

Calendar No. 706

110TH CONGRESS
2D SESSION

S. 431

To require convicted sex offenders to register online identifiers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 30, 2007

Mr. SCHUMER (for himself, Mr. McCain, Mr. Stevens, Ms. Snowe, Mr. Grassley, Mr. Obama, Mr. Specter, Mrs. Clinton, Ms. Landrieu, Mr. Kyl, Ms. Klobuchar, Mrs. Hutchison, Mr. Kerry, Mr. Johnson, Mr. Cardin, Mrs. Feinstein, Mr. Cornyn, Mr. Leahy, Mr. Lieberman, Mr. Crapo, and Mr. Vitter) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

APRIL 22, 2008

Reported by Mr. LEAHY, with amendments

[Omit the part struck through and insert the part printed in *italic*]

A BILL

To require convicted sex offenders to register online identifiers, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Keeping the Internet
3 Devoid of Sexual Predators Act of 2007” or the “KIDS
4 Act of 2007”.

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

7 (a) IN GENERAL.—Section 114(a) of the Sex Of-
8 fender Registration and Notification Act (42 U.S.C.
9 16914(a)) is amended—

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

12 (2) by inserting after paragraph (3) the fol-
13 lowing:

14 ~~“(4) Any electronic mail address, instant mes-~~
15 ~~sage address, or other similar Internet identifier the~~
16 ~~sex offender used or will use to communicate over~~
17 ~~the Internet.~~

18 *“(4) Any electronic mail address, instant mes-*
19 *sage address, or other designation the sex offender uses*
20 *or will use for self-identification or routing in an*
21 *Internet communication or posting.”.*

22 (b) UPDATING OF INFORMATION.—Section 113(c) of
23 the Sex Offender Registration and Notification Act (42
24 U.S.C. 16913(c)) is amended by inserting “and before any
25 use of an electronic mail address, instant message address,
26 ~~or other similar Internet identifier not provided under sub-~~

1 ~~section (b) by the sex offender to communicate over the~~
 2 ~~Internet, or other designation used for self-identification or~~
 3 ~~routing in an Internet communication or posting that is~~
 4 ~~not included in the sex offender's registration information,"~~
 5 after "or student status,".

6 (c) FAILURE TO REGISTER ONLINE IDENTIFIERS.—
 7 Section 2250 of title 18, United States Code, is amend-
 8 ed—

9 (1) in subsection (b), by inserting "or (d)" after
 10 "subsection (a)"; and

11 (2) by adding at the end the following:

12 "(d) *KNOWING FAILURE TO REGISTER ONLINE*
 13 *IDENTIFIERS.*—

14 "(1) IN GENERAL.—It shall be unlawful for any
 15 person who is required to register under the Sex Of-
 16 fender Registration and Notification Act (42 U.S.C.
 17 16901 et seq.) to *knowingly* fail to provide an elec-
 18 tronic mail ~~address, instant message address, or~~
 19 ~~other similar Internet identifier used by that person~~
 20 ~~to communicate over the Internet address, instant~~
 21 ~~message address, or other designation used for self-~~
 22 ~~identification or routing in an Internet communica-~~
 23 ~~tion or posting to the appropriate official for inclu-~~
 24 ~~sion in the sex offender registry, as required under~~
 25 that Act.

1 “(2) PENALTY.—Any person who violates para-
 2 graph (1) shall be fined under this title, imprisoned
 3 not more than 10 years, or both.”.

4 *(d) CONFORMING AMENDMENT; DIRECTIVE TO UNITED*
 5 *STATES SENTENCING COMMISSION.—Section 141(b) of the*
 6 *Adam Walsh Child Protection and Safety Act of 2006 (Pub-*
 7 *lic Law 109–248; 120 Stat. 602) is amended by striking*
 8 *“offense specified in subsection (a)” and inserting “offenses*
 9 *specified in subsections (a) and (d) of section 2250 of title*
 10 *18, United States Code”.*

11 **SEC. 3. RELEASE OF ELECTRONIC MAIL ADDRESSES, IN-**
 12 **STANT MESSAGE ADDRESSES, OR OTHER**
 13 **SIMILAR INTERNET IDENTIFIERS.**

14 (a) PUBLIC ACCESS.—Section 118(b) of the Sex Of-
 15 fender Registration and Notification Act (42 U.S.C.
 16 16918(b)) is amended—

17 (1) in paragraph (3), by striking “and” at the
 18 end;

19 (2) by redesignating paragraph (4) as para-
 20 graph (5); and

21 (3) by inserting after paragraph (3) the fol-
 22 lowing:

23 “(4) any electronic mail address, instant mes-
 24 sage address, or other similar Internet identifier
 25 used by the sex offender; and”.

