

Feds seek to limit sexual images online

By Heather Cassell
September 13, 2007

A proposed amendment to a federal recordkeeping law could force adult social networking Web sites and other Internet sites to gather and maintain users' identification.

Civil liberties organizations have slammed the proposal, and have submitted comments to the U.S. Department of Justice on behalf of adult social networking and adult entertainment Web sites that could be severely crippled by the amendment to the federal labeling and recordkeeping law.

Public comment about the new rules and regulations to Section 2257 of the recordkeeping law closed September 10. The new regulations are a product of the Adam Walsh Child Protection and Safety Act of 2006, which is designed to prevent sexual and other violent crimes against children, and regulate sexually explicit digital images online.

"The proposed amendment to the federal labeling and recordkeeping law will surely at the least have a chilling effect on users of social networking Web sites, and at the worst [is] an outright and unacceptable invasion of privacy," wrote Roberta Sklar, National Gay and Lesbian Task Force spokeswoman, in an e-mail.

According to Diane Duke, executive director of the Free Speech Coalition in Canoga Park, California, the Justice Department could take up to eight months to process public comments about the proposal before issuing the new regulations. After the Justice Department issues the new requirements businesses will have 30 days to comply.

Duke told the *B.A.R.* that the Free Speech Coalition would file a lawsuit seeking an injunction if changes aren't made to the regulations to protect individuals' rights.

The regulations require secondary producers, such as dating and social networking Web sites, to gather and maintain personal information from every user who posts a "sexually explicit" photo, according to NGLTF.

Civil liberties organizations stated that the language in the amendment lacks clarity about how personal information, which would be subject to investigation without probable cause or warrants, could be used by the federal government and maintain the regulations violate individuals' rights to privacy and free speech and causes concerns about security.

"The 2257 regulations seem to be sweeping with a much broader brush, using bureaucracy to curtail sexual images," said Susan Wright, media spokeswoman for the National Coalition for Sexual Freedom in Baltimore, which is aggressively working against the regulations and encouraging BDSM and polyamorous communities to join the Free Speech Coalition, which also submitted public comments to the Justice Department.

In a letter to the Justice Department on September 7, the Human Rights Campaign raised questions about the regulations, including security breaches that could affect LGBT individuals. In the letter HRC cited "707 data security breaches ... since January of 2005." HRC pointed out that

many of the security breaches were with companies like Monster.com and the SEC Fidelity National Information Services Certegy Check Services Inc., which combined exposed personal information of 10.1 million customers.

"As these companies with better resources than most adult networking sites can attest, maintenance of the security of sensitive data for networking sites with thousands of visitors and members can be very difficult to manage," the HRC stated in the letter. "This creates an unreasonable risk of exposure."

Furthermore, HRC outlined the specific risk for LGBT individuals. The letter cited everything from identity theft to fears of being "outed" to discrimination to hate crimes.

Civil liberties organizations agreed, noticing that the effect of the pending regulations and the attacks on the adult entertainment industry under the Bush administration have led to self-censorship.

According to Wright, the regulations could have an adverse effect on sexual education Web sites. She told the *B.A.R.* that she's already seen self-censorship happen with BDSM Web sites pulling images. She also believes that the regulations could be more insidious than just including social networking Web sites, and that chat groups and personal e-mail conversations could be included. The pressure, according to Wright, could lead to some networks and Web sites closing down, particularly if the groups running them are nonprofit organizations that can't afford to operate as a "primary" source for the images.

The regulations call for stiff penalties, including up to five years imprisonment if businesses don't comply.

"We firmly believe it's not about enforcing the intent of the law," said Duke. "It's about putting adult entertainment out of business and seriously damaging the industry."

Operators of adult social networking Web sites are scared.

Kevin Nyland, vice president of corporate communications and investor relations for PlanetOut Inc., owner of Gay.com, didn't want to comment, fearing politicizing the issue.

"There are a lot of legal issues surrounding it and just as a general rule we don't want to politicize the whole thing," said Nyland. "We are taking all steps necessary to maintain our knowledge about the issue and will handle it in the most appropriate way as we move forward."

OkCupid.com, a dating Web site that includes LGBT dating, refused to comment about the pending rules and regulations, after Sam Yagan, co-founder and chief executive officer, agreed by e-mail to speak to the *Bay Area Reporter* about the potential effects of the regulations. OurChart.com, Butch-Femme.com, and Craigslist.org did not respond to requests for comment by press time.

Jonathan Crutchley, co-owner of Manhunt.net, which is owned and operated by Online Buddies Inc. in Cambridge, Massachusetts, said with more than 9 million photos posted on his site by 1.1 million subscribers from around the globe it would be impossible to verify the proof of age for each individual picture.

"My company is not in the business of posting pictures of children at all," said Crutchley. "But they want us to prove that we don't do that. It would just be too difficult to keep records of 9 million pictures and growing. You have to be 18 or older to join our site."

Crutchley believes that once the new regulations are enforced he could be imprisoned for life for not being able to maintain records.

"What can they do except close the business and move to Amsterdam?" asked Crutchley, a former Republican, who is keeping a close watch on the issue. "We haven't faced that one yet."

He noted that other adult social networking Web sites, "particularly the gay sites," such as Barebackrt.com and Bigmuscle.com posted banners on their Web sites alerting their users to the pending regulations during the past few weeks.

"I think the Web sites are counting on that [federal courts imposing injunctions based on the regulations being unconstitutional] rather than wanting to go public with political statements," said Crutchley. "Because if you stick your head up you might get shot."

When the *B.A.R.* asked why he was willing to speak out against the regulations, Crutchley said, "I'm in serious risk, but I would say to Mr. Cheney, 'Go ahead and make my day' – someone has to."