

PREVENTION OF INTERSTATE COMMERCE IN ANIMAL  
CRUSH VIDEOS ACT OF 2010

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JULY 19, 2010.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

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Mr. CONYERS, from the Committee on the Judiciary,  
submitted the following

R E P O R T

[To accompany H.R. 5566]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 5566) to amend title 18, United States Code, to prohibit interstate commerce in animal crush videos, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

Our Nation has long recognized a compelling government interest in the humane treatment of animals. All fifty States and the District of Columbia have enacted statutes that make it a crime to inflict cruelty on animals. Congress has enacted similar laws to re-

quire the humane care and treatment of animals. The torture and abuse of animals sometimes marks the beginning of a pattern of abuse that culminates in acts of violence towards fellow human beings. Should society become desensitized to the suffering of animals, it may also lose the ability to empathize with the suffering of human beings.

As a general principle, it is well settled that criminals should not be allowed to profit from their crimes. To this end, a decade ago, Congress overwhelmingly passed legislation to combat a growing interstate market in so-called “crush videos”—visual depictions of animals being slowly tortured to death for the sexual pleasure of the viewer. The statute, codified in 18 U.S.C. § 48, was intended to supplement existing State cruelty laws. After Congress enacted this provision into law, the commercial market for crush videos effectively dried up, until the Supreme Court declared the statute unconstitutional on First Amendment grounds.<sup>1</sup> In the wake of this ruling, a robust interstate market for these heinous videos has been reestablished.

H.R. 5566, the Prevention of Interstate Commerce in Animal Crush Videos Act of 2010, amends 18 U.S.C. § 48 and closes the gap in the enforcement of State and Federal animal cruelty laws left open by the Supreme Court’s decision. Although the Court declared the current statute to be substantially overbroad as written, this bill is narrowly drafted to prohibit only the sale or distribution, in interstate commerce and for commercial advantage or private financial gain, of obscene visual depictions of specific acts of animal cruelty, and only where the depicted act violates a State or Federal law prohibiting intentional cruelty to animals.

## BACKGROUND AND NEED FOR THE LEGISLATION

### THE 1999 DEPICTION OF ANIMAL CRUELTY STATUTE

In 1999, at a hearing before this Committee’s Subcommittee on Crime, a California State prosecutor and a police officer testified about the growing interstate market for “crush videos.”<sup>2</sup> Crush videos depict small animals—including mice, hamsters, rabbits, cats, and dogs—being slowly crushed to death. These videos are specifically created, marketed, and sold to those who have a particular sexual fetish and therefore find the animal torture sexually appealing, exciting, and arousing. Many crush videos feature women inflicting choreographed animal torture with their bare feet or while wearing high heeled shoes, and the producers of these videos sometimes ensure that the animal suffers over an extended period of time in order to create a longer video. In some, a woman can be heard talking to the animals in a sexual manner; in most, the cries and squeals of the animals, obviously in great pain, can also be heard. At the time of the 1999 hearing, thousands of crush videos were readily available for purchase over the Internet, and were almost exclusively distributed for sale via the Internet and other instrumentalities of interstate and foreign commerce. Many Internet

<sup>1</sup>U.S. v. Stevens, 130 S.Ct. 1577 (2010).

<sup>2</sup>Punishing Depictions of Animal Cruelty and the Federal Prisoner Health Care Co-Payment Act of 1999 Before the Subcomm. on Crime of the H. Comm. on the Judiciary, 106th Cong. 40–48 (1999) (statement of Tom Connors, Deputy District Attorney, Ventura County District Attorney’s Office).

sites openly offered crush videos for sale. Some even advertised a willingness to create made-to-order crush videos featuring the animals and methods of torture of the customer's choice.

The witnesses testified further that these videos were produced in a way that thwarted law enforcement agencies' efforts to prosecute the individuals who committed the animal torture. The acts depicted in the crush videos clearly constituted animal cruelty. However, because the identities of the animal torturers and the location and date of the filmed animal cruelty were either obscured or unknown, prosecutors were unable to prove the State's jurisdiction over the criminal acts, and were thus powerless to enforce longstanding animal cruelty laws.

