

110TH CONGRESS
2^D SESSION

S. 1738

AN ACT

To require the Department of Justice to develop and implement a National Strategy Child Exploitation Prevention and Interdiction, to improve the Internet Crimes Against Children Task Force, to increase resources for regional computer forensic labs, and to make other improvements to increase the ability of law enforcement agencies to investigate and prosecute child predators.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
 5 “Providing Resources, Officers, and Technology To Eradi-
 6 cate Cyber Threats to Our Children Act of 2008” or the
 7 “PROTECT Our Children Act of 2008”.

8 (b) TABLE OF CONTENTS.—The table of contents for
 9 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—NATIONAL STRATEGY FOR CHILD EXPLOITATION
 PREVENTION AND INTERDICTION

Sec. 101. Establishment of National Strategy for Child Exploitation Prevention
 and Interdiction.

Sec. 102. Establishment of National ICAC Task Force Program.

Sec. 103. Purpose of ICAC task forces.

Sec. 104. Duties and functions of task forces.

Sec. 105. National Internet Crimes Against Children Data System.

Sec. 106. ICAC grant program.

Sec. 107. Authorization of appropriations.

TITLE II—ADDITIONAL MEASURES TO COMBAT CHILD
 EXPLOITATION

Sec. 201. Additional regional computer forensic labs.

TITLE III—EFFECTIVE CHILD PORNOGRAPHY PROSECUTION

Sec. 301. Prohibit the broadcast of live images of child abuse.

Sec. 302. Amendment to section 2256 of title 18, United States Code.

Sec. 303. Amendment to section 2260 of title 18, United States Code.

Sec. 304. Prohibiting the adaptation or modification of an image of an identifi-
 able minor to produce child pornography.

TITLE IV—NATIONAL INSTITUTE OF JUSTICE STUDY OF RISK
 FACTORS

Sec. 401. NIJ study of risk factors for assessing dangerousness.

TITLE V—SECURING ADOLESCENTS FROM ONLINE
 EXPLOITATION

Sec. 501. Reporting requirements of electronic communication service providers
 and remote computing service providers.

Sec. 502. Reports.
Sec. 503. Severability.

1 **SEC. 2. DEFINITIONS.**

2 In this Act, the following definitions shall apply:

3 (1) CHILD EXPLOITATION.—The term “child
4 exploitation” means any conduct, attempted conduct,
5 or conspiracy to engage in conduct involving a minor
6 that violates section 1591, chapter 109A, chapter
7 110, and chapter 117 of title 18, United States
8 Code, or any sexual activity involving a minor for
9 which any person can be charged with a criminal of-
10 fense.

11 (2) CHILD OBSCENITY.—The term “child ob-
12 scenity” means any visual depiction proscribed by
13 section 1466A of title 18, United States Code.

14 (3) MINOR.—The term “minor” means any per-
15 son under the age of 18 years.

16 (4) SEXUALLY EXPLICIT CONDUCT.—The term
17 “sexually explicit conduct” has the meaning given
18 such term in section 2256 of title 18, United States
19 Code.

1 **TITLE I—NATIONAL STRATEGY**
2 **FOR CHILD EXPLOITATION**
3 **PREVENTION AND INTERDIC-**
4 **TION**

5 **SEC. 101. ESTABLISHMENT OF NATIONAL STRATEGY FOR**
6 **CHILD EXPLOITATION PREVENTION AND**
7 **INTERDICTION.**

8 (a) IN GENERAL.—The Attorney General of the
9 United States shall create and implement a National
10 Strategy for Child Exploitation Prevention and Interdic-
11 tion.

12 (b) TIMING.—Not later than 1 year after the date
13 of enactment of this Act and on February 1 of every sec-
14 ond year thereafter, the Attorney General shall submit to
15 Congress the National Strategy established under sub-
16 section (a).

