

Public Law 115–395
115th Congress

An Act

To amend title 18, United States Code, to make certain changes to the reporting requirement of certain service providers regarding child sexual exploitation visual depictions, and for other purposes.

Dec. 21, 2018
[S. 3170]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “CyberTipline Modernization Act of 2018”.

CyberTipline
Modernization
Act of 2018.
18 USC 1 note.

SEC. 2. ALTERATIONS TO REPORTING REQUIREMENTS FOR ELECTRONIC SERVICE PROVIDERS AND REMOTE COMPUTING SERVICE PROVIDERS.

Section 2258A of title 18, United States Code, is amended—

(1) in the heading, by striking “**electronic communication service providers and remote computing service providers**” and inserting “**providers**”;

(2) in subsection (a)—

(A) by amending paragraph (1) to read as follows:

“(1) IN GENERAL.—

“(A) DUTY.—In order to reduce the proliferation of online child sexual exploitation and to prevent the online sexual exploitation of children, a provider—

“(i) shall, as soon as reasonably possible after obtaining actual knowledge of any facts or circumstances described in paragraph (2)(A), take the actions described in subparagraph (B); and

“(ii) may, after obtaining actual knowledge of any facts or circumstances described in paragraph (2)(B), take the actions described in subparagraph (B).

“(B) ACTIONS DESCRIBED.—The actions described in this subparagraph are—

“(i) providing to the CyberTipline of NCMEC, or any successor to the CyberTipline operated by NCMEC, the mailing address, telephone number, facsimile number, electronic mailing address of, and individual point of contact for, such provider; and

“(ii) making a report of such facts or circumstances to the CyberTipline, or any successor to the CyberTipline operated by NCMEC.”; and

(B) by amending paragraph (2) to read as follows:

“(2) FACTS OR CIRCUMSTANCES.—

“(A) APPARENT VIOLATIONS.—The facts or circumstances described in this subparagraph are any facts

or circumstances from which there is an apparent violation of section 2251, 2251A, 2252, 2252A, 2252B, or 2260 that involves child pornography.

“(B) IMMINENT VIOLATIONS.—The facts or circumstances described in this subparagraph are any facts or circumstances which indicate a violation of any of the sections described in subparagraph (A) involving child pornography may be planned or imminent.”;

(3) in subsection (b)—

(A) in the matter preceding paragraph (1)—

(i) by striking “To the extent” and inserting “In an effort to prevent the future sexual victimization of children, and to the extent”;

(ii) by striking “an electronic communication service provider or a remote computing service provider” and inserting “a provider”; and

(iii) by striking “may include” and inserting “may, at the sole discretion of the provider, include”;

(B) in paragraph (1)—

(i) by inserting “or plans to violate” after “who appears to have violated”; and

(ii) by inserting “payment information (excluding personally identifiable information),” after “uniform resource locator.”;

(C) in paragraph (2)—

(i) by striking “an electronic communication service or a remote computing service” and inserting “a provider”;

(ii) by striking “apparent child pornography” each place it appears and inserting “content relating to the report”; and

(iii) by striking “the electronic communication service provider or remote computing service provider” and inserting “the provider”;

(D) by amending paragraph (3) to read as follows:

“(3) GEOGRAPHIC LOCATION INFORMATION.—Information relating to the geographic location of the involved individual or website, which may include the Internet Protocol address or verified address, or, if not reasonably available, at least one form of geographic identifying information, including area code or zip code, provided by the customer or subscriber, or stored or obtained by the provider.”;

(E) in paragraph (4)—

(i) in the heading by striking “IMAGES” and inserting “VISUAL DEPICTIONS”;

(ii) by striking “image” and inserting “visual depiction”; and

(iii) by inserting “or other content” after “apparent child pornography”; and

(F) in paragraph (5)—

(i) by striking “image” and inserting “visual depiction”;

(ii) by inserting “or other content” after “apparent child pornography”; and

(iii) by striking “images” and inserting “visual depictions”;

(4) by amending subsection (c) to read as follows:

“(c) FORWARDING OF REPORT TO LAW ENFORCEMENT.—Pursuant to its clearinghouse role as a private, nonprofit organization, and at the conclusion of its review in furtherance of its nonprofit mission, NCMEC shall make available each report made under subsection (a)(1) to one or more of the following law enforcement agencies:

“(1) Any Federal law enforcement agency that is involved in the investigation of child sexual exploitation, kidnapping, or enticement crimes.

