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### Congressional Record S. 16262 - Designation of Obscene or Offensive Mail

Mike Mansfield 1903-2001

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#### DESIGNATION OF OBSCENE OR OFFENSIVE MAIL

The Senate continued with the consideration of the bill (S. 3220) to protect a person's right of privacy by providing for the designation of obscene or offensive mail matter by the sender and for the return of such matter at the expense of the sender.

Mr. MANSFIELD. Mr. President, I send to the desk an amendment to the pending bill and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read the amendment, as follows: Between lines 19 and 20 on page 5 insert the following:

(3) Each piece of mail required to carry the above notice must be sent at the rates prescribed for first class mail.

Mr. MANSFIELD. Mr. President, the intent of this amendment is to place an added burden on the pusher—the peddler, if you will—of pornographic literature, literature which is unsolicited, lewd literature which is an invasion of the right of privacy of the individual. This amendment seeks to cope with a problem which has become quite prevalent through the use of second-, third-, and even fourth-class mail.

It is my hope that this proposal, affecting unsolicited obscene literature, pornographic material through the mails, will be given the most serious consideration.

The way it operates at the present time, the U.S. Government, because of the fact that it does deliver, collect, and deposit mail, acts as a handmaiden to these pushers of pornography. This is one way to face up to a problem which has become quite prevalent.

In my own State of Montana, based on the correspondence I have received from many of my constituents—and I know in other States of the Nation as well—many people are greatly offended by this unsolicited literature.

This bill has nothing to do with what one seeks to acquire, but, I repeat, has to do only with unsolicited pornographic material delivered to the homes of the citizens of this country; I think when these materials are sent without request or solicitation there is a clear invasion of a person's right of privacy. Those individuals that market these materials should be limited in their distribution to those individuals that specifically request them. This bill will put a burden on these distributors to bear the financial risk of paying return postage plus a service charge if any party receives their materials without prior request. In addition, first-class postage rates must be used by the distributors to send out their products. This added burden is imposed by the amendment just adopted by the Senate. I believe, Mr. President, that this bill is an excellent start in protecting the option of the individual not to view pornographic literature.

Mr. President, I ask unanimous consent that a statement contained in the report of the Committee on Post Office and Civil Service be printed in the RECORD at this point.

There being no objection, the excerpt from the report (No. 91-1217) was ordered to be printed in the RECORD, as follows:

#### STATEMENT

In favorably reporting S. 3220 with amendments to the Senate, the committee first took into account the obvious and urgent need to find an effective way of stopping the delivery through the mails of unsolicited salacious and prurient materials. The written and photographic pornography brought to the attention of the committee is shocking, often perverse; clearly people who naturally find such materials repulsive, degrading, and offensive should be protected from it and should have the right to protect their families from it.

Increasing numbers of complaints directed against the unsolicited delivery of pornography to homes and offices have been received by the committee and by other Members of Congress; and the committee's public hearing emphasized that the tide of unsolicited pornography in the mails is highly repugnant to many thousands of recipients who have no idea how their names came to be a part of the senders' mailing lists. It is apparent that Senator Mike Mansfield and those who joined him as cosponsors of S. 3220 have, through this bill, pointed to a clear and present avenue through which every citizen's privacy can be invaded; and that this measure merits congressional action.

The committee weighed carefully the requirements for effective legislative action in the same scale with the responsibility to protect every citizen's rights guaranteed by the first and fifth amendments. In the balance against those rights also is the constitutional right of privacy which has been clearly defined by the Supreme Court. Trespassers may be lawfully ejected from private property or removed by police. Uninvited salesmen, purveying whatever product, may be ordered off the doorstep. These rights to protect one's privacy are rooted deep in ancient common law.

The committee through this bill as amended seeks to assure that this same fight to protect one's privacy in his home is applied to protect every citizen from unsolicited pornography, in any medium of communication, delivered through the mails. If the sanctity and privacy of the home are protected by the common law right to eject trespassers, so should ordinary decent, family life be protected from pornographic materials moving gratuitously into the mailbox from the mail stream.

This measure as amended involves no censorship. It is silent on mail matter ordered or requested by the addressee, who, when he breaks the seal, knows what to expect. S. 3220 is designed to protect the family member, possibly an impressionable child, from the shock of unsuspectingly opening an unmarked envelope and finding within it lurid and blatant sexual photographs or other sexual material.

This bill supports and adds to current law which now provides a measure of protection against unsolicited pornography.

In 1967, the Congress enacted title III of Public Law 90-206 providing that the recipient of any pandering advertisement was authorized to file a complaint with the Postmaster General and thus initiate a series of administrative actions designed to stop any further mailing to the addressee of such mail. In its 1969 term, the Supreme Court of the United States sustained the constitutionality of that statute.

The Postal Reorganization Act signed into law in August 1970 includes a provision, to become effective February 1, 1971, permitting any person to file with the postal service a statement that he or his minor children or both do not wish to receive from any source any sexually oriented advertisement. The act provides that the postal service will maintain a list of these persons and will make the list available to mailers at cost. The General Counsel of the Post Office Department testified that the postal service contemplates maintaining the list by computer and making computer printouts of nationwide names and addresses available for sale to mailers. Mailers are prohibited from sending sexually oriented advertisements to anyone whose name has been on the list for more than 30 days. The act provides for the use of court orders to enjoin violation of this prohibition. Civil penalties are reserved for willful violations.

#### S. 3220 AS INTRODUCED

S. 3220 as introduced provides that the envelope or other cover of any mail matter that includes obscene mail matter or mail matter that may be obscene or offensive shall be marked by the sender: "The Enclosed Material May Be Obscene or Offensive to the Addressee."