Recognizing its primary authority to regulate interstate commerce, and society's desire to ensure that animals are treated humanely, Congress enacted section 18 U.S.C. §48, which made it a crime to knowingly create, sell, or possess a depiction of animal cruelty with the intention of placing that depiction of animal cruelty in interstate or foreign commerce for commercial gain. The term "depiction of animal cruelty" was defined as

any visual or auditory depiction, including any photograph, motion-picture film, video recording, electronic image, or sound recording of conduct in which a living animal is intentionally maimed, mutilated, tortured, wounded, or killed, if such conduct is illegal under Federal law or the law of the State in which the creation, sale, or possession takes place, regardless of whether the maiming, mutilation, torture, wounding, or killing took place in the State.<sup>3</sup>

Shortly after the statute was passed, the market for crush videos dried up and, by 2007, the sponsors of the law declared the crush video industry "dead."<sup>4</sup>

#### UNITED STATES V. STEVENS INVALIDATES SECTION 48

In 2005, law enforcement authorities arrested Pennsylvania resident Robert Stevens and charged him with three counts of violating section 48. Mr. Stevens sold, across State lines, videos featuring gruesome dogfights and dogs mauling domestic and wild pigs. A jury convicted Mr. Stevens on all three counts, and he was sentenced to 37 months in prison. Thereafter, he appealed to the United States Court of Appeals for the Third Circuit, which overturned his conviction, ruling the law unconstitutional. The United States petitioned the Supreme Court to grant certiorari, which it did, and oral argument in *United States v. Stevens* was heard on October 6, 2009.<sup>5</sup>

On April 20, 2010, the Supreme Court affirmed the circuit court, striking down 18 U.S.C. §48 as unconstitutional.<sup>6</sup> In an 8–1 opinion authored by Chief Justice Roberts, the Court declined to recognize depictions of animal cruelty as a category of speech outside the scope of First Amendment protection. Although the Court acknowledged a long history of laws prohibiting animal cruelty in the United States, the Chief Justice distinguished between the *acts* of

<sup>3</sup> 18 U.S.C. §48(c)(1) (2010), invalidated by *U.S. v. Stevens*, *supra* note 1.

<sup>4</sup> Press Release, Rep. Elton W. Gallegly, "Beyond Cruelty," (Dec. 16, 2007).

<sup>5</sup> *U.S. v. Stevens*, cert. granted, 129 S.Ct. 1984 (2009).

<sup>6</sup> *U.S. v. Stevens*, 130 S.Ct. 1577 (2010).

animal cruelty prohibited by such statutes and the *depictions* of animal cruelty banned by section 48.

Turning to a traditional First Amendment analysis, the Court rejected arguments made by the United States that section 48 should be read narrowly and construed to be limited to depictions of actual animal cruelty. Instead, the Court focused on hypothetical applications of the law to acts that were not necessarily cruel or in violation of State or Federal animal cruelty laws. Further, the Court was unwilling to find that the statute was sufficiently narrowed by a statutory exemption for depictions with “serious religious, political, scientific, educational, journalistic, historical or artistic value.”<sup>7</sup> Finding that section 48 reached a significant amount of constitutionally protected speech, the Court struck down the law as unconstitutionally overbroad. Chief Justice Roberts noted explicitly that the decision did not reach the issue whether a statute limited to crush videos or other depictions of extreme animal cruelty would be constitutional.

In his dissenting opinion, Justice Alito disagreed with the Court’s decision to consider a facial challenge to section 48, and stated that the case should have been remanded to determine if the statute was unconstitutional only as applied to the facts of Mr. Stevens’s case. He also disagreed with the majority’s overbreadth analysis, concluding instead that a narrower reading of the law was proper and would have saved it under the First Amendment. Justice Alito noted that the underlying criminal animal cruelty was undertaken for the sole purpose of creating and selling crush videos, and that the clandestine nature of the crimes frustrated law enforcement efforts to bring the perpetrators to justice. Lastly, Justice Alito stated that both the States and the Federal Government have a compelling interest in preventing the torture depicted in crush videos and in ensuring that criminals do not profit from their crimes.

#### EFFECTS OF *UNITED STATES V. STEVENS* ON FUTURE LEGISLATION

On May 26, 2010, the Committee’s Subcommittee on Crime, Terrorism, and Homeland Security received testimony from constitutional scholars and practitioners as to the meaning of the Court’s opinion in *Stevens* and the implications it holds for future legislation on crush videos. All of the witnesses generally agreed that the Court was likely to be receptive to a law regulating the interstate sale of crush videos if the law were narrowly and precisely written.<sup>8</sup> Indeed, one witness noted that a majority of parties who filed amicus curiae briefs in support of Mr. Stevens agreed that a law prohibiting crush videos would pass constitutional muster.<sup>9</sup> Such a

<sup>7</sup> *Id.* at 1590–1591.

