

110<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3791

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IN THE SENATE OF THE UNITED STATES

DECEMBER 6, 2007

Received; read twice and referred to the Committee on the Judiciary

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## AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

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

5 **SEC. 2. REPORTING REQUIREMENTS OF ELECTRONIC COM-**  
6 **MUNICATION SERVICE PROVIDERS AND RE-**  
7 **MOTE COMPUTING SERVICE PROVIDERS.**

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

11 **“SEC. 2258A. REPORTING REQUIREMENTS OF ELECTRONIC**  
12 **COMMUNICATION SERVICE PROVIDERS AND**  
13 **REMOTE COMPUTING SERVICE PROVIDERS.**

14 “(a) DUTY TO REPORT.—

15 “(1) IN GENERAL.—Whoever, while engaged in  
16 providing an electronic communication service or a  
17 remote computing service to the public through a fa-  
18 cility or means of interstate or foreign commerce,  
19 obtains actual knowledge of any facts or cir-  
20 cumstances described in paragraph (2) shall, as soon  
21 as reasonably possible—

22 “(A) complete and maintain with current  
23 information a registration with the  
24 CyberTipline of the National Center for Missing  
25 and Exploited Children, or any successor to the  
26 CyberTipline operated by such center, by pro-

1           viding the mailing address, telephone number,  
2           facsimile number, electronic mail address of,  
3           and individual point of contact for, such elec-  
4           tronic communication service provider or remote  
5           computing service provider; and

6           “(B) make a report of such facts or cir-  
7           cumstances to the CyberTipline, or any suc-  
8           cessor to the CyberTipline operated by such  
9           center.

10           “(2) FACTS OR CIRCUMSTANCES.—The facts or  
11           circumstances described in this paragraph are any  
12           facts or circumstances that appear to indicate a vio-  
13           lation of—

14           “(A) section 2251, 2251A, 2252, 2252A,  
15           2252B, or 2260 that involves child pornog-  
16           raphy; or

17           “(B) section 1466A.

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

22           “(1) INFORMATION ABOUT THE INVOLVED IN-  
23           DIVIDUAL.—Information relating to the Internet  
24           identity of any individual who appears to have vio-  
25           lated a Federal law in the manner described in sub-

1 section (a)(2), which shall, to the extent reasonably  
2 practicable, include the electronic mail address,  
3 website address, uniform resource locator, or any  
4 other identifying information, including self-reported  
5 identifying information.

6 “(2) HISTORICAL REFERENCE.—Information  
7 relating to when any apparent child pornography  
8 was uploaded, transmitted, reported to, or discovered  
9 by the electronic communication service provider or  
10 remote computing service provider, as the case may  
11 be, including a date and time stamp and time zone.

12 “(3) GEOGRAPHIC LOCATION INFORMATION.—  
13 Information relating to the geographic location of  
14 the involved individual, hosting website, or uniform  
15 resource locator, which shall include the Internet  
16 Protocol Address or verified billing address, or, if  
17 not reasonably available, at least one form of geo-  
18 graphic identifying information, including area code  
19 or zip code. The information shall also include any  
20 self-reported geographic information.

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

1           “(5) COMMINGLED IMAGES.—Any images, data,  
2           or other digital files (collectively referred to as ‘dig-  
3           ital files’) which are commingled or interspersed  
4           among the images of apparent child pornography. If  
5           it would impose an undue hardship to provide these  
6           commingled digital files as part of the report, be-  
7           cause of the volume of the digital files or for other  
8           reasons, the reporting company shall, in lieu of pro-  
9           viding those digital files, inform the CyberTipline of  
10          the existence of such digital files, and retain those  
11          digital files as if they were part of the report as re-  
12          quired pursuant to subsection (h).

13          “(c) FORWARDING OF REPORT TO LAW ENFORCE-  
14          MENT.—

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

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

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

9           “(d) ATTORNEY GENERAL RESPONSIBILITIES.—

10           “(1) IN GENERAL.—The Attorney General shall  
11           enforce this section.

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

17           “(3) DESIGNATION OF FOREIGN AGENCIES.—  
18           The Attorney General shall promptly—

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

22           “(B) establish the conditions under which  
23           such a report may be forwarded to such agen-  
24           cies; and

1           “(C) develop a process for foreign law en-  
2           forcement agencies to request assistance from  
3           Federal law enforcement agencies in obtaining  
4           evidence related to a report referred under sub-  
5           section (c)(3).