17 (c) REQUIRED CONTENTS OF NATIONAL STRAT-
18 EGY.—The National Strategy established under subsection
19 (a) shall include the following:

20 (1) Comprehensive long-range, goals for reduc-
21 ing child exploitation.

22 (2) Annual measurable objectives and specific
23 targets to accomplish long-term, quantifiable goals
24 that the Attorney General determines may be

1 achieved during each year beginning on the date
2 when the National Strategy is submitted.

3 (3) Annual budget priorities and Federal efforts
4 dedicated to combating child exploitation, including
5 resources dedicated to Internet Crimes Against Chil-
6 dren task forces, Project Safe Childhood, FBI Inno-
7 cent Images Initiative, the National Center for Miss-
8 ing and Exploited Children, regional forensic com-
9 puter labs, Internet Safety programs, and all other
10 entities whose goal or mission is to combat the ex-
11 ploitation of children that receive Federal support.

12 (4) A 5-year projection for program and budget
13 goals and priorities.

14 (5) A review of the policies and work of the De-
15 partment of Justice related to the prevention and in-
16 vestigation of child exploitation crimes, including ef-
17 forts at the Office of Justice Programs, the Criminal
18 Division of the Department of Justice, the Executive
19 Office of United States Attorneys, the Federal Bu-
20 reau of Investigation, the Office of the Attorney
21 General, the Office of the Deputy Attorney General,
22 the Office of Legal Policy, and any other agency or
23 bureau of the Department of Justice whose activities
24 relate to child exploitation.

1 (6) A description of the Department's efforts to
2 coordinate with international, State, local, tribal law
3 enforcement, and private sector entities on child ex-
4 ploitation prevention and interdiction efforts.

5 (7) Plans for interagency coordination regard-
6 ing the prevention, investigation, and apprehension
7 of individuals exploiting children, including coopera-
8 tion and collaboration with—

9 (A) Immigration and Customs Enforce-
10 ment;

11 (B) the United States Postal Inspection
12 Service;

13 (C) the Department of State;

14 (D) the Department of Commerce;

15 (E) the Department of Education;

16 (F) the Department of Health and Human
17 Services; and

18 (G) other appropriate Federal agencies.

19 (8) A review of the Internet Crimes Against
20 Children Task Force Program, including—

21 (A) the number of ICAC task forces and
22 location of each ICAC task force;

23 (B) the number of trained personnel at
24 each ICAC task force;

1 (C) the amount of Federal grants awarded
2 to each ICAC task force;

3 (D) an assessment of the Federal, State,
4 and local cooperation in each task force, includ-
5 ing—

6 (i) the number of arrests made by
7 each task force;

8 (ii) the number of criminal referrals
9 to United States attorneys for prosecution;

10 (iii) the number of prosecutions and
11 convictions from the referrals made under
12 clause (ii);

13 (iv) the number, if available, of local
14 prosecutions and convictions based on
15 ICAC task force investigations; and

16 (v) any other information dem-
17 onstrating the level of Federal, State, and
18 local coordination and cooperation, as such
19 information is to be determined by the At-
20 torney General;

21 (E) an assessment of the training opportu-
22 nities and technical assistance available to sup-
23 port ICAC task force grantees; and

24 (F) an assessment of the success of the
25 Internet Crimes Against Children Task Force

1 Program at leveraging State and local resources
2 and matching funds.

3 (9) An assessment of the technical assistance
4 and support available for Federal, State, local, and
5 tribal law enforcement agencies, in the prevention,
6 investigation, and prosecution of child exploitation
7 crimes.

8 (10) A review of the backlog of forensic analysis
9 for child exploitation cases at each FBI Regional
10 Forensic lab and an estimate of the backlog at State
11 and local labs.

12 (11) Plans for reducing the forensic backlog de-
13 scribed in paragraph (10), if any, at Federal, State
14 and local forensic labs.

15 (12) A review of the Federal programs related
16 to child exploitation prevention and education, in-
17 cluding those related to Internet safety, including ef-
18 forts by the private sector and nonprofit entities, or
19 any other initiatives, that have proven successful in
20 promoting child safety and Internet safety.

