMMU-**  
 16 **NICATIONS IN THE INVESTIGATION OF SEX-**  
 17 **UAL CRIMES AGAINST CHILDREN.**

18       Section 2516(1)(c) of title 18, United States Code,  
 19 is amended—

20           (1) by inserting “section 1591 (sex trafficking  
 21 of children by force, fraud, or coercion),” after “sec-  
 22 tion 1511 (obstruction of State or local law enforce-  
 23 ment),”; and

24           (2) by inserting “section 2251A (selling or buy-  
 25 ing of children), section 2252A (relating to material

1 constituting or containing child pornography), sec-  
 2 tion 2252B (relating to child obscenity), section  
 3 2260 (production of sexually explicit depictions of a  
 4 minor for importation into the United States), sec-  
 5 tions 2421, 2422, 2423, and 2425 (relating to trans-  
 6 portation for illegal sexual activity and related  
 7 crimes),” after “sections 2251 and 2252 (sexual ex-  
 8 ploitation of children),”.

9 **SEC. 16. INVESTIGATIVE AUTHORITY RELATING TO CHILD**  
 10 **PORNOGRAPHY.**

11 Section 3486(a)(1)(C)(i) of title 18, United States  
 12 Code, is amended by striking “the name, address” and  
 13 all that follows through “subscriber or customer utilized,”  
 14 and inserting “the information specified in section  
 15 2703(c)(2)”.

16 **SEC. 17. SEVERABILITY.**

17 If any provision of this Act, an amendment made by  
 18 this Act, or the application of such provision or amend-  
 19 ment to any person or circumstance is held to be unconsti-  
 20 tutional, the remainder of this Act, the amendments made  
 21 by this Act, and the application of the provisions of such

1 to any person or circumstance shall not be affected there-  
2 by.

Passed the Senate February 24, 2003.

Attest:

*Secretary.*

108TH CONGRESS  
1ST SESSION

**S. 151**

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**AN ACT**

To amend title 18, United States Code, with  
respect to the sexual exploitation of children.