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

10           “(1) in the case of an initial knowing and will-  
11           ful failure to make a report, not more than  
12           \$150,000; and

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

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

20           “(1) monitor any user, subscriber, or customer  
21           of that provider;

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

24           “(3) affirmatively seek facts or circumstances  
25           described in subsection (a)(2).

1       “(g) CONDITIONS OF DISCLOSURE INFORMATION  
2 CONTAINED WITHIN REPORT.—

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

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

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

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

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

24                   “(D) if the report discloses a violation of  
25 State criminal law, to an appropriate official of



1 a State or subdivision of a State for the pur-  
2 pose of enforcing such State law;

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

7 “(F) to an electronic communication serv-  
8 ice provider or remote computing provider if  
9 necessary to facilitate response to legal process  
10 issued in connection to that report. The elec-  
11 tronic communication service provider or remote  
12 computing service provider shall be prohibited  
13 from disclosing the contents of that report to  
14 any person, except as necessary to respond to  
15 the legal process; and

16 “(G) as ordered by a court upon a showing  
17 of good cause and pursuant to any protective  
18 orders or other conditions that the court may  
19 impose.

20 “(h) EVIDENCE PRESERVATION.—

21 “(1) IN GENERAL.—For the purposes of this  
22 section, the notification to an electronic communica-  
23 tion service provider or a remote computing service  
24 provider by the CyberTipline of receipt of a report  
25 under subsection (a)(1) shall be treated as notice to

1 preserve, as if such notice was made pursuant to  
2 section 2703(f).

3 “(2) PRESERVATION OF REPORT.—Pursuant to  
4 subsection (h)(1), an electronic communication serv-  
5 ice provider or a remote computing service shall pre-  
6 serve the contents of the report provided pursuant to  
7 subsection (b) as well as the information in sub-  
8 section (c)(2) of section 2703 pertaining to the in-  
9 volved individual for not less than 180 days after  
10 such notification by the CyberTipline.

11 “(3) AUTHORITIES AND DUTIES NOT AF-  
12 FECTED.—Nothing in this section shall be construed  
13 as replacing, amending, or otherwise interfering with  
14 the authorities and duties under section 2703.

15 **“SEC. 2258B. LIMITED LIABILITY FOR ELECTRONIC COMMU-  
16 NICATION SERVICE PROVIDERS, REMOTE  
17 COMPUTING SERVICE PROVIDERS, OR DO-  
18 MAIN NAME REGISTRAR.**

19 “(a) IN GENERAL.—Except as provided in sub-  
20 sections (b) and (c), a civil claim or criminal charge  
21 against an electronic communication service provider, a re-  
22 mote computing service provider, or domain name reg-  
23 istrar, including any director, officer, employee, or agent  
24 of such electronic communication service provider, remote  
25 computing service provider, or domain name registrar

1 arising from the performance of the reporting responsibil-  
2 ities of such electronic communication service provider, re-  
3 mote computing service provider, or domain name reg-  
4 istrar under this section, section 2258A, or section 2258C  
5 may not be brought in any Federal or State court.

6 “(b) INTENTIONAL, RECKLESS, OR OTHER MIS-  
7 CONDUCT.—Subsection (a) shall not apply to a claim if  
8 the electronic communication service provider, remote  
9 computing service provider, or domain name registrar, or  
10 a director, officer, employee, or agent of that electronic  
11 communication service provider, remote computing service  
12 provider, or domain name registrar—

13 “(1) engaged in intentional misconduct; or

14 “(2) acted, or failed to act—

15 “(A) with actual malice;

16 “(B) with reckless disregard to a substan-  
17 tial risk of causing injury without legal jus-  
18 tification; or

19 “(C) for a purpose unrelated to the per-  
20 formance of any responsibility or function  
21 under this section, section 2258A, or section  
22 2258C.

23 “(c) ORDINARY BUSINESS ACTIVITIES.—Subsection  
24 (a) shall not apply to an act or omission relating to an  
25 ordinary business activity of an electronic communication

1 service provider, a remote computing service provider, or  
2 domain name registrar, including general administration  
3 or operations, the use of motor vehicles, or personnel man-  
4 agement.