21 (13) An assessment of the future trends, chal-
22 lenges, and opportunities, including new tech-
23 nologies, that will impact Federal, State, local, and
24 tribal efforts to combat child exploitation.

1 (14) Plans for liaisons with the judicial
2 branches of the Federal and State governments on
3 matters relating to child exploitation.

4 (15) An assessment of Federal investigative and
5 prosecution activity relating to reported incidents of
6 child exploitation crimes, which shall include a num-
7 ber of factors, including—

8 (A) the number of high-priority suspects
9 (identified because of the volume of suspected
10 criminal activity or because of the danger to the
11 community or a potential victim) who were in-
12 vestigated and prosecuted;

13 (B) the number of investigations, arrests,
14 prosecutions and convictions for a crime of
15 child exploitation; and

16 (C) the average sentence imposed and stat-
17 utory maximum for each crime of child exploi-
18 tation.

19 (16) A review of all available statistical data in-
20 dicating the overall magnitude of child pornography
21 trafficking in the United States and internationally,
22 including—

23 (A) the number of computers or computer
24 users, foreign and domestic, observed engaging
25 in, or suspected by law enforcement agencies

1 and other sources of engaging in, peer-to-peer
2 file sharing of child pornography;

3 (B) the number of computers or computer
4 users, foreign and domestic, observed engaging
5 in, or suspected by law enforcement agencies
6 and other reporting sources of engaging in,
7 buying and selling, or other commercial activity
8 related to child pornography;

9 (C) the number of computers or computer
10 users, foreign and domestic, observed engaging
11 in, or suspected by law enforcement agencies
12 and other sources of engaging in, all other
13 forms of activity related to child pornography;

14 (D) the number of tips or other statistical
15 data from the National Center for Missing and
16 Exploited Children's CyberTipline and other
17 data indicating the magnitude of child pornog-
18 raphy trafficking; and

19 (E) any other statistical data indicating
20 the type, nature, and extent of child exploi-
21 tation crime in the United States and abroad.

22 (17) Copies of recent relevant research and
23 studies related to child exploitation, including—

1 (A) studies related to the link between pos-
2 session or trafficking of child pornography and
3 actual abuse of a child;

4 (B) studies related to establishing a link
5 between the types of files being viewed or
6 shared and the type of illegal activity; and

7 (C) any other research, studies, and avail-
8 able information related to child exploitation.

9 (18) A review of the extent of cooperation, co-
10 ordination, and mutual support between private sec-
11 tor and other entities and organizations and Federal
12 agencies, including the involvement of States, local
13 and tribal government agencies to the extent Federal
14 programs are involved.

15 (19) The results of the Project Safe Childhood
16 Conference or other conferences or meetings con-
17 vened by the Department of Justice related to com-
18 bating child exploitation

19 (d) APPOINTMENT OF HIGH-LEVEL OFFICIAL.—

20 (1) IN GENERAL.—The Attorney General shall
21 designate a senior official at the Department of Jus-
22 tice to be responsible for coordinating the develop-
23 ment of the National Strategy established under
24 subsection (a).

1 (2) DUTIES.—The duties of the official des-
2 ignated under paragraph (1) shall include—

3 (A) acting as a liaison with all Federal
4 agencies regarding the development of the Na-
5 tional Strategy;

6 (B) working to ensure that there is proper
7 coordination among agencies in developing the
8 National Strategy;

9 (C) being knowledgeable about budget pri-
10 orities and familiar with all efforts within the
11 Department of Justice and the FBI related to
12 child exploitation prevention and interdiction;
13 and

14 (D) communicating the National Strategy
15 to Congress and being available to answer ques-
16 tions related to the strategy at congressional
17 hearings, if requested by committees of appro-
18 priate jurisdictions, on the contents of the Na-
19 tional Strategy and progress of the Department
20 of Justice in implementing the National Strat-
21 egy.

