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*PAY YOUR ISP TO UN-BLOCK PORN SITES —*

# \$20 porn-unblocking fee could hit Internet users if state bill becomes law

The opposite of net neutrality: R.I. bill requires ISPs to block sexual content.

**JON BRODKIN** - 3/6/2018, 11:35 AM



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State legislation pending in Rhode Island would force Internet service providers to block "sexual content" by default

and charge a one-time fee of \$20 to any Internet user who wants to view porn or other "offensive material" online. ISPs would have to hand the money they collect over to the state so it can "help fund the operations of the [council](#) on human trafficking."

The bill was introduced on Thursday by Democratic state Senators Frank Ciccone and Hanna Gallo and is titled "[An Act Relating to Public Utilities and Carriers—Internet Digital Blocking.](#)"

ISPs "shall provide... a digital blocking capability that renders inaccessible sexual content and/or patently offensive material as defined in § 11-31-1," the bill says. Under that [state statute](#), sexual content includes depictions and descriptions of any act of sexual intercourse, whether "normal or perverted, actual or simulated." Depictions of masturbation are also considered sexual content under this statute.

Given the state's definition of sexual content, the Ciccone/Gallo bill would force ISPs to block pretty much all pornography, even if it was performed by consenting adults and violates no law.

Separately, the proposed requirement to block "patently offensive material" would include any material that is "so offensive on its face as to affront current standards of decency."

In addition to blocking a host of legal and/or vaguely defined content, the bill would require blocking of websites that facilitate certain illegal acts. Specifically, the bill extends the required blocking to "any hub that facilitates prostitution" and "websites that are known to facilitate human trafficking."

The bill would also require blocking of certain content that is clearly illegal, specifically child pornography. Finally, it would require blocking of revenge pornography, whose legal status is **less clear**.

The required digital blocking capability could only be deactivated by the ISP after a consumer does the following:

1. Requests in writing that the capability be disabled;
2. Presents identification to verify that the consumer is

- eighteen (18) years of age or older;
- 3. Acknowledges receiving a written warning regarding the potential danger of deactivating the digital blocking capability; and
- 4. Pays a one-time twenty-dollar (\$20.00) digital access fee.

As currently written, the bill would seem to let Internet users view legal porn or child pornography if they pay the \$20 fee. It doesn't seem likely that the legislators really intend to let people view child pornography in exchange for paying \$20, however.

The bill was **referred** to the Senate Judiciary Committee. Many bills languish in committee, so the proposal won't necessarily be voted on by the legislature. A similar bill was **proposed in Virginia** last month, but hasn't been passed.

We contacted Ciccone and Gallo with several questions today and will update this story if we get a response. *A Providence Journal*

[article](#) on the bill said, "Cicccone and Gallo did not respond to phone messages requesting comment Friday night."

**UPDATE:** Cicccone responded to Ars. While he did not answer any of our questions about his bill, he said that it "is similar to legislation in 44 other states and the fee is consistent with the 44 states." His statement does not appear to be accurate.

As evidence, Cicccone pointed to a [website](#) about the "Human Trafficking and Child Exploitation Prevention Act." The website lists states where such legislation has been proposed, but only provides links to pending bills in some of the states. And the bills are not identical to the one proposed by Cicccone and Gallo.

For example, the Alabama bill targets depictions of "patently offensive" sexual conduct, rather than all sexual content. The Arizona proposal targets child porn and content that is otherwise unlawful. An Ohio bill targets sexually graphic images of people taken without their consent. A Minnesota bill is simply a resolution "recognizing pornography as a public health hazard," and requires no blocking and no fees.

# Net neutrality and the First Amendment

An ISP blocking lawful content would violate the Federal Communications Commission's net neutrality rules, but those rules are coming off the books once the FCC [finalizes its repeal](#).

The Ciccone/Gallo bill could conflict with Rhode Island's efforts to reinstate net neutrality rules. Rhode Island Attorney General Peter Kilmartin recently joined other state attorneys general in a [lawsuit against the FCC](#) that seeks to reverse the net neutrality repeal.

There is also [pending net neutrality legislation](#) in Rhode Island that would prohibit ISPs from blocking or throttling lawful Internet content.

The soon-to-be-repealed federal net neutrality rules don't require blocking of illegal content, but the [rules](#) let ISPs block content when they "have to address the needs of emergency communications or law enforcement, public safety, or national security authorities."

Broad requirements to block sexual content, such as the ones

proposed in Rhode Island, could violate the First Amendment's free speech protections. For example, the *Reno v. American Civil Liberties Union* **Supreme Court decision** said that the "indecent transmission" and "patently offensive display" provisions of the 1996 Communications Decency Act violated the First Amendment. **In that case**, the vagueness and breadth of the law resulted in suppression of "a large amount of speech that adults have a constitutional right to send and receive," the court said.

In general, attempts to censor online content in the US have targeted website operators rather than ISPs. While Section 230 of the 1996 Communications Decency Act provides website operators with broad immunity for hosting third-party content, **legislation just passed** by the US House of Representatives would make it easier for states to prosecute websites that facilitate prostitution and sex trafficking.

It would obviously be difficult and likely impossible for an ISP to proactively block all of the legal and illegal content described or vaguely hinted at in the Ciccone/Gallo bill. An ISP could easily end up blocking content that shouldn't be

blocked while trying to comply with the Rhode Island bill's broad requirements.

ISPs in Rhode Island would be required to "establish a reporting mechanism, such as a website or call center, to allow a consumer to report unblocked sexual content or potentially offensive material or report blocked material that is not sexual content or potentially offensive."

The bill seems to acknowledge that this type of system is likely to result in ISPs blocking content when they shouldn't do so:

If the digital-blocking capability blocks material that is not sexual content or patently offensive and the block is reported to a call center or reporting website, the material shall be unblocked within a reasonable time, but in no event later than five (5) business days after the block is first reported.

The bill also says that "a consumer may seek judicial relief to unblock filtered content." The state attorney general or a

consumer could seek damages of up to \$500 "for each piece of content that was reported but not subsequently blocked" by an ISP.

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