1 (b) NATIONAL REGISTRY.—Section 119 of the Sex
2 Offender Registration and Notification Act (42 U.S.C.
3 16919) is amended by adding at the end the following:

4 “(c) RELEASE OF ELECTRONIC MAIL ADDRESSES,
5 INSTANT MESSAGE ADDRESSES, OR OTHER SIMILAR
6 INTERNET IDENTIFIERS TO COMMERCIAL SOCIAL NET-
7 WORKING WEBSITE.—

8 “(1) IN GENERAL.—The Attorney General shall
9 maintain a system allowing a commercial social net-
10 working website to compare the database of reg-
11 istered users of that commercial social networking
12 website to the list of electronic mail addresses, in-
13 stant message addresses, and other similar Internet
14 identifiers of persons in the National Sex Offender
15 Registry.

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

1 “(A) the name, address, and telephone
2 number of the commercial social networking
3 website;

4 “(B) the specific legal nature and cor-
5 porate status of the commercial social net-
6 working website;

7 “(C) an affirmation signed by the chief
8 legal officer of the commercial social networking
9 website that the information obtained from that
10 database shall not be disclosed for any purpose
11 other than for comparing the database of reg-
12 istered users of that commercial social net-
13 working website against the list of electronic
14 mail addresses, instant message addresses, and
15 other similar Internet identifiers of persons in
16 the National Sex Offender Registry to protect
17 ~~children~~ *individuals* from online sexual preda-
18 tors and that disclosure of this information for
19 purposes other than those under this section
20 may be unlawful; and

21 “(D) the name, address, and telephone
22 number of a natural person who consents to
23 service of process for the commercial social net-
24 working website.

1 “(3) USE OF DATABASE.—After a commercial
 2 social networking website has complied with para-
 3 graph (2) and paid any fee established by the Attor-
 4 ney General, the commercial social networking
 5 website may screen new users or compare its data-
 6 base of registered users to the list of electronic mail
 7 addresses, instant message addresses, and other
 8 similar Internet identifiers of persons in the Na-
 9 tional Sex Offender Registry as frequently as the At-
 10 torney General may allow for the purpose of identi-
 11 fying a registered user associated with an electronic
 12 mail address, instant message address, or other
 13 similar Internet identifier contained in the National
 14 Sex Offender Registry.

15 ~~“(4) LIABILITY RELIEF FOR SOCIAL NET-~~
 16 ~~WORKING SITES USING THE REGISTRY INFORMATION~~
 17 ~~TO PROTECT USERS.—~~

18 ~~“(A) IN GENERAL.—If a commercial social~~
 19 ~~networking website complies with this section, a~~
 20 ~~covered civil action against that commercial so-~~
 21 ~~cial networking website or any director, officer,~~
 22 ~~employee, or agent of that commercial social~~
 23 ~~networking website may not be brought in any~~
 24 ~~Federal or State court.~~

1 “(B) DEFINITION.—In this paragraph, the
 2 term ‘covered civil action’ means a civil action
 3 relating to the use of the information in the
 4 National Sex Offender Registry by a commer-
 5 cial social networking website to screen users or
 6 compare its database of registered users for the
 7 purpose of identifying a registered user associ-
 8 ated with an electronic mail address, instant
 9 message address, or other similar Internet iden-
 10 tifier information contained in the National Sex
 11 Offender Registry.

12 “(5) INTERIM PERIOD.—In any interim period
 13 before the National Sex Offender Registry is imple-
 14 mented, any commercial social networking website
 15 shall have access to the electronic mail addresses, in-
 16 stant message addresses, and other similar Internet
 17 identifiers of persons required to register in a juris-
 18 diction’s sex offender registry through the methods
 19 set forth in paragraphs (2) and (3). Until such time
 20 as the National Sex Offender Registry is imple-
 21 mented, the term ‘Attorney General’ shall be re-
 22 placed with ‘the jurisdiction’ and the term ‘the Na-
 23 tional Sex Offender Registry’ shall be replaced with
 24 ‘a jurisdiction’s sex offender registry’ in paragraphs
 25 (2) and (3).”.