“(2) Any State or local law enforcement agency that is involved in the investigation of child sexual exploitation.

“(3) A foreign law enforcement agency designated by the Attorney General under subsection (d)(3) or a foreign law enforcement agency that has an established relationship with the Federal Bureau of Investigation, Immigration and Customs Enforcement, or INTERPOL, and is involved in the investigation of child sexual exploitation, kidnapping, or enticement crimes.”;

(5) in subsection (d)—

(A) in paragraph (2), by striking “shall designate promptly the” and inserting “may designate a”;

(B) in paragraph (3)—

(i) in the matter preceding subparagraph (A), by striking “shall promptly” and inserting “may”; and

(ii) in subparagraph (A), by striking “designate the” and inserting “designate”;

(C) in paragraph (4)—

(i) by striking “shall” and inserting “may”;

(ii) by striking “the National Center for Missing and Exploited Children” and inserting “NCMEC”; and

(iii) by striking “electronic communication service providers, remote computing service providers” and inserting “providers”;

(D) by striking paragraph (5);

(E) by redesignating paragraph (6) as paragraph (5);

and

(F) by amending paragraph (5), as so redesignated, to read as follows:

“(5) NOTIFICATION TO PROVIDERS.—

“(A) IN GENERAL.—NCMEC may notify a provider of the information described in subparagraph (B), if—

“(i) a provider notifies NCMEC that the provider is making a report under this section as the result of a request by a foreign law enforcement agency; and

“(ii) NCMEC forwards the report described in clause (i) to—

“(I) the requesting foreign law enforcement agency; or

“(II) another agency in the same country designated by the Attorney General under paragraph (3) or that has an established relationship with the Federal Bureau of Investigation, U.S. Immigration and Customs Enforcement, or INTERPOL and is involved in the investigation of child sexual exploitation, kidnapping, or enticement crimes.

“(B) INFORMATION DESCRIBED.—The information described in this subparagraph is—

“(i) the identity of the foreign law enforcement agency to which the report was forwarded; and

“(ii) the date on which the report was forwarded.

“(C) NOTIFICATION OF INABILITY TO FORWARD REPORT.—

If a provider notifies NCMEC that the provider is making a report under this section as the result of a request by a foreign law enforcement agency and NCMEC is unable to forward the report as described in subparagraph (A)(ii), NCMEC shall notify the provider that NCMEC was unable to forward the report.”;

(6) in subsection (e), by striking “An electronic communication service provider or remote computing service provider” and inserting “A provider”;

(7) in subsection (f)—

(A) in the matter preceding paragraph (1), by striking “an electronic communication service provider or a remote computing service provider” and inserting “a provider”; and

(B) in paragraph (3), by striking “seek” and inserting “search, screen, or scan for”;

(8) in subsection (g)—

(A) in paragraph (2)—

(i) in subparagraph (A)(vi), by striking “an electronic communication service provider or remote computing service provider” and inserting “a provider”; and

(ii) by amending subparagraph (B) to read as follows:

“(B) LIMITATION.—Nothing in subparagraph (A)(vi) authorizes a law enforcement agency to provide visual depictions of apparent child pornography to a provider.”;

(B) in paragraph (3)—

(i) in the paragraph heading, by striking “THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN” and inserting “NCMEC”;

(ii) in the matter preceding subparagraph (A)—

(I) by striking “The National Center for Missing and Exploited Children” and inserting “NCMEC”;

(II) by inserting after “may disclose” the following: “by mail, electronic transmission, or other reasonable means,”; and

(III) by striking “only” and inserting “only to”;

(iii) in subparagraph (A)—

(I) by striking “to any Federal law enforcement agency” and inserting “any Federal law enforcement agency”; and

(II) by inserting before the semicolon at the end the following: “or that is involved in the investigation of child sexual exploitation, kidnapping, or enticement crimes”;

(iv) in subparagraph (B)—

(I) by striking “to any State” and inserting “any State”; and

(II) by striking “child pornography, child exploitation” and inserting “child sexual exploitation”;

(v) in subparagraph (C)—

(I) by striking “to any foreign law enforcement agency” and inserting “any foreign law enforcement agency”; and

