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STATEMENT BEFORE THE CHILD ONLINE PROTECTION ACT COMMISSION
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Good afternoon Chairman Telage and members of the Child Online Protection Act Commission. It is an honor for me to be able to discuss with you today some of the challenges we in law enforcement face when investigating cases of children who have been victimized on-line.

One area of specific concern for investigators in this field is the statutory language found in many of the laws that attempt to protect children from on-line victimization. Specifically, two statutes come to mind; both are found in Title 18 of the United States Code.

Section 2252 makes it illegal to possess or distribute child pornography. When attempting to establish a federal nexus for these cases, investigators must prove that the images being charged traveled in interstate or foreign commerce, or that the materials used to produce the depictions traveled in interstate or foreign commerce. In practical terms, this means that investigators must locate the manufacturer of computer hard drives and disks and establish that they were manufactured outside of California. Investigators may also have to determine whether or not the image or images actually traveled in

interstate or foreign commerce; this is not always possible, given the dynamic nature of the Internet.

A practicable solution that reflects accurately what transpires in these cases would involve a statutory word change. Making it illegal to use a "facility" of interstate or foreign commerce to distribute child pornography would greatly reduce investigator workload and simplify what is now a somewhat complicated process. This statutory word change would also fall in line with wording contained in other child exploitation statutes, mainly Section 2422, which makes it illegal to use a facility of interstate or foreign commerce to entice that minor, and section 1470, which makes it illegal to transmit obscene materials to a minor using a facility of interstate commerce. All three of these statutes assure one thing: if the person uses the Internet, he or she has used a facility of interstate commerce. It is simple, direct and makes sense.

The other statute that could be changed so that law enforcement can more effectively investigate on-line child exploitation cases is one I previously mentioned, section 1470. This statute makes it illegal for someone to use a facility of interstate or foreign commerce to send obscene matter to a minor. What constitutes obscene matter varies greatly from judicial district to district because of case law that requires local community standards be applied when evaluating whether or not an image is obscene. In the Central and Northern districts of California, an image must depict particularly egregious conduct before it is considered obscene. That means that an adult can transmit

adult pornography to a minor as a means of enticement without violating federal law. Whether or not that violates any state laws varies greatly for state to state.

We propose that "transmitting obscene matter" to a minor be changed to transmitting images that depict "sexually explicit conduct." The definition of "sexually explicit conduct" is already defined in section 2256 of Title 18. This simple change would then make it a federal offense for a person to send adult pornography to a minor with the intent to seduce or entice that minor.

Adults transmit pornography to minors with alarming regularity. As an undercover agent, adults routinely transmit adult pornography to the various personae we portray. Currently, this violates no federal law, as the images do not meet the Miller test definition of obscenity. If we have made transmitting the e-mail address of a minor a federal offense, certainly transmitting images of sexually explicit conduct to a minor should be as well. This simple statutory change would expand greatly law enforcement's ability to apprehend those who use the Internet to deliberately provide our children with harmful matter. This statute only addresses those situations where adults actively and deliberately transmit pornography to those who have made their identity, real or undercover, known; it does not, and should not, cover those situations where adult material is posted on sites and reasonable measures are taken to ensure that minors do not have access.

In short, these simple changes will help ensure that the language of all statutes regarding on-line child exploitation is consistent. Additionally, in the case with 1470, it will help law enforcement address a current problem about which we can do little; those adults who purposefully send pornography to children.

Thank you very much.