



Not-so-anonymous sex

Why the feds are placing heavy new requirements on hookup websites

by Eric Wolff
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The Internet, as the song goes, is for porn. But it may be for less porn in the near future if new rules from the federal government go into effect. Actually, it doesn't have to be for less porn--it will just become a lot more laborious to post it legally, because the new rules impose a pile of recordkeeping requirements on digital media. That's why they're part of Section 2257 of the Federal Labeling and Recordkeeping Law.

If the rules take effect, they'll go like this: If a person wants to post dirty pictures, the person will need:

- A copy of identification for anyone whose dirty picture has been posted.
- A list of all the aliases used by the person in the picture.
- A system that indexes the model by name and alias.
- A notice that comes with the photo that includes the name of the producer (videographer, photographer), the address at which records are stored and the date of production.

These records must be available for government inspection between 9 a.m. and 5 p.m., Monday through Friday.

Failure to meet those requirements could mean five years in jail, even for a person who shows off his or her own, ahem, assets. The ostensible purpose of the rules is to prevent child pornography. As First Amendment attorney and pornography-law specialist J.D. Obenberger put it, "You can't tell how old a dick is by looking at it."

The requirements allow the FBI to appear at any time during the week and demand evidence that none of the models are underage. Obenberger supports the principle behind the law.

"If they seize your laptop and they find a bunch of pictures of youngish people," he told CityBeat, "you can say, 'I got them from a site that led me to believe they're 18 years of age.' It protects the consumer; it's a warranty that all the people on this site are over 18."

The rules have actually existed since 1990, when they were mostly applied to print publications that have far more control over content than a networking website does. As the web emerged in the mid-1990s, its capacity to distribute pornography of all sorts to all predilections became a source of profit and concern to different segments of Americans. The exact wording of the law suggested it could be applied to digital pornography, but President Bill Clinton's attorney general,

Janet Reno, never enforced it on websites; she never even selected which arm of law enforcement would conduct inspections.

Not until Congressman Jim Sensenbrenner of Wisconsin raised a ruckus in 2004 did the law get amended to specifically include digital media. Then-Attorney General John Ashcroft ordered specific regulations be written, and the public-comment period on those proposed regulations ended just last week. The rules now wait on the Justice Department to finalize them before they go into effect. Ashcroft also selected the FBI to become the enforcer.

Under most regulations governing the Internet, websites that host other people's content are not responsible for that content. The people vulnerable to this law are primary producers, which can include any individual who puts a dirty picture on their profile page at adult social-networking sites. "Dirty" in this case means genitalia or depictions of real or simulated sex. That word "simulated" in particular has people nervous, because it's so open to interpretation by the authorities.

However, Obenberger doesn't believe the government will really go after individuals.

"I predict no poster on a networking site will ever be prosecuted under 2257," Obenberger said. "Otherwise, I and other lawyers will fucking jump on the case and stick it up the wazoo of the Justice Department. They're relying on prosecutorial discretion to keep it out of rough constitutional waters."

So if the government won't go after regular people, and providers are immune, what's the big deal? Well, providers aren't entirely immune. A company like Craigslist has no worries, because it exerts no editorial control over the people who post to its site. It's simply a service provider. But as soon as a company, say a social-networking website, exerts any editorial control, it becomes a "primary producer" in the eyes of the law and must maintain all the records for every person who appears in a dirty photo on its site. Editorial control can be as simple as moving the pretty people to the top of searches or even a "profile of the day" selection. Companies like the Las Vegas-based Boyhunt.com are worried, because making those adjustments are the keys to marketing a site, yet the ID requirements will be hard to meet.

"How do you go about proving who they are?" Boyhunt.com co-CEO Robert West said. "That would be so hideous. Anybody can send a fake picture or a fake ID."

Most social-networking sites are intensely secretive, and few returned CityBeat's calls. Those that did would only speak off the record, but their concern is manifest. They fear strict requirements will drive users looking for an anonymous quickie away from their companies and that the industry could collapse. The Free Speech Coalition, an industry group supported by large porn producers, has already sued the government and lost on most of the elements of their case.

A few sites are trying to get ahead of the curve. Adultspace.com has a notice on its website saying it is entirely in compliance with Section 2257, and Bnskin.com requires a verifiable photo before creating a new profile. The requirement has already caused a couple of users CityBeat e-mailed to abandon the site. West said he and his partner are thinking about taking Boyhunt.com to France.

The consequences for these kinds of hookup sites have actually sent some gay-rights organizations to the battlements to challenge the rules.

"The proposed regulations seek to effectively kill sites used by LGBT people to meet each other, while doing absolutely nothing to address child pornography," said Matt Foreman, executive director of the National Gay and Lesbian Task Force. "Since the early days of

the Internet, LGBT people have been in the forefront of using new technologies to meet each other--it's been a literal lifesaver for thousands of us, particularly those who live outside of major metropolitan areas."

Both inside the sex industry and out, those who are aware of the Section 2257 regulations see the tightening as the latest salvo in the culture war.

"These proposed regulations," Foreman said, "along with many other initiatives--such as abstinence-only sex education programs and the elimination of funding for accurate and explicit HIV prevention programs--reflect the current administration's utter capitulation to the right wing's obsession with sexuality and sexual freedom."

The rules are expected to take effect in some form next year.