(II) by striking “; and” and inserting “or that has an established relationship with the Federal Bureau of Investigation, Immigration and Customs Enforcement, or INTERPOL, and is involved in the investigation of child sexual exploitation, kidnapping, or enticement crimes;”;

(vi) in subparagraph (D)—

(I) by striking “to an electronic communication service provider or remote computing service provider” and inserting “a provider”; and

(II) by striking the period at the end and inserting “; and”; and

(vii) by adding after subparagraph (D) the following:

“(E) respond to legal process, as necessary.”; and

(C) by adding at the end the following:

“(4) PERMITTED DISCLOSURE BY A PROVIDER.—A provider that submits a report under subsection (a)(1) may disclose by mail, electronic transmission, or other reasonable means, information, including visual depictions contained in the report, in a manner consistent with permitted disclosures under paragraphs (3) through (8) of section 2702(b) only to a law enforcement agency described in subparagraph (A), (B), or (C) of paragraph (3), to NCMEC, or as necessary to respond to legal process.”; and

(9) in subsection (h)—

(A) in paragraph (1)—

(i) by striking “the notification to an electronic communication service provider or a remote computing service provider by the CyberTipline of receipt of a report” and inserting “a completed submission by a provider of a report to the CyberTipline”; and

(ii) by striking “; as if such request was made pursuant to section 2703(f)” and inserting “the contents provided in the report for 90 days after the submission to the CyberTipline”;

(B) by striking paragraph (2);

(C) by redesignating paragraphs (3) through (5) as paragraphs (2) through (4), respectively;

(D) in paragraph (2), as so redesignated—

(i) in the heading, by striking “IMAGES” and inserting “CONTENT”;

(ii) by striking “an electronic communication service provider or a remote computing service” and inserting “a provider”;

(iii) by striking “images” and inserting “visual depictions”; and

(iv) by striking “commingled or interspersed among the images of apparent child pornography within a particular communication or user created folder or

directory” and inserting “reasonably accessible and may provide context or additional information about the reported material or person”; and

(E) in paragraph (3), as so redesignated, by striking “An electronic communication service or remote computing service” and inserting “A provider”.

SEC. 3. LIMITED LIABILITY FOR PROVIDERS OR DOMAIN NAME REGISTRARS.

Section 2258B of title 18, United States Code, is amended—

(1) in the heading—

(A) by striking “**electronic communication service providers, remote computing service providers,**” and inserting “**providers**”; and

(B) by striking “**registrar**” and inserting “**registrars**”;

(2) in subsection (a)—

(A) by striking “an electronic communication service provider, a remote computing service provider,” and inserting “a provider”; and

(B) by striking “such electronic communication service provider, remote computing service provider,” each place it appears and inserting “such provider”;

(3) in subsection (b), by striking “electronic communication service provider, remote computing service provider,” each place it appears and inserting “provider”; and

(4) in subsection (c)—

(A) by striking “image” each place it appears and inserting “visual depiction”; and

(B) in the matter preceding paragraph (1), by striking “An electronic communication service provider, a remote computing service provider,” and inserting “A provider”.

SEC. 4. USE TO COMBAT CHILD PORNOGRAPHY OF TECHNICAL ELEMENTS RELATING TO REPORTS MADE TO CYBERTIPLINE.

Section 2258C of title 18, United States Code, is amended—

(1) in the heading, by striking “**to images reported to**” and inserting “**to reports made to**”;

(2) in subsection (a)—

(A) in paragraph (1)—

(i) by striking “The National Center for Missing and Exploited Children” and inserting “NCMEC”;

(ii) by striking “apparent child pornography image of an identified child” and inserting “CyberTipline report”;

(iii) by striking “an electronic communication service provider or a remote computing service provider” and inserting “a provider”;

(iv) by striking “that electronic communication service provider or remote computing service provider” and inserting “that provider”; and

(v) by striking “further transmission of images” and inserting “online sexual exploitation of children”;

(B) in paragraph (2), by striking “specific image, Internet location of images, and other technological elements that can be used to identify and stop the transmission of child pornography” and inserting “specific visual depiction, including an Internet location and any other elements provided in a CyberTipline report that can be used to

identify, prevent, curtail, or stop the transmission of child pornography and prevent the online sexual exploitation of children”; and

(C) in paragraph (3), by striking “actual images” and inserting “actual visual depictions of apparent child pornography”;