1 “(4) *LIMITATION ON RELEASE OF INTERNET*
 2 *IDENTIFIERS.—Except as explicitly provided for in*
 3 *this section or for a necessary law enforcement pur-*
 4 *pose, the Attorney General may not authorize the re-*
 5 *lease or dissemination of any Internet identifier con-*
 6 *tained in the National Sex Offender Registry.*

7 “(5) *LIMITATION ON LIABILITY.—*

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

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

20 “(i) *engaged in intentional mis-*
 21 *conduct; or*

22 “(ii) *acted, or failed to act—*

23 “(I) *with actual malice;*

1 “(II) *with reckless disregard to a*
 2 *substantial risk of causing injury with-*
 3 *out legal justification; or*

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

7 “(C) *ORDINARY BUSINESS ACTIVITIES.—*
 8 *Subsection (a) shall not apply to an act or omis-*
 9 *sion to act relating to an ordinary business ac-*
 10 *tivity of any commercial social networking*
 11 *website, including to any acts related to the gen-*
 12 *eral administration or operations of such*
 13 *website, the use of motor vehicles by employees or*
 14 *agents of such website, or any personnel manage-*
 15 *ment decisions of such websites.*

16 “(D) *MINIMIZING ACCESS.—A commercial*
 17 *social networking website shall minimize the*
 18 *number of employees that are provided access to*
 19 *the list of electronic mail addresses, instant mes-*
 20 *sage addresses, and other similar Internet identi-*
 21 *fiers of persons in the National Sex Offender*
 22 *Registry.*

23 “(6) *RULE OF CONSTRUCTION.—Nothing is this*
 24 *section shall be construed to require any Internet*
 25 *website, including a commercial social networking*

1 *website, to compare its database of registered users*
 2 *with the list of electronic mail addresses, instant mes-*
 3 *sage addresses, and other similar Internet identifiers*
 4 *of persons in the National Sex Offender Registry, and*
 5 *no Federal or State liability, or any other actionable*
 6 *adverse consequence, shall be imposed on such website*
 7 *based on its decision not to compare its database with*
 8 *such list.”.*

9 **SEC. 4. DEFINITIONS.**

10 Section 111 of the Sex Offender Registration and No-
 11 tification Act (42 U.S.C. 16911) is amended—

12 ~~(1) in paragraph (7)(H), by striking the period~~
 13 ~~and inserting the following: “, except that it shall~~
 14 ~~not be necessary to show that the sexual conduct ac-~~
 15 ~~tually occurred or to offer proof that the defendant~~
 16 ~~engaged in an act, other than use of the Internet to~~
 17 ~~facilitate criminal sexual conduct involving a~~
 18 ~~minor.”; and~~

19 ~~(2) by adding at the end the following: is~~
 20 ~~amended by adding at the end the following:~~

21 “(15) The term ‘commercial social networking
 22 website’ means a commercially operated Internet
 23 website that—

24 ~~“(A) allows users to create web pages or~~
 25 ~~profiles that provide information about them-~~

1 selves and are available publicly or to other
2 users; and

3 “(A) allows users, through the creation of
4 web pages or profiles or by other means, to pro-
5 vide information about themselves that is avail-
6 able publicly or to other users; and

7 “(B) offers a mechanism for communica-
8 tion with other users, such as a forum, chat
9 room, electronic mail, or instant messenger.

10 “(16) The term ‘chat room’ means any Internet
11 website through which a number of users can com-
12 municate in real time via text and that allows mes-
13 sages to be almost immediately visible to all other
14 users or to a designated segment of all other users.

15 “(16) The term ‘chat room’ means any Internet
16 service through which a number of users can commu-
17 nicate in real time so that communications are al-
18 most immediately available to all other users or to a
19 designated segment of all other users.

20 “(17) The term ‘Internet’ has the meaning
21 given that term in section 1101 of the Internet Tax
22 Freedom Act (47 U.S.C. 151 note).

23 “(18) The term ‘electronic mail address’ has
24 the meaning given that term in section 3 of the Con-

1 trolling the Assault of Non-Solicited Pornography
2 and Marketing Act of 2003 (15 U.S.C. 7702).

3 “(19) The term ‘instant message address’
4 means an identifier that allows a person to ~~commu-~~
5 ~~nicate~~ *communicate* in real-time with another per-
6 son using the Internet.”.