5 “(d) MINIMIZING ACCESS.—An electronic commu-  
6 nication service provider, a remote computing service pro-  
7 vider, and domain name registrar shall—

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

11 “(2) ensure that any such image is permanently  
12 destroyed, upon notification from a law enforcement  
13 agency.

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

16 “(a) IN GENERAL.—The National Center for Missing  
17 and Exploited Children is authorized to provide elements  
18 relating to any image reported to its CyberTipline to an  
19 electronic communication service provider or a remote  
20 computing service provider for the sole and exclusive pur-  
21 pose of permitting that electronic communication service  
22 provider or remote computing service provider to stop the  
23 further transmission of images. Such elements may in-  
24 clude unique identifiers associated with a specific image,  
25 Internet location of images, and other technological ele-

1 ments that can be used to identify and stop the trans-  
2 mission of child pornography.

3       “(b) USE BY ELECTRONIC COMMUNICATION SERVICE  
4 PROVIDERS AND REMOTE COMPUTING SERVICE PRO-  
5 VIDERS.—Any electronic communication service provider  
6 or remote computing service provider that receives ele-  
7 ments relating to an image from the National Center for  
8 Missing and Exploited Children under this section may  
9 use such information only for the purposes described in  
10 this section, provided that such use shall not relieve that  
11 electronic communication service provider or remote com-  
12 puting service provider from its reporting obligations  
13 under section 2258A.

14 **“SEC. 2258D. LIMITED LIABILITY FOR THE NATIONAL CEN-**  
15                   **TER FOR MISSING AND EXPLOITED CHIL-**  
16                   **DREN.**

17       “(a) IN GENERAL.—Except as provided in sub-  
18 sections (b) and (c), a civil claim or criminal charge  
19 against the National Center for Missing and Exploited  
20 Children, including any director, officer, employee, or  
21 agent of such center, arising from the performance of the  
22 CyberTipline responsibilities or functions of such center,  
23 as described in this section, section 2258A or 2258C of  
24 this title, or section 404 of the Missing Children’s Assist-  
25 ance Act (42 U.S.C. 5773), or from the effort of such cen-

1 ter to identify child victims may not be brought in any  
2 Federal or State court.

3 “(b) INTENTIONAL, RECKLESS, OR OTHER MIS-  
4 CONDUCT.—Subsection (a) shall not apply to a claim or  
5 charge if the National Center for Missing and Exploited  
6 Children, or a director, officer, employee, or agent of such  
7 center—

8 “(1) engaged in intentional misconduct; or

9 “(2) acted, or failed to act—

10 “(A) with actual malice;

11 “(B) with reckless disregard to a substan-  
12 tial risk of causing injury without legal jus-  
13 tification; or

14 “(C) for a purpose unrelated to the per-  
15 formance of any responsibility or function  
16 under this section, section 2258A or 2258C of  
17 this title, or section 404 of the Missing Chil-  
18 dren’s Assistance Act (42 U.S.C. 5773).

19 “(c) ORDINARY BUSINESS ACTIVITIES.—Subsection  
20 (a) shall not apply to an act or omission relating to an  
21 ordinary business activity, including general administra-  
22 tion or operations, the use of motor vehicles, or personnel  
23 management.

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

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

4           “(2) ensure that any such image is permanently  
5           destroyed upon notification from a law enforcement  
6           agency.

7   **“SEC. 2258E. DEFINITIONS.**

8           “‘In sections 2258A through 2258D—

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

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

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

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

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

22          “(6) the term ‘website’ means any collection of  
23          material placed in a computer server-based file ar-  
24          chive so that it is publicly accessible, over the Inter-

1 net, using hypertext transfer protocol or any suc-  
2 cessor protocol.”.

3 (b) CONFORMING AMENDMENTS.—

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

7 (2) TABLE OF SECTIONS.—The table of sections  
8 for chapter 110 of title 18, United States Code, is  
9 amended by inserting after the item relating to sec-  
10 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.”.

Passed the House of Representatives December 5,  
2007.

Attest:

LORRAINE C. MILLER,

*Clerk.*