



**U.S. Department of Justice**

Office of Legislative Affairs

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Office of the Assistant Attorney General

Washington, D.C. 20530

May 15, 2006

The Honorable Richard B. Cheney  
President  
United States Senate  
Washington, D.C. 20510

Dear Mr. President:

We are transmitting herewith a legislative proposal intended to ensure that electronic communications providers report the presence of child pornography on their systems by strengthening the civil penalties for failure to report it. This proposed legislation supplements a second Department proposal, the Child Pornography and Obscenity Prevention Amendments of 2006, which we provided to the Congress on April 20, 2006.

Thank you for the opportunity to present this proposal. Please do not hesitate to call upon us if we may be of further assistance. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

A handwritten signature in black ink that reads "William E. Moschella".

William E. Moschella  
Assistant Attorney General

Attachment



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*Washington, D.C. 20530*

May 15, 2006

The Honorable J. Dennis Hastert  
Speaker  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Speaker:

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William E. Moschella  
Assistant Attorney General

Attachment

## A BILL

To enhance prosecution of child pornography by strengthening section 13032 of title 42, United States Code, to ensure that child pornography is effectively reported.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### **SEC. 1. SHORT TITLE.**

- (1) Short Title- This Act may be cited as the 'Child Pornography Amendments of 2006'.
- (2) Table of Contents- The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Findings.

Sec. 3. Strengthening section 13032 of title 42 to ensure that child pornography is effectively reported.

### **SEC. 2. FINDINGS.**

Congress makes the following findings:

- (1) The importance of electronic communications service providers reporting the presence of child pornography on the Internet to the CyberTipline at the National Center for Missing and Exploited Children:
  - (A) A substantial interstate market in child pornography exists, including not only a multimillion dollar industry, but also a nationwide network of individuals openly advertising their desire to exploit children and to traffic in child pornography. Many of these individuals distribute child pornography with the expectation of receiving other child pornography in return.
  - (B) The interstate market in child pornography is carried on to a substantial extent through the mails and other instrumentalities of interstate and foreign commerce, such as the Internet. The advent of the Internet has greatly increased the ease of transporting, distributing, receiving, and advertising child pornography in interstate commerce. The advent of digital cameras and digital video cameras, as well as videotape cameras, has greatly increased the ease of producing child pornography. The advent of inexpensive computer equipment with the capacity to store large numbers of digital images of child pornography has greatly increased the ease of possessing child pornography. Taken together, these technological

advances have had the unfortunate result of greatly increasing the interstate market in child pornography.

- (C) Ensuring that electronic communication service providers effectively report violations of the child pornography laws to the CyberTipline at the National Center for Missing and Exploited Children, which in turn will forward that report to law enforcement agencies designated by the Attorney General, will reduce both supply and demand in the interstate market for child pornography and will enhance the prosecution of such offenses.

**SEC. 3. STRENGTHENING SECTION 13032 OF TITLE 42 TO ENSURE THAT CHILD PORNOGRAPHY IS EFFECTIVELY REPORTED.**

Section 13032 of title 42 of the United States Code is amended—

- (1) By amending paragraph (4) of subsection (b) to read as follows:

- (4) Failure to report.

- (A) A provider of electronic communication services or remote computing services described in paragraph (1) who knowingly and willfully fails to make a report under that paragraph shall be fined—

- (i) in the case of an initial failure to make a report, not more than \$ 150,000; and
- (ii) in the case of any second or subsequent failure to make a report, not more than \$ 300,000.

- (B) A provider of electronic communication services or remote computing services described in paragraph (1) who negligently fails to make a report under that paragraph shall be subject to a civil penalty of—

- (i) in the case of an initial failure to make a report, not more than \$ 50,000; and
- (ii) in the case of any second or subsequent failure to make a report, not more than \$100,000.

- (C) For the purposes of this paragraph, the Federal Communications Commission shall have the authority to levy civil penalties under subparagraph (B) and shall promulgate regulations, in consultation with the Attorney General, to effectuate the purposes of subparagraph (B) and to provide for appropriate administrative review of any civil penalties levied thereunder.

## **Brief Section-by-Section Summary of Proposed Legislation:**

### **Child Pornography Amendments of 2006**

#### **Section 1:**

Sets forth the short title and table of contents for the legislation.

#### **Section 2:**

Makes findings regarding the importance of reporting the presence of child pornography on the Internet.

#### **Section 3:**

Section 3 would amend existing provisions of the law that require certain providers of electronic communications services to report violations of the child pornography laws. Current law provides that a provider who knowingly and willfully fails to report such violations shall be subject to a criminal fine of up to \$50,000 for the initial failure to report and \$100,000 for each subsequent failure to report. Prosecutors and law enforcement sources report that this criminal provision has been virtually impossible to enforce because of the particular mens rea requirement and the low amount of the potential penalty. This legislation would triple the criminal fines available for knowing and willful failures to report, making the available fines \$150,000 for the initial violation and \$300,000 for each subsequent violation. In addition, the legislation would add civil fines for negligent failure to report a child pornography offense. The civil penalty is set at \$50,000 for the initial violation and \$100,000 for each subsequent violation. The Federal Communications Commission would be provided with the authority to levy the civil fines under this section and to make the necessary regulations, in consultation with the Attorney General, in order to carry the fines into effect and to provide an appropriate administrative review process.