Obscene mail matter, for the purposes of the bill, is defined.

The bill further provides that any mail matter received by the addressee and determined by him in his sole discretion to be obscene may be returned to the sender. The addressee is required to write "Obscene Mail Matter" on the returned envelope. Provision is made that the sender pay the first-class rate for the return of the mail matter plus a service charge of not less than 50 cents.

A sender who fails to mark the cover or who refuses to pay the postage or service charge will be subject to a civil penalty of \$5,000 for each such failure.

The committee considered the following possible misapplications of the bill as introduced:

The addressee may return to the sender, at the sender's expense and with a surcharge imposed upon him, any mail matter "determined by him [the addressee] in his sole discretion to be obscene." Thus any mailing could be returned, if the addressee were willing to state that he found it obscene. This would impose postage and penalty costs upon the sender and subject him to the hazard of a \$5,000 fine if he failed to pay the costs. The committee heard testimony that many copies of a recent issue of a national magazine reporting on current sexual mores in a way inoffensive to most people would doubtless have been returned as obscene, at great and unwarranted cost to the publisher. Political advertisements, mail-order catalogs, or any mail would be subject to return. The Post Office Department noted that "In its most evenhanded form, [the bill] is saying that the mailing of any matter may cost the sender 62 cents, if the addressee chooses to return it as obscene."

S. 3220 covers all mail matter which may fall within the bill's definition of obscenity, imposing restrictions not only upon unsolicited pornographic material but also upon mail which the addressee has ordered and is purchasing. Inoffensive art publications depicting nudes, for example, would be required by law to be labeled as possibly being obscene. All advertisement for such a publication could be returned to the sender at his expense.

#### COMMITTEE AMENDMENTS

The committee has amended S. 3220 in such a way as to minimize these possible misapplications. As amended, the bill expands the provisions of section 3010 of title 39, United States Code, as enacted by Public Law 91-375, and Postal Reorganization Act.



Presently, section 3010 imposes restrictions upon sexually oriented advertisements. Thus, the thrust of the amended bill is to provide further protection for addressees from offensive advertising material sent through the mail. The bill as introduced applies to any obscene mail matter or mail matter that may be obscene or mail matter that the addressee deems to be obscene. The committee believes that it is advertisements which constitute the greatest bulk of unsolicited sexual mail. Other such mail is generally ordered or requested.

Section 3010(a) provides that sexually oriented advertisements shall bear the name and address of the sender and such mark or notice as the postal service may prescribe. The amended bill amends section 3010(a) by requiring the following notice to be printed on the cover: "The Enclosed Material Is Sexually Oriented Advertising and May, If Unrequested by the Addressee, Be Returned To the Sender Unopened At No Cost To The Addressee."

The amended bill provides that any unrequested sexually oriented advertisement may be returned unopened at no cost to the addressee. Return postage shall be paid by the sender plus a service charge of not less than 50 cents.

Retained unchanged is the provision of Public Law 91-375 discussed earlier which allows any person to file with the postal service notice that he desires to receive no sexually oriented advertisements; the provision that the postal service shall maintain lists of such persons and make them available to mailers at a cost; the provision that mailers may not send sexual advertisements to anyone whose name has been on the list for 30 days.

Retained also is section 3010's definition of "sexually oriented advertisement," which contains the following exclusion: "Material otherwise within the definition \* \* \* shall be deemed not to constitute a sexually oriented advertisement if it constitutes only a small and insignificant part of the whole of a single catalog, book, periodical, or other work the remainder of which is not primarily devoted to sexual matters."

This exclusion from the definition of sexually oriented advertisements, absent from the bill as introduced, will serve effectively to exempt advertisements which are not salacious and prurient in intent and will prevent wholesale and possibly malicious misuse of the right to return.

The right to return mail at the expense of the sender if the mail is determined in the sole discretion of the addressee to be obscene is not retained in the amended bill.

S. 3220 as amended adds a new section following closely the provisions of the bill as introduced: postage plus service charge to be paid by the sender and liability to a \$5,000 civil penalty for noncompliance.

The committee also amended the title of the bill to make it more descriptive of the bill's purpose. The title now refers to sexually oriented advertisements rather than to obscene and offensive mail matter.

#### SUMMARY

S. 3220 as amended adds to the procedure by which the privacy of the home may be protected from sexually oriented material by placing reasonable and enforceable restrictions upon sexual advertisements. The committee believes that it is through advertisements of sexual material that privacy is most often invaded.

1. Under Public Law 90-206, through a complaint to the Postmaster General, a citizen can set in motion administration action designed to halt the delivery at his home of pandering advertisements.

2. Through section 3010 of title 39, United States Code, as enacted by Public Law 91-375, the sender of sexually oriented advertisements must, by law, state on the cover that the enclosed material is sexually oriented.

3. A person who does not wish to receive sexually oriented advertisements in his own name or in the name of his minor children may so advise the postal service and the postal service shall make his name available to mailers who are prohibited from sending him such advertisements.

4. Under the provisions of S. 3220 as amended any unrequested sexually oriented advertisement may be returned to the sender at no cost to the addressee. Return postage of such unrequested advertisements will be paid by the sender plus a surcharge of not less than 50 cents.

When a question arises whether there is a violation on the part of the sender, a determination will be made by a district court of the United States. The court will have recourse to the definition spelled out in law excepting certain advertising matter from the general restrictions.

The committee believes that these explicit provisions of law, taken together, will protect the privacy of the home from invasion by unsolicited sexual material and will protect publishers and advertisers from unjustified misapplication of the law.