

DISCUSSION DRAFT114TH CONGRESS
1ST SESSION**H. R.** _____

To amend title 18, United States Code, to provide that it is unlawful to reproduce, distribute, exhibit, publish, transmit, or otherwise disseminate a visual depiction of a person who is nude or partially nude or who is engaging in sexually explicit conduct, regardless of whether the depicted person consented to the capture of the image, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Ms. SPEIER introduced the following bill; which was referred to the Committee on _____

A BILL

To amend title 18, United States Code, to provide that it is unlawful to reproduce, distribute, exhibit, publish, transmit, or otherwise disseminate a visual depiction of a person who is nude or partially nude or who is engaging in sexually explicit conduct, regardless of whether the depicted person consented to the capture of the image, 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 “Intimate Privacy Pro-
3 tection Act of 2015”.

4 **SEC. 2. CERTAIN ACTIVITIES RELATING TO VISUAL DEPIC-**
5 **TIONS OF THE PRIVATE AREA OF AN INDI-**
6 **VIDUAL OR OF AN INDIVIDUAL ENGAGED IN**
7 **SEXUALLY EXPLICIT CONDUCT.**

8 (a) IN GENERAL.—Chapter 88 of title 18, United
9 States Code, is amended by adding at the end the fol-
10 lowing:

11 **“§ 1802. Certain activities relating to visual depic-**
12 **tions of the private area of an individual**
13 **or of an individual engaged in sexually**
14 **explicit conduct**

15 “(a) IN GENERAL.—Whoever knowingly presents or
16 distributes through the mails, or using any means of facil-
17 ity of interstate or foreign commerce or in or affecting
18 interstate or foreign commerce by any means, including
19 a computer, a visual depiction of a person who is identifi-
20 able from the image itself or information displayed in con-
21 nection with the image and who is engaging in sexually
22 explicit conduct, or of the naked genitals or post-pubescent
23 female nipple of a person, without the consent of that per-
24 son (regardless of whether the depicted person consented
25 to the original capture of the image), and knows or should
26 have known that such reproduction, distribution, exhi-

1 bition, publication, transmission, or dissemination would
2 likely cause emotional distress to a reasonable person if
3 that reasonable person were so depicted, shall be fined
4 under this title or imprisoned not more than 5 years, or
5 both.

6 “(b) EXCEPTIONS.—

7 “(1) LAW ENFORCEMENT.—This section—

8 “(A) does not prohibit any lawful law en-
9 forcement, correctional, or intelligence activity;

10 “(B) shall not apply in the case of an indi-
11 vidual reporting unlawful activity; and

12 “(C) shall not apply to a subpoena or court
13 order for use in a legal proceeding.

14 “(2) VOLUNTARY PUBLIC OR COMMERCIAL EX-
15 POSURE.—This section does not apply in the case of
16 an individual who voluntarily exposes the naked
17 genitals or post-pubescent female nipple of that indi-
18 vidual or voluntarily engages in sexually explicit con-
19 duct in public or in a commercial setting.

20 “(3) CERTAIN CATEGORIES OF VISUAL DEPIC-
21 TIONS EXCEPTED.—This section shall not apply in
22 the case of a visual depiction, the disclosure of which
23 is in the bona fide public interest.

24 “(4) TELECOMMUNICATIONS AND INTERNET
25 SERVICE PROVIDERS.—

1 “(A) IN GENERAL.—Except as provided in
2 subparagraph (B), this section shall not apply
3 in the case of a person engaged in an activity
4 that is limited to—

5 “(i) the provision of a telecommuni-
6 cations service (as defined in section 3 of
7 the Communications Act of 1934 (47
8 U.S.C. 153)) or an Internet access service
9 or Internet information location tool (as
10 such terms are defined in section 231 of
11 the Communications Act of 1934 (47
12 U.S.C. 231)); or

13 “(ii) the transmission, storage, re-
14 trieval, hosting, formatting, or translation
15 (or any combination thereof) of a commu-
16 nication, without selection or alteration of
17 the content of the communication, except
18 that the deletion of a particular commu-
19 nication or material made by another per-
20 son in a manner consistent with section
21 230(e) of the Communications Act of 1934
22 (47 U.S.C. 230(e)) shall not constitute
23 such selection or alteration of the content
24 of the communication.