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

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

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

14 (2) by inserting after subsection (b) the fol-
15 lowing:

16 “(e) ~~AGE MISREPRESENTATION.—Any person 18~~
17 ~~years or older who knowingly misrepresents their age with~~
18 ~~the intent to use the Internet to engage in criminal sexual~~
19 ~~conduct involving a minor, or to facilitate or attempt such~~
20 ~~conduct, shall be fined under this title and imprisoned for~~
21 ~~not more than 20 years. Such penalty shall be in addition~~
22 ~~to any penalty pursuant to the laws of any jurisdiction~~
23 ~~for the crime of using the Internet to engage in criminal~~
24 ~~sexual conduct involving a minor, or to facilitate or at-~~
25 ~~tempt such conduct.”.~~

1 “(c) *AGE OF MISREPRESENTATION.*—Any person 18
 2 years or older who knowingly misrepresents his or her age
 3 with the intent to use the Internet, to operate a facility,
 4 by mail, or by any other means of interstate or foreign com-
 5 merce to engage in criminal sexual conduct involving a
 6 minor who is at least 4 years younger than the person en-
 7 gaging in such conduct, or to facilitate or attempt such con-
 8 duct, shall be fined under this title and imprisoned for not
 9 more than 20 years. Such penalty shall be in addition to
 10 any penalty pursuant to the laws of any jurisdiction for
 11 the crime of using the Internet to engage in criminal sexual
 12 conduct involving a minor, or to facilitate or attempt such
 13 conduct.”.

14 **SEC. 6. KNOWINGLY ACCESSING CHILD PORNOGRAPHY**
 15 **WITH THE INTENT TO WATCH CHILD POR-**
 16 **NOGRAPHY.**

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

20 (1) in subparagraph (A), by inserting “, or
 21 knowingly accesses with intent to view,” after “pos-
 22 sesses”; and

23 (2) in subparagraph (B), by inserting “, or
 24 knowingly accesses with intent to view,” after “pos-
 25 sesses”.

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

4 (1) in subparagraph (A), by inserting “, or
 5 knowingly accesses with intent to view,” after “pos-
 6 sesses”; and

7 (2) in subparagraph (B), by inserting “, or
 8 knowingly accesses with intent to view,” after “pos-
 9 sesses”.

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

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

13 (1) in section 2251—

14 (A) in each of subsections (a), (b), and (d),
 15 by inserting “using any means or facility of
 16 interstate or foreign commerce or” after “be
 17 transported”;

18 (B) in each of subsections (a) and (b), by
 19 inserting “using any means or facility of inter-
 20 state or foreign commerce or” after “been trans-
 21 ported”; and

22 (C) in subsection (d), by inserting “using
 23 any means or facility of interstate or foreign
 24 commerce or” after “is transported”;

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

(3) *in section 2252(a)—*

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

(B) *in paragraph (2)—*

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

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

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

(4) *in section 2252A(a)—*

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

(B) *in paragraph (3), by inserting “using any means or facility of interstate or foreign*

1 *commerce or” after “mails, or” each place it ap-*
 2 *pears;*

3 *(C) in each of paragraphs (4) and (5), by*
 4 *inserting “using any means or facility of inter-*
 5 *state or foreign commerce or” after “has been*
 6 *mailed, or shipped or transported”; and*

7 *(D) in paragraph (6), by inserting “using*
 8 *any means or facility of interstate or foreign*
 9 *commerce or” after “has been mailed, shipped, or*
 10 *transported”.*

11 ***(b) AFFECTING INTERSTATE COMMERCE.***—Chapter
 12 *110 of title 18, United States Code, is amended in each*
 13 *of sections 2251, 2251A, 2252, and 2252A, by striking “in*
 14 *interstate” each place it appears and inserting “in or af-*
 15 *fecting interstate”.*

16 ***(c) CERTAIN ACTIVITIES RELATING TO MATERIAL IN-***
 17 ***VOLVING THE SEXUAL EXPLOITATION OF MINORS.***—Section
 18 *2252(a)(3)(B) of title 18, United States Code, is amended*
 19 *by inserting “, shipped, or transported using any means*
 20 *or facility of interstate or foreign commerce” after “that*
 21 *has been mailed”.*

22 ***(d) CERTAIN ACTIVITIES RELATING TO MATERIAL***
 23 ***CONSTITUTING OR CONTAINING CHILD PORNOGRAPHY.***—
 24 *Section 2252A(a)(6)(C) of title 18, United States Code, is*
 25 *amended by striking “or by transmitting” and all that fol-*

- 1 *lows through “by computer,” and inserting “or any means*
- 2 *or facility of interstate or foreign commerce,”.*

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