DISCUSSION DRAFT

114TH 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.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

This Act may be cited as the “Intimate Privacy Protection Act of 2015”.

SEC. 2. CERTAIN ACTIVITIES RELATING TO VISUAL DEPICTIONS OF THE PRIVATE AREA OF AN INDIVIDUAL OR OF AN INDIVIDUAL ENGAGED IN SEXUALLY EXPLICIT CONDUCT.

(a) In general.—Chapter 88 of title 18, United States Code, is amended by adding at the end the following:

“§ 1802. Certain activities relating to visual depictions of the private area of an individual or of an individual engaged in sexually explicit conduct

“(a) In general.—Whoever knowingly presents or distributes through the mails, or using any means of facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including a computer, a visual depiction of a person who is identifiable from the image itself or information displayed in connection with the image and who is engaging in sexually explicit conduct, or of the naked genitals or post-pubescent female nipple of a person, without the consent of that person (regardless of whether the depicted person consented to the original capture of the image), and knows or should have known that such reproduction, distribution, exhi-
bition, publication, transmission, or dissemination would likely cause emotional distress to a reasonable person if that reasonable person were so depicted, shall be fined under this title or imprisoned not more than 5 years, or both.

“(b) EXCEPTIONS.—

“(1) LAW ENFORCEMENT.—This section—

“(A) does not prohibit any lawful law enforcement, correctional, or intelligence activity;

“(B) shall not apply in the case of an individual reporting unlawful activity; and

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

“(2) VOLUNTARY PUBLIC OR COMMERCIAL EXPOSURE.—This section does not apply in the case of an individual who voluntarily exposes the naked genitals or post-pubescent female nipple of that individual or voluntarily engages in sexually explicit conduct in public or in a commercial setting.

“(3) CERTAIN CATEGORIES OF VISUAL DEPictions EXCEPTED.—This section shall not apply in the case of a visual depiction, the disclosure of which is in the bona fide public interest.

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

“(i) the provision of a telecommunications service (as defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153)) or an Internet access service or Internet information location tool (as such terms are defined in section 231 of the Communications Act of 1934 (47 U.S.C. 231)); or

“(ii) the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication, without selection or alteration of the content of the communication, except that the deletion of a particular communication or material made by another person in a manner consistent with section 230(c) of the Communications Act of 1934 (47 U.S.C. 230(c)) shall not constitute such selection or alteration of the content of the communication.

“(B) APPLICABILITY.—
“(i) IN GENERAL.—The exception under subparagraph (A) shall not apply in the case of an operator of a search engine or website or of a developer of any software application if—

“(I) in the case of an operator of a search engine, the operator, after receiving notice from a person described in clause (ii) that a search result on that search engine directs the user to a website that contains a visual depiction, the reproduction, distribution, exhibition, publication, transmission, or dissemination of which is in violation of this section, does not, within 48 hours after receiving such notice, remove that search result from the search engine, unless the operator contacts the person and provides them with notice under subparagraph (D)(iii).

“(II) in the case of an operator of a website, the operator, after receiving notice from a person described in clause (ii) that the website contains
a visual depiction, the reproduction, distribution, exhibition, publication, transmission, or dissemination of which is in violation of this section, does not, within 48 hours after receiving such notice, remove that content from the website, unless the operator contacts the person and provides them with notice under subparagraph (D)(iii).

“(III) in the case of a developer of a software application, the developer, after receiving notice from a person described in clause (ii) that the application contains a visual depiction, the reproduction, distribution, exhibition, publication, transmission, or dissemination of which is in violation of this section, does not, within 48 hours after receiving such notice, remove that content from the application, unless the developer contacts the person and provides them with notice under subparagraph (D)(iii).
“(ii) PROVIDER OF NOTICE.—A person is described in this clause if—

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

“(II) the person is the legal representative of the person described in subclause (I); or

“(III) the person is a law enforcement officer acting in performance of official duties.

“(C) DETERMINING IF A VIOLATION OF THIS SECTION HAS OCCURRED.—In determining whether consent was given to publicly disseminate visual depictions of the private area or sexually explicit conduct of an individual covered in this section, the operator of a website or search engine must be provided credible information that affirmative consent was given. This may include contacting the individual that uploaded the content.

“(D) TIMEFRAME FOR DETERMINATION.—Not later than 48 hours after a covered individual contacts the operator of a website or search engine or the developer of a software ap-
application, the operator of a website or search engine or the software developer shall contact the individual with their determination that—

“(i) consent was given to publicly disseminate the content;

“(ii) no consent was given; or

“(iii) more time was needed to determine whether such consent was given.

The covered individual shall make a determination no later than 10 days after being first notified.

“(E) REPORTING REQUIREMENT.—Beginning on the date that is 1 year after the date of enactment of this section, and annually thereafter, each operator of a website or search engine or developer of a software application who has been notified by an individual that the individual had not consented to public dissemination of content covered in this section, shall make publicly available on the Internet and report to the Attorney General the following:

“(i) The number of requests to take down the content.
“(ii) The number of times the content was determined to be content presented or distributed in violation of subsection (a).

“(iii) The number of times the content was determined not to be such content.

“(iv) The number of times more than 48 hours was needed to make a determination as to whether consent was given to publicly disseminate the content, and why additional time was required to make such determination.

“(c) DEFINITIONS.—In this section:

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

“(2) The term ‘visual depiction’ has the meaning given that term in section 2256.

“(3) The term ‘search engine’ means a service that permits a user to search for information on the Internet and provides the user with a hypertext link to or other indication of the location of such information.
“(4) The term ‘sexually explicit conduct’ has the meaning given that term in section 2256(2)(A).”