<sup>8</sup> *United States v. Stevens: The Supreme Court’s Decision Invalidating the Crush Video Statute, Before the Subcomm. on Crime, Terrorism, and Homeland Security of the H. Judiciary Comm., 111th Cong. (2010)* (hereinafter “Subcommittee Hearing”) (prepared testimony of J. Scott Ballenger, Partner at Latham & Watkins, at 3; prepared testimony of Professor Stephen Vladeck, American University Washington College of Law, at 3; prepared testimony of Professor Nathaniel Persily, Columbia Law School, at 5).

<sup>9</sup> Subcommittee Hearing, *supra* note 8 (prepared testimony of J. Scott Ballenger, at 10 (citing Brief of Amici Curiae Association of American Publishers, Inc., et al. Supporting Respondent, at 17, *United States v. Stevens*, 130 S. Ct. 1577 (2010) (No. 08–769) (“Had Congress sought to proscribe only ‘crush videos,’ it could have done so, and this would be a much different case.”); Brief Amici Curiae of The Reporters Committee for Freedom of the Press and Thirteen News Media Organizations in Support of Respondent, at 22, *United States v. Stevens*, 130 S. Ct. 1577 (2010) (No. 08–769) (“Congress could have regulated legally obscene crush videos in a manner that did not threaten news reporting and other high-value speech.”); Brief of Amicus Curiae National Rifle Association of America, Inc. in Support of Respondent, at 34–35, *United States v.*

would be a narrower prohibition against recordings depicting acts of animal cruelty that were themselves in violation of an underlying criminal statute.

The witnesses also agreed that crush videos could be constitutionally prohibited in line with the obscenity doctrine formulated by the Supreme Court in *Miller v. California*.<sup>10</sup> *Miller* and its progeny firmly established the term “obscene” as a legal term of art.<sup>11</sup> The witnesses concurred that Congress can ban interstate and foreign commerce in depictions of acts of illegal animal cruelty that appeal to the “prurient interest,” are “patently offensive,” and “lack serious literary, artistic, political or scientific value.”<sup>12</sup> Although obscenity may generally apply to materials that depict or describe a more obviously sexual act, case law shows that obscenity can also cover unusual deviant acts.<sup>13</sup> Lastly, witnesses noted that the Court left open the possibility that Congress could permissibly regulate crush videos because they constitute speech integral to criminal conduct.<sup>14</sup>

#### PRACTICAL EFFECTS OF THE INVALIDATION OF SECTION 48

The Committee has learned that a robust market for crush videos reemerged on the Internet in light of the Supreme Court’s invalidation of section 48.<sup>15</sup> As was the case when Congress first attempted to address the problem of trade in crush videos, these videos are again being created for sale to those with a sexual fetish and for whom depictions of animal cruelty are arousing. For instance, one website identified in a 2009 investigation, [www.sexycrush.com](http://www.sexycrush.com), openly offered mice crush videos for sale. One video, selling for \$40, shows mice and pinkies—newborn mice whose eyes are still fused shut—strapped inside a high-heeled stiletto shoe with a rubber band. A woman then dons the shoes and proceeds to stomp down on the mice and pinkies while making sexual noises. The animals are seen struggling to get away as they are repeatedly crushed by the woman’s foot, after which some of the mice are further crushed on the floor by the woman now wearing only stockings. Another website, [www.crushheaven.com](http://www.crushheaven.com), allowed people to custom order crush videos and boasted that “you can choose model and victim for your custom video. please tell us the detail of whats [sic] you want. our custom video costs \$200 for 30

Stevens, 130 S. Ct. 1577 (2010) (No. 08–769) (“Congress could have drafted a statute that more precisely aimed at its objectives. For example, Congress could have defined and criminalized crush videos.”).

<sup>10</sup> *Miller v. California*, 413 U.S. 15 (1973).

<sup>11</sup> See, e.g., *Hamling v. United States*, 418 U.S. 87, 105, 113 (1974); *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 505 n.13 (1985).

<sup>12</sup> *Miller*, supra note 10 (the first two elements are to be considered by an average person applying contemporary community standards, while the third applies national standards).