22 **SEC. 102. ESTABLISHMENT OF NATIONAL ICAC TASK FORCE**

23 **PROGRAM.**

24 (a) ESTABLISHMENT.—

1 (1) IN GENERAL.—There is established within
2 the Department of Justice, under the general au-
3 thority of the Attorney General, a National Internet
4 Crimes Against Children Task Force Program (here-
5 inafter in this title referred to as the “ICAC Task
6 Force Program”), which shall consist of a national
7 program of State and local law enforcement task
8 forces dedicated to developing effective responses to
9 online enticement of children by sexual predators,
10 child exploitation, and child obscenity and pornog-
11 raphy cases.

12 (2) INTENT OF CONGRESS.—It is the purpose
13 and intent of Congress that the ICAC Task Force
14 Program established under paragraph (1) is in-
15 tended to continue the ICAC Task Force Program
16 authorized under title I of the Departments of Com-
17 merce, Justice, and State, the Judiciary, and Re-
18 lated Agencies Appropriations Act, 1998, and fund-
19 ed under title IV of the Juvenile Justice and Delin-
20 quency Prevention Act of 1974.

21 (b) NATIONAL PROGRAM.—

22 (1) STATE REPRESENTATION.—The ICAC Task
23 Force Program established under subsection (a)
24 shall include at least 1 ICAC task force in each
25 State.

1 (2) CAPACITY AND CONTINUITY OF INVESTIGA-
2 TIONS.—In order to maintain established capacity
3 and continuity of investigations and prosecutions of
4 child exploitation cases, the Attorney General, shall,
5 in establishing the ICAC Task Force Program under
6 subsection (a) consult with and consider all 59 task
7 forces in existence on the date of enactment of this
8 Act. The Attorney General shall include all existing
9 ICAC task forces in the ICAC Task Force Program,
10 unless the Attorney General makes a determination
11 that an existing ICAC does not have a proven track
12 record of success.

13 (3) ONGOING REVIEW.—The Attorney General
14 shall—

15 (A) conduct periodic reviews of the effec-
16 tiveness of each ICAC task force established
17 under this section; and

18 (B) have the discretion to establish a new
19 task force if the Attorney General determines
20 that such decision will enhance the effectiveness
21 of combating child exploitation provided that
22 the Attorney General notifies Congress in ad-
23 vance of any such decision and that each state
24 maintains at least 1 ICAC task force at all
25 times.

1 (4) TRAINING.—

2 (A) IN GENERAL.—The Attorney General
3 may establish national training programs to
4 support the mission of the ICAC task forces, in-
5 cluding the effective use of the National Inter-
6 net Crimes Against Children Data System.

7 (B) LIMITATION.—In establishing training
8 courses under this paragraph, the Attorney
9 General may not award any one entity other
10 than a law enforcement agency more than
11 \$2,000,000 annually to establish and conduct
12 training courses for ICAC task force members
13 and other law enforcement officials.

14 (C) REVIEW.—The Attorney General
15 shall—

16 (i) conduct periodic reviews of the ef-
17 fectiveness of each training session author-
18 ized by this paragraph; and

19 (ii) consider outside reports related to
20 the effective use of Federal funding in
21 making future grant awards for training.

22 **SEC. 103. PURPOSE OF ICAC TASK FORCES.**

23 The ICAC Task Force Program, and each State or
24 local ICAC task force that is part of the national program
25 of task forces, shall be dedicated toward—

1 (1) increasing the investigative capabilities of
2 State and local law enforcement officers in the de-
3 tection, investigation, and apprehension of Internet
4 crimes against children offenses or offenders, includ-
5 ing technology-facilitated child exploitation offenses;

6 (2) conducting proactive and reactive Internet
7 crimes against children investigations;

8 (3) providing training and technical assistance
9 to ICAC task forces and other Federal, State, and
10 local law enforcement agencies in the areas of inves-
11 tigation, forensics, prosecution, community out-
12 reach, and capacity-building, using recognized ex-
13 perts to assist in the development and delivery of
14 training programs;

