

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
October 15, 2003

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Ranking Member, Senate Committee on the Judiciary
Hearing on "Indecent Exposure:
Oversight of DOJ's Efforts to Protect Pornography's Victims"
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Today's hearing -- which is being billed as an "oversight" hearing - will focus the Committee's attention again on issues relating to the distribution of pornography. The Committee has devoted a significant amount of time to this topic, particularly as it relates to the exploitation of children, and we have become well-versed on the subject.

Just last month, the Committee held a hearing on peer-to-peer networks, which allow individuals to share files with millions of other users in relative anonymity. Witnesses testified that these networks are harboring the vilest forms of child pornography and are increasingly impervious to law enforcement scrutiny.

Earlier this year, Congress passed the PROTECT Act - which Senator Hatch and I had developed and refined over the course of several Congressional sessions. Although not perfect, the PROTECT Act was a good faith effort to provide powerful tools for prosecutors to deal with the problem of child pornography within constitutional limits in the wake of the Supreme Court's ruling on the 1996 Child Pornography Protection Act. Regrettably, House and Senate Republicans used this bipartisan legislation as a vehicle to pass controversial sentencing provisions that had nothing to do with protecting children, and, in the words of Chief Justice Rehnquist, "seriously impair the ability of courts to impose just and responsible sentences."

One of the many positive aspects of the PROTECT Act was its updating of the Victims of Child Abuse Act of 1990. That legislation requires electronic and remote computing services to report instances of child pornography to the National Center for Missing and Exploited Children, and authorizes the Center to forward this information to law enforcement. The PROTECT Act strengthened the Center's ability to report Internet-related child sexual exploitation in the distribution of child pornography, online enticement of children for sexual acts, and child prostitution.

I am pleased to welcome our witnesses from the Department of Justice, as well as representatives of local law enforcement and pornography victims. I am looking forward to their testimony. One issue I would like to hear discussed is whether the investigation and prosecution of child pornography cases could be significantly enhanced by greater participation of local and state law enforcement. They are highly experienced, and their involvement would also free up additional Department resources for pursuit of terrorism cases and other national law enforcement concerns.

I also hope the Department witness will answer outstanding questions on the Department's efforts under the Victims of Child Abuse Act, as recently amended, to stop child pornography, especially in the peer-to-peer network context. For instance, I would also like to have a discussion of the Department's position on whether these networks are subject to the pornography reporting requirements.

It has become clear that some peer-to-peer operators take the position that this statute does not apply to them. I think it is important that we have a clear understanding - and that these network operators have a clear understanding - about their obligations, and that we do all that we can under the law to prevent their networks from being conduits for child pornography and exploitation. Indeed, I have a continuing concern that the Department has not yet issued implementing regulations updating the Victims of Child Abuse Act under the PROTECT Act. The Department has yet to provide how Internet Service Providers should comply with the statute. I note that I recently sent letters to Attorney General Ashcroft on this matter, and look forward to his response.

In the meantime, it would be instructive for us if the Department representatives here today could discuss what they know about the Department position on the obligation of P2P networks to comply with this statute, and to what extent the Department is pursuing matters against these networks as a result of their failure to report instances of child pornography.