

110TH CONGRESS
1ST SESSION

H. R. 3791

To modernize and expand the reporting requirements relating to child pornography, to expand cooperation in combating child pornography, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 10, 2007

Mr. LAMPSON (for himself and Mr. CHABOT) introduced the following bill;
which was referred to the Committee on the Judiciary

A BILL

To modernize and expand the reporting requirements relating to child pornography, to expand cooperation in combating child pornography, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Securing Adolescents
5 From Exploitation-Online Act of 2007” or the “SAFE Act
6 of 2007”.

1 **SEC. 2. REPORTING REQUIREMENTS OF ELECTRONIC COM-**
2 **MUNICATION SERVICE PROVIDERS AND RE-**
3 **MOTE COMPUTING SERVICE PROVIDERS.**

4 (a) IN GENERAL.—Chapter 110 of title 18, United
5 States Code, is amended by inserting after section 2258
6 the following:

7 **“SEC. 2258A. REPORTING REQUIREMENTS OF ELECTRONIC**
8 **COMMUNICATION SERVICE PROVIDERS AND**
9 **REMOTE COMPUTING SERVICE PROVIDERS.**

10 “(a) DUTY TO REPORT.—

11 “(1) IN GENERAL.—Whoever, while engaged in
12 providing an electronic communication service or a
13 remote computing service to the public through a fa-
14 cility or means of interstate or foreign commerce,
15 obtains actual knowledge of any facts or cir-
16 cumstances described in paragraph (2) shall, as soon
17 as reasonably possible, make a report of such facts
18 or circumstances to the CyberTipline of the National
19 Center for Missing and Exploited Children, or any
20 successor to the CyberTipline operated by such cen-
21 ter.

22 “(2) FACTS OR CIRCUMSTANCES.—The facts or
23 circumstances described in this paragraph are any
24 facts or circumstances that appear to indicate a vio-
25 lation of—

1 “(A) section 2251, 2251A, 2252, 2252A,
2 2252B, or 2260 that involves child pornography
3 or;

4 “(B) section 1466A.

5 “(b) CONTENTS OF REPORT.—To the extent avail-
6 able to an electronic communication service provider or a
7 remote computing service provider, each report under sub-
8 section (a)(1) shall include the following information:

9 “(1) INFORMATION ABOUT THE INVOLVED IN-
10 DIVIDUAL.—Information relating to the Internet
11 identity of any individual who appears to have vio-
12 lated a Federal law in the manner described in sub-
13 section (a)(2), including the electronic mail address,
14 website address, uniform resource locator, or any
15 other identifying information.

16 “(2) HISTORICAL REFERENCE.—Information
17 relating to when any apparent child pornography
18 was uploaded, transmitted, reported to, or discovered
19 by the electronic communication service provider or
20 remote computing service provider, as the case may
21 be, including a date and time stamp and time zone.

22 “(3) GEOGRAPHIC LOCATION INFORMATION.—
23 Information relating to the geographic location of
24 the involved individual, hosting website, or uniform
25 resource locator, including the street address, tele-

1 phone number, area code, zip code, or any Internet
2 Protocol address.

3 “(4) IMAGES OF APPARENT CHILD PORNOG-
4 RAPHY.—Any image of any apparent child pornog-
5 raphy relating to the incident such report is regard-
6 ing.

7 “(5) COMPANY CONTACT INFORMATION.—Accu-
8 rate contact information for the electronic commu-
9 nication service provider or remote computing serv-
10 ice provider making the report, including the ad-
11 dress, telephone number, facsimile number, elec-
12 tronic mail address of, and individual point of con-
13 tact for, such electronic communication service pro-
14 vider or remote computing service provider.

15 “(c) FORWARDING OF REPORT TO LAW ENFORCE-
16 MENT.—

17 “(1) IN GENERAL.—The National Center for
18 Missing and Exploited Children shall forward each
19 report made under subsection (a)(1) to any appro-
20 priate law enforcement agency designated by the At-
21 torney General under subsection (d)(2).

