

*YOUR WEBSITE AND COMPLIANCE
WITH THE
ADAM WALSH CHILD PROTECTION AND SAFETY ACT
RECORD KEEPING REQUIREMENTS*

*ALTERNATIVE COMPLIANCE CERTIFICATIONS
DUE JUNE 16, 2009*



The Department of Justice issued final rules for compliance with the Adam Walsh Child Protection and Safety Act of 2006 (the “Adam Walsh Act”) in December 2008. The Adam Walsh Act amended an earlier statute (The Child Protection and Obscenity Enforcement Act of 1988) that is intended to prevent child pornography by imposing certain name- and age-verification, record-keeping and labeling requirements on “producers” of visual depictions of “actual sexually explicit conduct.” The Adam Walsh Act extended these requirements to “producers” of visual depictions of “*simulated* sexually explicit conduct” (*i.e.*, depictions that would “cause a reasonable viewer to believe that the performers engaged in actual sexually explicit conduct even if they did not do so”) and “lascivious exhibitions of the genitals or pubic area.”

The DOJ’s rules define the term “producer” very broadly to include those who actually film, videotape, photograph or create digital images of sexually explicit material, as well as those who duplicate or post such images on a website. ***As a consequence, stations that post sexually explicit material on their websites may be subject to the requirements of the Adam Walsh Act even if they did not originate that material themselves.***

Under the DOJ’s rules, producers of visual depictions of “actual sexually explicit conduct,” “simulated sexually explicit conduct” and “lascivious exhibitions of the genitals or pubic area” are required to examine identification documents of individuals appearing in those depictions to confirm their correct names, stage names, and dates of birth, and to record and maintain this information in files subject to government inspection. “Secondary producers” of such material, *i.e.*, parties who acquire such material from another producer and edit, otherwise compile, or exercise editorial control over such material, must acquire copies of the records created by the original producer and maintain them in their own files.

These age verification, record-keeping and labeling requirements apply to all visual depictions of “actual sexually explicit conduct” (excluding “lascivious exhibitions”) created as of July 3, 1995, and all visual depictions of “simulated sexually explicit conduct” and “lascivious exhibitions” created after March 18, 2009. However, producers of visual depictions of “simulated sexually explicit conduct” and/or “lascivious exhibitions” may avoid the record-keeping and labeling requirements (but not the age verification requirement) by submitting a certification to the Attorney General confirming, among other things, that:

- (i) the work is intended for commercial distribution;
- (ii) they “regularly and in the normal course of business collect and maintain individually identifiable information of all performers pursuant to Federal and

industry standards, where such information includes the name, address and date of birth of the performer;” and

- (iii) “such works are not produced, marketed, or made available in circumstances such that an ordinary person would conclude that the matter contains a visual depiction that is child pornography. . . .”

The deadline for submitting certifications to the Attorney General relating to depictions of “simulated sexually explicit conduct” and “lascivious exhibitions” created after March 18, 2009 but before June 16, 2009 is **June 16, 2009**. For depictions created on or after June 16, 2009, the certification is due within sixty days of the start of such production. Subsequent certifications are required only if there are material changes in the information the producer or secondary producer certified in the initial certification.

Failure to comply with these requirements, including filing a knowingly and willfully false certification, constitutes a criminal offense punishable by up to ten years in prison and fines.

Stations that have posted on their websites sexually explicit images created after March 18, 2009 are urged to contact us immediately in order to review whether those images might be deemed to constitute depictions of “simulated sexually explicit conduct” or “lascivious exhibitions” within the meaning of the Adam Walsh Act. Moreover, moving forward, we strongly recommend that stations contact us prior to posting any sexually explicit images on their websites in order to ensure compliance with these statutory requirements.

If you have any questions concerning compliance with the Adam Walsh Act, please contact John Poutasse (jpoutasse@lermansenter.com) and Louis Levy (llevy@lermansenter.com), or in their absence, your primary attorney in this office.

This memorandum is intended only as a general discussion of these issues and should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

Copyright © 2009, Lerman Senter PLLC

2000 K STREET NW, SUITE 600 | WASHINGTON, DC 20006-1809
TEL. 202.429.8970 | FAX 202.293.7783 | WWW.LERMANSENTER.COM
To Unsubscribe: [Unsubscribe](#) | To Update Client Info: [Update Client Info](#)