

AN ACT
RELATING TO SEXUALLY ORIENTED MATERIAL HARMFUL TO MINORS;
INCLUDING COMPUTER COMMUNICATIONS; CREATING CRIMES;
PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 30, Article 37
NMSA 1978 is enacted to read:

"DISSEMINATION OF MATERIAL THAT IS HARMFUL TO A MINOR
BY COMPUTER--CHILD LURING.--

A. Dissemination of material that is harmful to a minor by computer consists of the use of a computer communications system that allows the input, output, examination or transfer of computer data or computer programs from one computer to another, to knowingly and intentionally initiate or engage in communication with a person under eighteen years of age when such communication in whole or in part depicts actual or simulated nudity, sexual intercourse or any other sexual conduct. Whoever commits dissemination of material that is harmful to a minor by computer is guilty of a misdemeanor.

B. Child luring consists of a person knowingly and intentionally inducing a child under sixteen years of age, by means of computer, to engage in sexual intercourse, sexual contact or in a sexual or obscene performance, or to

engage in any other sexual conduct when the perpetrator is at least three years older than the child. Whoever commits child luring is guilty of a fourth degree felony.

C. In a prosecution for dissemination of material that is harmful to a minor by computer, it is a defense that the defendant has:

(1) in good faith taken reasonable, effective and appropriate actions under the circumstances to restrict or prevent access by minors to indecent materials on computer, including any method that is feasible with available technology;

(2) restricted access to indecent materials by requiring the use of a verified credit card, debit account, adult access code or adult personal identification number; or

(3) in good faith established a mechanism such as labeling, segregation or other means that enables the indecent material to be automatically blocked or screened by software or other capability reasonably available to persons who wish to effect such blocking or screening and the defendant has not otherwise solicited a minor not subject to such screening or blocking capabilities to access the indecent material or to circumvent the screening or blocking.

D. In a prosecution for dissemination of material

that is harmful to a minor by computer, a person shall not be held to have violated the provisions of this section solely for providing access or connection to or from a facility, system or network not under the person's control, including transmission, downloading, intermediate storage, access software or other related capabilities that are incidental to providing access or connection and that do not include the creation of the content of the communication.

E. The limitations provided by Subsection D of this section shall not be applicable to a person who is a conspirator with an entity actively involved in the creation or knowing dissemination of indecent material by computer or who knowingly advertises the availability of indecent material by computer. The limitations provided by Subsection D of this section shall not be applicable to a person who provides access or connection to a facility, system or network that disseminates indecent material by computer that is owned or controlled by him.

F. No employer shall be held liable for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of his employment or agency and the employer, having knowledge of such conduct, authorizes or ratifies the conduct or recklessly disregards the conduct. "

Section 2. EFFECTIVE DATE. -- The effective date of the

provisions of this act is July 1, 1998.