22 “(2) STATE AND LOCAL LAW ENFORCEMENT.—
23 The National Center for Missing and Exploited Chil-
24 dren may forward any report made under subsection
25 (a)(1) to an appropriate official of a State or polit-

1 ical subdivision of a State for the purpose of enforce-
2 ing State criminal law.

3 “(3) FOREIGN LAW ENFORCEMENT.—The Na-
4 tional Center for Missing and Exploited Children
5 may forward any report made under subsection
6 (a)(1) to any appropriate foreign law enforcement
7 agency designated by the Attorney General under
8 subsection (d)(3), subject to the conditions estab-
9 lished by the Attorney General under subsection
10 (d)(3).

11 “(d) ATTORNEY GENERAL RESPONSIBILITIES.—

12 “(1) IN GENERAL.—The Attorney General shall
13 enforce this section.

14 “(2) DESIGNATION OF FEDERAL AGENCIES.—
15 The Attorney General shall designate promptly the
16 Federal law enforcement agency or agencies to
17 which a report shall be forwarded under subsection
18 (c)(1).

19 “(3) DESIGNATION OF FOREIGN AGENCIES.—
20 The Attorney General shall promptly—

21 “(A) designate the foreign law enforcement
22 agencies to which a report may be forwarded
23 under subsection (c)(3); and

1 “(B) establish the conditions under which
2 such a report may be forwarded to such agen-
3 cies.

4 “(e) FAILURE TO REPORT.—An electronic commu-
5 nication service provider or remote computing service pro-
6 vider that knowingly and willfully fails to make a report
7 required under subsection (a)(1) shall be fined—

8 “(1) in the case of an initial knowing and will-
9 ful failure to make a report, not more than
10 \$150,000; and

11 “(2) in the case of any second or subsequent
12 knowing and willful failure to make a report, not
13 more than \$300,000.

14 “(f) PROTECTION OF PRIVACY.—Nothing in this sec-
15 tion shall be construed to require an electronic commu-
16 nication service provider or a remote computing service
17 provider to—

18 “(1) monitor any user, subscriber, or customer
19 of that provider;

20 “(2) monitor the content of any communication
21 of any person described in paragraph (1); or

22 “(3) affirmatively seek facts or circumstances
23 described in subsection (a)(2).

24 “(g) CONDITIONS OF DISCLOSURE INFORMATION
25 CONTAINED WITHIN REPORT.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graph (2), a law enforcement agency that receives a
3 report under subsection (c) shall not disclose any in-
4 formation contained in that report.

5 “(2) PERMITTED DISCLOSURES.—A law en-
6 forcement agency may disclose information in a re-
7 port received under subsection (c)—

8 “(A) to an attorney for the government for
9 use in the performance of the official duties of
10 that attorney;

11 “(B) to such officers and employees of that
12 law enforcement agency, as may be necessary in
13 the performance of their investigative and rec-
14 ordkeeping functions;

15 “(C) to such other government personnel
16 (including personnel of a State or subdivision of
17 a State) as are determined to be necessary by
18 an attorney for the government to assist the at-
19 torney in the performance of the official duties
20 of the attorney in enforcing Federal criminal
21 law;

22 “(D) if the report discloses a violation of
23 State criminal law, to an appropriate official of
24 a State or subdivision of a State for the pur-
25 pose of enforcing such State law; or

1 “(E) to a defendant in a criminal case or
2 the attorney for that defendant, to the extent
3 the information relates to a criminal charge
4 pending against that defendant.

5 “(h) EVIDENCE PRESERVATION.—

6 “(1) IN GENERAL.—An electronic communica-
7 tion service provider or a remote computing service
8 provider shall store any image and other information
9 relating to the facts or circumstances of any incident
10 reported under subsection (a)(1) for not less than
11 180 days after the date that the report is trans-
12 mitted to the National Center for Missing and Ex-
13 ploited Children through the CyberTipline, or for
14 such longer period of time as may be requested by
15 a law enforcement agency.