25 “(B) APPLICABILITY.—

1 “(i) IN GENERAL.—The exception
2 under subparagraph (A) shall not apply in
3 the case of an operator of a search engine
4 or website or of a developer of any soft-
5 ware application if—

6 “(I) in the case of an operator of
7 a search engine, the operator, after
8 receiving notice from a person de-
9 scribed in clause (ii) that a search re-
10 sult on that search engine directs the
11 user to a website that contains a vis-
12 ual depiction, the reproduction, dis-
13 tribution, exhibition, publication,
14 transmission, or dissemination of
15 which is in violation of this section,
16 does not, within 48 hours after receiv-
17 ing such notice, remove that search
18 result from the search engine, unless
19 the operator contacts the person and
20 provides them with notice under sub-
21 paragraph (D)(iii).

22 “(II) in the case of an operator
23 of a website, the operator, after re-
24 ceiving notice from a person described
25 in clause (ii) that the website contains

1 a visual depiction, the reproduction,
2 distribution, exhibition, publication,
3 transmission, or dissemination of
4 which is in violation of this section,
5 does not, within 48 hours after receiv-
6 ing such notice, remove that content
7 from the website, unless the operator
8 contacts the person and provides them
9 with notice under subparagraph
10 (D)(iii).

11 “(III) in the case of a developer
12 of a software application, the devel-
13 oper, after receiving notice from a
14 person described in clause (ii) that the
15 application contains a visual depiction,
16 the reproduction, distribution, exhi-
17 bition, publication, transmission, or
18 dissemination of which is in violation
19 of this section, does not, within 48
20 hours after receiving such notice, re-
21 move that content from the applica-
22 tion, unless the developer contacts the
23 person and provides them with notice
24 under subparagraph (D)(iii).

1 “(ii) PROVIDER OF NOTICE.—A per-
2 son is described in this clause if—

3 “(I) the person is depicted in the
4 visual depiction which violates this
5 section;

6 “(II) the person is the legal rep-
7 resentative of the person described in
8 subclause (I); or

9 “(III) the person is a law en-
10 forcement officer acting in perform-
11 ance of official duties.

12 “(C) DETERMINING IF A VIOLATION OF
13 THIS SECTION HAS OCCURRED.—In determining
14 whether consent was given to publicly dissemi-
15 nate visual depictions of the private area or sex-
16 ually explicit conduct of an individual covered in
17 this section, the operator of a website or search
18 engine must be provided credible information
19 that affirmative consent was given. This may
20 include contacting the individual that uploaded
21 the content.

22 “(D) TIMEFRAME FOR DETERMINATION.—
23 Not later than 48 hours after a covered indi-
24 vidual contacts the operator of a website or
25 search engine or the developer of a software ap-

1 plication, the operator of a website or search
2 engine or the software developer shall contact
3 the individual with their determination that—

4 “(i) consent was given to publicly dis-
5 seminate the content;

6 “(ii) no consent was given; or

7 “(iii) more time was needed to deter-
8 mine whether such consent was given.

9 The covered individual shall make a determina-
10 tion no later than 10 days after being first noti-
11 fied.

12 “(E) REPORTING REQUIREMENT.—Begin-
13 ning on the date that is 1 year after the date
14 of enactment of this section, and annually
15 thereafter, each operator of a website or search
16 engine or developer of a software application
17 who has been notified by an individual that the
18 individual had not consented to public dissemi-
19 nation of content covered in this section, shall
20 make publicly available on the Internet and re-
21 port to the Attorney General the following:

22 “(i) The number of requests to take
23 down the content.

1 “(ii) The number of times the content
2 was determined to be content presented or
3 distributed in violation of subsection (a).

4 “(iii) The number of times the con-
5 tent was determined not to be such con-
6 tent.

7 “(iv) The number of times more than
8 48 hours was needed to make a determina-
9 tion as to whether consent was given to
10 publicly disseminate the content, and why
11 additional time was required to make such
12 determination.

13 “(c) DEFINITIONS.—In this section:

14 “(1) Except as otherwise provided, the terms in
15 this section have the meanings given those terms in
16 section 1801.

17 “(2) The term ‘visual depiction’ has the mean-
18 ing given that term in section 2256.

19 “(3) The term ‘search engine’ means a service
20 that permits a user to search for information on the
21 Internet and provides the user with a hypertext link
22 to or other indication of the location of such infor-
23 mation.

1 “(4) The term ‘sexually explicit conduct’ has
2 the meaning given that term in section
3 2256(2)(A).”.