<sup>13</sup> Subcommittee Hearing, supra note 8 (prepared testimony of J. Scott Ballenger, 12–13 (referring to prosecution of individual selling images depicting, inter alia, sadomasochistic torture, *United States v. Thomas*, 74 F.3d 701 (6th Cir. 1996)). “Sadomasochism” is defined as “[t]he combination of sadism and masochism, in particular the deriving of pleasure, especially sexual gratification, from inflicting or submitting to physical or emotional abuse.” *American Heritage Dictionary of the English Language* (Fourth Ed., 2010).

<sup>14</sup> Subcommittee Hearing, supra note 8 (prepared testimony of Prof. Nathaniel Persily, 6–7 (citing *Giboney v. Empire Storage and Ice Co.*, 336 U.S. 490 (1949) and noting its potential application: “the videotaping of such acts is integral to the criminal acts themselves. In other words, the speech accompanying the conduct is part of the same criminal endeavor: namely, the torture of animals in order to create videos for commercial sale and distribution.”)).

<sup>15</sup> The Humane Society of the United States, *Animal Crush Videos Research & Investigation: Descriptive Catalogue of DVD Folders Content* (May 22, 2009) (report submitted to the House Judiciary Committee, Subcommittee on Crime, Terrorism, and Homeland Security).

min/\$300 for 60 min with one model.” This website also offered over 100 non-custom videos for sale, ranging between \$20 and \$100, featuring the torture of various animals, including rabbits, hamsters, mice and pinkies, tortoises, quail, chicken, ducks, frogs, snakes, and cats.

#### HEARINGS

The Committee’s Subcommittee on Crime, Terrorism, and Homeland Security held a hearing on the Supreme Court’s opinion in *United States v. Stevens* on May 26, 2010. Testimony was received from Congressman Elton Gallegly; Congressman Gary Peters; Professor Stephen I. Vladeck, American University Washington College of Law; Professor Nathaniel Persily, Columbia Law School; and J. Scott Ballenger, Partner at Latham & Watkins.

#### COMMITTEE CONSIDERATION

On July 23, 2010, the Committee met in open session and ordered the bill H.R. 1110 favorably reported, without amendment, by a vote of 23–0, a quorum being present.

#### VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following vote was taken during Committee consideration of H.R. 5566:

Motion to favorably report the bill. Approved 23–0.

#### ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman .....	X		
Mr. Berman .....			
Mr. Boucher .....	X		
Mr. Nadler .....			
Mr. Scott .....	X		
Mr. Watt .....			
Ms. Lofgren .....	X		
Ms. Jackson Lee .....			
Ms. Waters .....			
Mr. Delahunt .....			
Mr. Cohen .....	X		
Mr. Johnson .....	X		
Mr. Pierluisi .....	X		
Mr. Quigley .....			
Ms. Chu .....	X		
Mr. Deutch .....	X		
Mr. Gutierrez .....			
Ms. Baldwin .....	X		
Mr. Gonzalez .....			
Mr. Weiner .....			
Mr. Schiff .....	X		
Ms. Sánchez .....	X		
Mr. Maffei .....			
Mr. Polis .....	X		
Mr. Smith, Ranking Member .....	X		
Mr. Sensenbrenner, Jr. ....			
Mr. Coble .....	X		
Mr. Gallegly .....	X		
Mr. Goodlatte .....	X		
Mr. Lungren .....	X		
Mr. Issa .....			

## ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. Forbes .....	X		
Mr. King .....	X		
Mr. Franks .....			
Mr. Gohmert .....			
Mr. Jordan .....	X		
Mr. Poe .....			
Mr. Chaffetz .....			
Mr. Rooney .....	X		
Mr. Harper .....	X		
Total .....	23	0	

## COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 5566, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 1, 2010.*

Hon. JOHN CONYERS, Jr., *Chairman,*  
*Committee on the Judiciary,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5566, the Prevention of Interstate Commerce in Animal Crush Videos Act of 2010.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

DOUGLAS W. ELMENDORF,  
DIRECTOR.

Enclosure

cc: Honorable Lamar S. Smith.  
Ranking Member

*H.R. 5566—Prevention of Interstate Commerce in Animal Crush Videos Act of 2010.*

CBO estimates that implementing H.R. 5566 would have no significant cost to the Federal Government. The legislation could affect direct spending and revenues, so pay-as-you-go procedures would apply, but we estimate that any such effects would not be significant.