16 “(2) DESTRUCTION OF EVIDENCE.—An elec-
17 tronic communication service provider or a remote
18 computing service provider shall not destroy any
19 data that, to the knowledge of that electronic com-
20 munication service provider or remote computing
21 service provider, relates to an incident reported
22 under subsection (a)(1) during the 180-day period
23 beginning on the date that report is transmitted to
24 the National Center for Missing and Exploited Chil-
25 dren through the CyberTipline, or for such longer

1 period of time as may be requested by a law enforce-
 2 ment agency.

3 **“SEC. 2258B. LIMITED LIABILITY FOR ELECTRONIC COMMU-**
 4 **UNICATION SERVICE PROVIDERS AND REMOTE**
 5 **COMPUTING SERVICE PROVIDERS.**

6 “(a) IN GENERAL.—Except as provided in sub-
 7 sections (b) and (c), a civil claim or criminal charge
 8 against an electronic communication service provider or a
 9 remote computing service provider, including any director,
 10 officer, employee, or agent of such electronic communica-
 11 tion service provider or remote computing service provider,
 12 arising from the performance of the reporting responsibil-
 13 ities of such electronic communication service provider or
 14 remote computing service provider under this section, sec-
 15 tion 2258A, or section 2258C may not be brought in any
 16 Federal or State court.

17 “(b) INTENTIONAL, RECKLESS, OR OTHER MIS-
 18 CONDUCT.—Subsection (a) shall not apply to a claim if
 19 the electronic communication service provider or remote
 20 computing service provider, or a director, officer, em-
 21 ployee, or agent of that electronic communication service
 22 provider or remote computing service provider—

23 “(1) engaged in intentional misconduct; or

24 “(2) acted, or failed to act—

25 “(A) with actual malice;

1 “(B) with reckless disregard to a substan-
2 tial risk of causing injury without legal jus-
3 tification; or

4 “(C) for a purpose unrelated to the per-
5 formance of any responsibility or function
6 under this section, section 2258A, or section
7 2258C.

8 “(c) ORDINARY BUSINESS ACTIVITIES.—Subsection
9 (a) shall not apply to an act or omission relating to an
10 ordinary business activity of an electronic communication
11 service provider or a remote computing service provider,
12 including general administration or operations, the use of
13 motor vehicles, or personnel management.

14 “(d) MINIMIZING ACCESS.—An electronic commu-
15 nication service provider and a remote computing service
16 provider shall—

17 “(1) minimize the number of employees that
18 are provided access to any image provided under sec-
19 tion 2258A or 2258C; and

20 “(2) ensure that any such image is permanently
21 destroyed, upon notification from a law enforcement
22 agency.

1 **“SEC. 2258C. USE OF IMAGES FROM THE CYBERTIPLINE TO**
2 **COMBAT CHILD PORNOGRAPHY.**

3 “(a) IN GENERAL.—The National Center for Missing
4 and Exploited Children is authorized to provide elements
5 relating to any image reported to its CyberTipline to an
6 electronic communication service provider or a remote
7 computing service provider for the sole and exclusive pur-
8 pose of permitting that electronic communication service
9 provider or remote computing service provider to stop the
10 further transmission of images. Such elements may in-
11 clude unique identifiers associated with a specific image,
12 Internet location of images, and other technological ele-
13 ments that can be used to identify and stop the trans-
14 mission of child pornography.

15 “(b) USE BY ELECTRONIC COMMUNICATION SERVICE
16 PROVIDERS AND REMOTE COMPUTING SERVICE PRO-
17 VIDERS.—Any electronic communication service provider
18 or remote computing service provider that receives ele-
19 ments relating to an image from the National Center for
20 Missing and Exploited Children under this section may
21 use such information only for the purposes described in
22 this section, provided that such use shall not relieve that
23 electronic communication service provider or remote com-
24 puting service provider from its reporting obligations
25 under section 2258A.