(3) in subsection (b)—

(A) in the heading, by striking “ELECTRONIC COMMUNICATION SERVICE PROVIDERS AND REMOTE COMPUTING SERVICE PROVIDERS” and inserting “PROVIDERS”;

(B) by striking “electronic communication service provider or remote computing service provider” each place it appears and inserting “provider”;

(C) by striking “apparent child pornography image of an identified child from the National Center for Missing and Exploited Children” and inserting “CyberTipline report from NCMEC”;

(D) by striking “shall not relieve that” and inserting “shall not relieve the”; and

(E) by striking “its reporting obligations” and inserting “reporting”;

(4) in subsection (c)—

(A) by striking “electronic communication service providers or remote computing service providers” and inserting “providers”;

(B) by striking “apparent child pornography image of an identified child from the National Center for Missing and Exploited Children” and inserting “CyberTipline report from NCMEC”; and

(C) by striking “further transmission of the images” and inserting “online sexual exploitation of children”;

(5) in subsection (d)—

(A) by striking “The National Center for Missing and Exploited Children shall” and inserting “NCMEC may”;

(B) by inserting after “local law enforcement” the following: “, and to foreign law enforcement agencies described in section 2258A(c)(3),”;

(C) by striking “investigation of child pornography” and inserting “investigation of child sexual exploitation”;

(D) by striking “image of an identified child” and inserting “visual depiction”; and

(E) by striking “reported to the National Center for Missing and Exploited Children” and inserting “reported to the CyberTipline”; and

(6) in subsection (e)—

(A) by inserting before “Federal” the following: “foreign,”;

(B) by striking “image of an identified child from the National Center for Missing and Exploited Children under section (d)” and inserting “visual depiction from NCMEC under subsection (d)”;

(C) by striking “child pornography crimes” and inserting “child sexual exploitation crimes,”; and

(D) by inserting before the period at the end the following: “and prevent future sexual victimization of children”.

SEC. 5. LIMITED LIABILITY FOR NCMEC.

Section 2258D of title 18, United States Code, is amended—

(1) in the heading, by striking “**the National Center for Missing and Exploited Children**” and inserting “**NCMEC**”;

(2) in subsection (a)—

(A) by striking “Except as provided” and inserting “Pursuant to its clearinghouse role as a private, nonprofit organization and its mission to help find missing children, reduce online sexual exploitation of children and prevent future victimization, and except as provided”;

(B) by striking “the National Center for Missing and Exploited Children” and inserting “NCMEC”;

(C) by striking “(42 U.S.C. 5773)” and inserting “(34 U.S.C. 11293)”;

(D) by striking “such center” each place it appears and inserting “NCMEC”; and

(E) by striking “from the effort” and inserting “from the efforts”;

(3) in subsection (b)—

(A) by striking “the National Center for Missing and Exploited Children” and inserting “NCMEC”;

(B) by striking “such center” and inserting “NCMEC”; and

(C) by striking “(42 U.S.C. 5773)” and inserting “(34 U.S.C. 11293)”;

(4) in subsection (d)—

(A) in the matter preceding paragraph (1), by striking “The National Center for Missing and Exploited Children” and inserting “NCMEC”; and

(B) by striking “image” each place it appears and inserting “visual depiction”.

SEC. 6. DEFINITIONS.

Section 2258E of title 18, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking “2258D” and inserting “2258E”;

(2) in paragraph (5), by striking “and” at the end;

(3) by redesignating paragraph (6) as paragraph (8); and

(4) by inserting after paragraph (5) the following:

“(6) the term ‘provider’ means an electronic communication service provider or remote computing service;

“(7) the term ‘NCMEC’ means the National Center for Missing & Exploited Children; and”.

SEC. 7. TECHNICAL AND CONFORMING AMENDMENT.

The table of sections for chapter 110 of title 18, United States Code, is amended by striking the items relating to sections 2258A, 2258B, 2258C, and 2258D and inserting the following:

“2258A. Reporting requirements of providers.

“2258B. Limited liability for providers or domain name registrars.

“2258C. Use to combat child pornography of technical elements relating to reports
made to the CyberTipline.
“2258D. Limited liability for NCMEC.”

Approved December 21, 2018.

LEGISLATIVE HISTORY—S. 3170:

CONGRESSIONAL RECORD, Vol. 164 (2018):
Sept. 27, considered and passed Senate.
Dec. 12, considered and passed House.