H.R. 5566 would modify the current laws that prohibit the sale of certain videos or other items that depict animal cruelty. Thus, the government might be able to pursue cases that it otherwise would not be able to prosecute. CBO expects that H.R. 5566 would apply to a relatively small number of offenders, however, so any increase in costs for law enforcement, court proceedings, or prison operations would not be significant. Any such costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under H.R. 5566 could be subject to criminal fines, the Federal Government might collect additional amounts if the legislation is enacted. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and later spent. CBO estimates that any additional revenues and direct spending would not be significant because of the small number of cases likely to be affected.

H.R. 5566 contains no intergovernmental mandates as defined in the Unfunded Mandate Reform Act (UMRA) and would impose no costs on State, local, or tribal governments. By prohibiting the sale or distribution of photographs, videos, or other electronic images that depict individuals conducting illegal acts of cruelty against animals, the bill would impose a private-sector mandate as defined in UMRA on entities involved in such sales. Creating, owning, or possessing videos depicting animal cruelty with the intent to sell them was prohibited by law until April 2010 when the Supreme Court overturned the 1999 law banning those activities. Before the ban was enacted in 1999, an investigation by the Humane Society of the United States found that such videos sold for up to \$400 each on the Internet. Because of the small volume of commercial sales that would be affected by this legislation, CBO estimates that the aggregate cost of the mandate would fall below the annual threshold established in UMRA for the private sector (\$141 million, in 2010, adjusted annually for inflation).

The CBO staff contacts for this estimate are Mark Grabowicz (for Federal costs) and Marin Randall (for the private-sector impact). The estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

#### PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 5566 will prohibit interstate commerce in animal crush videos.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clause 3 of the Constitution.

## ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 5566 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of Rule XXI.

## SECTION-BY-SECTION ANALYSIS

The following discussion describes the bill as reported by the Committee.

*Sec. 1. Short title.* Section 1 sets forth the short title of the bill as the “Prevention of Interstate Commerce in Animal Crush Videos Act of 2010.”

*Sec.2. Findings.* Section 2 of the bill sets forth several congressional findings.

The first finding expresses Congress’s recognition that preventing animal cruelty is a compelling government interest that is shared by every State and the Federal Government. In addition to protecting animals from suffering due to cruel acts, evidence shows that those who abuse animals are more likely to abuse humans, and society as a whole suffers from moral degradation when animals are cruelly treated. Therefore, protecting animals also protects all of society.

The second finding recognizes that every State in the Nation has existing laws that prohibit intentional animal cruelty. These laws describe prohibited animal cruelty in different ways. Some, for example, prohibit “cruel mistreatment,” while others prohibit “torture.” However, regardless of how these laws are written, they all criminalize the unjustifiable intentional crushing, burning, drowning, suffocating, or impaling of animals.

The third finding concludes that existing laws prohibiting animal cruelty are ineffective at punishing criminal animal abusers who are engaged in the creation of crush videos. Crush videos are typically created in a way that completely obscures the identity of the person torturing an animal. Similarly, the location and date of the torture are not indicated anywhere in the video. Prosecutors are therefore unable to prove the necessary facts to establish jurisdiction over the crime.

The fourth finding recognizes the intrinsic link between the creation of and market for crush videos. Because crush videos by their nature depict acts of actual animal cruelty, these acts constitute a necessary step in the creation of the videos and the establishment of a commercial market for their trade.

The fifth finding recognizes that the commercial market for crush videos provides an economic incentive for individuals to carry out acts of illegal animal cruelty and is therefore an integral part of such cruelty. The prevalence of a custom-order option for crush videos highlights this fact. Crush videos feature choreographed torture, which necessarily means that the creators of the video and the animal torturer jointly engaged in “premeditated” animal cruelty—this is in stark contrast to a scenario where an illegal act is coincidentally recorded, e.g., surveillance cameras recording a robbery.

The sixth finding acknowledges that the United States has long prohibited the sale of obscene materials in interstate commerce.

The seventh finding recognizes that animal crush videos appeal to those who find the depicted animal cruelty to be sexually arousing, and that such videos are patently offensive and lack any serious literary, artistic, political, or scientific value.

*Section 3. Animal Crush Videos.* Section 3 of the bill amends section 48 of title 18, United States Code, to narrowly and explicitly prohibit interstate and foreign commerce in crush videos. The prohibition is written so as to ensure that only a narrow category of obscene speech is affected by the amendment to section 48, thus carefully addressing the overbreadth concerns that form the basis of the Supreme Court's decision in *United States v. Stevens*.