1 **“SEC. 2258D. LIMITED LIABILITY FOR THE NATIONAL CEN-**
2 **TER FOR MISSING AND EXPLOITED CHIL-**
3 **DREN.**

4 “(a) IN GENERAL.—Except as provided in sub-
5 sections (b) and (c), a civil claim or criminal charge
6 against the National Center for Missing and Exploited
7 Children, including any director, officer, employee, or
8 agent of such center, arising from the performance of the
9 CyberTipline responsibilities or functions of such center,
10 as described in this section, section 2258A or 2258C of
11 this title, or section 404 of the Missing Children’s Assist-
12 ance Act (42 U.S.C. 5773), or from the effort of such cen-
13 ter to identify child victims may not be brought in any
14 Federal or State court.

15 “(b) INTENTIONAL, RECKLESS, OR OTHER MIS-
16 CONDUCT.—Subsection (a) shall not apply to a claim or
17 charge if the National Center for Missing and Exploited
18 Children, or a director, officer, employee, or agent of such
19 center—

20 “(1) engaged in intentional misconduct; or

21 “(2) acted, or failed to act—

22 “(A) with actual malice;

23 “(B) with reckless disregard to a substan-
24 tial risk of causing injury without legal jus-
25 tification; or

1 “(C) for a purpose unrelated to the per-
2 formance of any responsibility or function
3 under this section, section 2258A or 2258C of
4 this title, or section 404 of the Missing Chil-
5 dren’s Assistance Act (42 U.S.C. 5773).

6 “(c) ORDINARY BUSINESS ACTIVITIES.—Subsection
7 (a) shall not apply to an act or omission relating to an
8 ordinary business activity, including general administra-
9 tion or operations, the use of motor vehicles, or personnel
10 management.

11 “(d) MINIMIZING ACCESS.—The National Center for
12 Missing and Exploited Children shall—

13 “(1) minimize the number of employees that
14 are provided access to any image provided under sec-
15 tion 2258A; and

16 “(2) ensure that any such image is permanently
17 destroyed upon notification from a law enforcement
18 agency.

19 **“SEC. 2258E. DEFINITIONS.**

20 “‘In sections 2258A through 2258D—

21 “(1) the terms ‘attorney for the government’
22 and ‘State’ have the meanings given those terms in
23 rule 1 of the Federal Rules of Criminal Procedure;

24 “(2) the term ‘electronic communication service’
25 has the meaning given that term in section 2510;

1 “(3) the term ‘electronic mail address’ has the
 2 meaning given that term in section 3 of the CAN-
 3 SPAM Act of 2003 (15 U.S.C. 7702);

4 “(4) the term ‘Internet’ has the meaning given
 5 that term in section 1101 of the Internet Tax Free-
 6 dom Act (47 U.S.C. 151 note);

7 “(5) the term ‘remote computing service’ has
 8 the meaning given that term in section 2711; and

9 “(6) the term ‘website’ means any collection of
 10 material placed in a computer server-based file ar-
 11 chive so that it is publicly accessible, over the Inter-
 12 net, using hypertext transfer protocol or any suc-
 13 cessor protocol.”.

14 (b) CONFORMING AMENDMENTS.—

15 (1) REPEAL OF SUPERCEDED PROVISION.—Sec-
 16 tion 227 of the Crime Control Act of 1990 (42
 17 U.S.C. 13032) is repealed.

18 (2) TABLE OF SECTIONS.—The table of sections
 19 for chapter 110 of title 18, United States Code, is
 20 amended by inserting after the item relating to sec-
 21 tion 2258 the following:

“2258A. Reporting requirements of electronic communication service providers
 and remote computing service providers.

“2258B. Limited liability for electronic communication service providers and re-
 mote computing service providers.

“2258C. Use of images from the CyberTipline to combat child pornography.

“2258D. Limited liability for the National Center for Missing and Exploited
Children.

“2258E. Definitions.”.

