



# WILLIAM & MARY LAW SCHOOL

## **Spong 2025 Problem & Rules Clarification Questions:**

Per Rule V(B)(2), not all questions submitted are answered, only those which are major. “Major questions” are determined by the Spong Justice. The following are those determined to be major by the Spong Justice.

1. Is this an as applied or facial challenge?
  - a. Both issues are a facial challenge.
2. Section 4(b)(2) on page 18 refers to Section 129B.002(b), but this section is not found elsewhere in the problem. Should Section 4(b)(2) refer to Section 2(b)?
  - a. Yes, Section 4(b)(2) should refer to Section 2(b), not Section 129B.002(b). It is fixed in an updated version of Rule One attached as an appendix.
3. What is the purpose of the "News-gathering organization" definition in Section 1(4)(A)-(B) on page 17? A news-gathering organization is not mentioned elsewhere in the problem.
  - a. This is solved through an amended version of Rule One, attached to this document as an appendix.
4. **An issue with vagueness of the applicability of the statute.**
  - a. **An amended version of Rule One is attached as an appendix which adds a section to make the applicability clearer. PLEASE READ IN ITS ENTIRETY**

## **APPENDIX A:**

### **FROM TITLE 55 OF THE CODE OF FEDERAL REGULATIONS ("RULE ONE")**

#### **SECTION 1. DEFINITIONS**

- (1) "Commercial entity" includes a corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legally recognized business entity.
- (2) "Distribute" means to issue, sell, give, provide, deliver, transfer, transmute, circulate, or disseminate by any means.
- (3) "Minor" means an individual younger than 18 years of age.
- (4) "News-gathering organization" includes:
  - (A) an employee of a newspaper, news publication, or news source, printed or on an online or mobile platform, of current news and public interest, who is acting within the course and scope of that employment and can provide documentation of that employment with the newspaper, news publication, or news source;
  - (B) an employee of a radio broadcast station, television broadcast station, cable television operator, or wire service who is acting within the course and scope of that employment and can provide documentation of that employment;
- (5) "Publish" means to communicate or make information available to another person or entity on a publicly available Internet website.
- (6) "Sexual material harmful to minors" includes any material that:
  - (A) the average person applying contemporary community standards would find, taking the material as a whole and with respect to minors, is designed to appeal to or pander to the prurient interest;
  - (B) in a manner patently offensive with respect to minors, exploits, is devoted to, or principally consists of descriptions of actual, simulated, or animated displays or depictions of:
    - (i) a person's pubic hair, anus, or genitals or the nipple of the female breast;
    - (ii) touching, caressing, or fondling of nipples, breasts, buttocks, anuses, or genitals; or
    - (iii) sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, excretory functions, exhibitions, or any other sexual act; and
  - (C) taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.
- (7) "Transactional data" means a sequence of information that documents an exchange, agreement, or transfer between an individual, commercial entity, or third party used for the purpose of satisfying a request or event. The term includes records from mortgage, education, and employment entities.

#### **SECTION 2. PUBLICATION OF MATERIALS HARMFUL TO MINORS.**

- (a) A commercial entity that knowingly and intentionally publishes or distributes material on an Internet website, including a social media platform, more than one-tenth of which is sexual material harmful to minors, shall use reasonable age verification methods as described by Section 3 to verify that an individual attempting to access the material is 18 years of age or older.

- (b) A commercial entity that performs the age verification required by Subsection (a) or a third party that performs the age verification required by Subsection (a) may not retain any identifying information of the individual.

### **SECTION 3. REASONABLE AGE VERIFICATION METHODS.**

- (a) A commercial entity that knowingly and intentionally publishes or distributes material on an Internet website or a third party that performs age verification under this chapter shall require an individual to comply with a commercial age verification system that verifies age using:
  - (1) government-issued identification; or
  - (2) a commercially reasonable method that relies on public or private transactional data to verify the age of an individual

### **SECTION 4. CIVIL PENALTY; INJUNCTION**

- (a) If the Kids Internet Safety Authority, Inc., believes that an entity is knowingly violating or has knowingly violated this Rule, the Authority may bring a suit for injunctive relief or civil penalties.
- (b) A civil penalty imposed under this Rule for a violation of Section 2 or Section 3 may be in equal in an amount equal to not more than the total, if applicable, of:
  - (1) \$10,000 per day that the entity operates an Internet website in violation of the age verification requirements of this Rule;
  - (2) \$10,000 per instance when the entity retains identifying information in violation of Section 2(b); and
  - (3) if, because of the entity's violation of the age verification requirements of this chapter, one or more minors accesses sexual material harmful to minors, an additional amount of not more than \$250,000.
- (c) The amount of a civil penalty under this section shall be based on:
  - (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
  - (2) the history of previous violations;
  - (3) the amount necessary to deter a future violation;
  - (4) the economic effect of a penalty on the entity on whom the penalty will be imposed;
  - (5) the entity's knowledge that the act constituted a violation of this chapter; and
  - (6) any other matter that justice may require.
- (d) The Kids Internet Safety Association, Inc., may recover reasonable and necessary attorney's fees and costs incurred in an action under this Rule.

### **SECTION 5. APPLICABILITY OF THIS RULE.**

- (a) This Rule does not apply to a bona fide news or public interest broadcast, website video, report, or event and may not be construed to affect the rights of a news-gathering organization.
- (b) An Internet service provider, or its affiliates or subsidiaries, a search engine, or a cloud service provider may not be held to have violated this Rule solely for providing access or connection to or from a website or other information or content on the Internet or on a facility, system, or network not under that provider's control, including transmission, downloading, intermediate storage, access software, or other services to the extent the

provider or search engine is not responsible for the creation of the content that constitutes sexual material harmful to minors.