To successfully prosecute an alleged violation of new section 48, the government must prove that the defendant (1) knowingly and (2) for the purpose of commercial advantage or private financial gain (3) sold or offered to sell or distributed or offered to distribute (4) an animal crush video (5) in interstate or foreign commerce.

The use of the word "knowingly" requires that the defendant voluntarily and intentionally sold or offered to sell, or distributed or offered to distribute, the animal crush video and did not do so because of mistake or accident. The sale or distribution, or offer to sell or distribute, must be undertaken with the intent to receive a commercial advantage or private financial gain; however, the sale, distribution, or offer of either need not result in an actual payment or profit in order to satisfy the element. "Sell" encompasses the common general understanding of the term, and "distribute" applies to any means whereby an animal crush video is transferred from one person or place to another person or place, and includes Internet transmissions. The sale, distribution, or offer of either must occur in interstate or foreign commerce.

The term "animal crush video" is defined explicitly as any obscene photograph, motion-picture film, video recording, or electronic image that shows actual, not simulated, intentional crushing, burning, drowning, suffocating, or impaling of one or more living animals in a manner that would violate either a Federal animal cruelty law or State animal cruelty law where the photograph, movie, video, or electronic image was created, sold, distributed, or offered for sale or distribution.

The depiction must also appeal to a prurient interest, and be patently offensive when taken as a whole and applying contemporary community standards. It must also, when taken as a whole, lack serious literary, artistic, political, or scientific value. These requirements serve to further distinguish the sale or distribution of a crush video from legitimate, legal expression.

This section also explicitly states that the prohibition does not apply to visual depictions of veterinary or agricultural husbandry practices or depictions of bona fide hunting, trapping, or fishing, even though the plain sweep of the statute does not cover these activities.

In sum, this section sufficiently addresses the resurgence of the crush video market while ensuring that the prohibition is a constitutional use of congressional powers.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill,

as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

## TITLE 18, UNITED STATES CODE

### PART I—CRIMES

\* \* \* \* \*

#### CHAPTER 3—ANIMALS, BIRDS, FISH, AND PLANTS

Sec.

41. Hunting, fishing, trapping; disturbance or injury on wildlife refuges.

\* \* \* \* \*

**[48. Depiction of animal cruelty.]**

*48. Animal crush videos.*

\* \* \* \* \*

#### **[§ 48. Depiction of animal cruelty**

**[(a) CREATION, SALE, OR POSSESSION.—**Whoever knowingly creates, sells, or possesses a depiction of animal cruelty with the intention of placing that depiction in interstate or foreign commerce for commercial gain, shall be fined under this title or imprisoned not more than 5 years, or both.

**[(b) EXCEPTION.—**Subsection (a) does not apply to any depiction that has serious religious, political, scientific, educational, journalistic, historical, or artistic value.

**[(c) DEFINITIONS.—**In this section—

**[(1)** the term “depiction of animal cruelty” means any visual or auditory depiction, including any photograph, motion-picture film, video recording, electronic image, or sound recording of conduct in which a living animal is intentionally maimed, mutilated, tortured, wounded, or killed, if such conduct is illegal under Federal law or the law of the State in which the creation, sale, or possession takes place, regardless of whether the maiming, mutilation, torture, wounding, or killing took place in the State; and

**[(2)** the term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States.]

#### **§ 48. Animal crush videos**

*(a) PROHIBITION.—Whoever knowingly and for the purpose of commercial advantage or private financial gain sells or offers to sell, or distributes or offers to distribute, an animal crush video in interstate or foreign commerce shall be fined under this title or imprisoned not more than 5 years, or both.*

*(b) RULE OF CONSTRUCTION.—Subsection (a) does not prohibit the sale, distribution, or offer for sale or distribution, of any visual depiction of—*

(1) *customary and normal veterinary or agricultural husbandry practices; or*

(2) *hunting, trapping, or fishing.*

(c) *DEFINITIONS.—In this section the term “animal crush video” means any obscene photograph, motion-picture film, video recording, or electronic image that depicts actual conduct in which one or more living animals is intentionally crushed, burned, drowned, suffocated, or impaled in a manner that would violate a criminal prohibition on cruelty to animals under Federal law or the law of the State in which the depiction is created, sold, distributed, or offered for sale or distribution.*

\* \* \* \* \*