15 (4) increasing the number of Internet crimes
16 against children offenses being investigated and
17 prosecuted in both Federal and State courts;

18 (5) creating a multiagency task force response
19 to Internet crimes against children offenses within
20 each State;

21 (6) participating in the Department of Justice's
22 Project Safe Childhood initiative, the purpose of
23 which is to combat technology-facilitated sexual ex-
24 ploitation crimes against children;

1 (7) enhancing nationwide responses to Internet
2 crimes against children offenses, including assisting
3 other ICAC task forces, as well as other Federal,
4 State, and local agencies with Internet crimes
5 against children investigations and prosecutions;

6 (8) developing and delivering Internet crimes
7 against children public awareness and prevention
8 programs; and

9 (9) participating in such other activities, both
10 proactive and reactive, that will enhance investiga-
11 tions and prosecutions of Internet crimes against
12 children.

13 **SEC. 104. DUTIES AND FUNCTIONS OF TASK FORCES.**

14 Each State or local ICAC task force that is part of
15 the national program of task forces shall—

16 (1) consist of State and local investigators,
17 prosecutors, forensic specialists, and education spe-
18 cialists who are dedicated to addressing the goals of
19 such task force;

20 (2) work consistently toward achieving the pur-
21 poses described in section 103;

22 (3) engage in proactive investigations, forensic
23 examinations, and effective prosecutions of Internet
24 crimes against children;

1 (4) provide forensic, preventive, and investiga-
2 tive assistance to parents, educators, prosecutors,
3 law enforcement, and others concerned with Internet
4 crimes against children;

5 (5) develop multijurisdictional, multiagency re-
6 sponses and partnerships to Internet crimes against
7 children offenses through ongoing informational, ad-
8 ministrative, and technological support to other
9 State and local law enforcement agencies, as a
10 means for such agencies to acquire the necessary
11 knowledge, personnel, and specialized equipment to
12 investigate and prosecute such offenses;

13 (6) participate in nationally coordinated inves-
14 tigations in any case in which the Attorney General
15 determines such participation to be necessary, as
16 permitted by the available resources of such task
17 force;

18 (7) establish or adopt investigative and prosecu-
19 tion standards, consistent with established norms, to
20 which such task force shall comply;

21 (8) investigate, and seek prosecution on, tips
22 related to Internet crimes against children, including
23 tips from Operation Fairplay, the National Internet
24 Crimes Against Children Data System established in
25 section 105, the National Center for Missing and

1 Exploited Children’s CyberTipline, ICAC task forces,
2 and other Federal, State, and local agencies, with
3 priority being given to investigative leads that indi-
4 cate the possibility of identifying or rescuing child
5 victims, including investigative leads that indicate a
6 likelihood of seriousness of offense or dangerousness
7 to the community;

8 (9) develop procedures for handling seized evi-
9 dence;

10 (10) maintain—

11 (A) such reports and records as are re-
12 quired under this title; and

13 (B) such other reports and records as de-
14 termined by the Attorney General; and

15 (11) seek to comply with national standards re-
16 garding the investigation and prosecution of Internet
17 crimes against children, as set forth by the Attorney
18 General, to the extent such standards are consistent
19 with the law of the State where the task force is lo-
20 cated.

21 **SEC. 105. NATIONAL INTERNET CRIMES AGAINST CHIL-**
22 **DREN DATA SYSTEM.**

23 (a) IN GENERAL.—The Attorney General shall estab-
24 lish, consistent with all existing Federal laws relating to
25 the protection of privacy, a National Internet Crimes

1 Against Children Data System. The system shall not be
2 used to search for or obtain any information that does
3 not involve the use of the Internet to facilitate child exploi-
4 tation.

5 (b) INTENT OF CONGRESS.—It is the purpose and in-
6 tent of Congress that the National Internet Crimes
7 Against Children Data System established in subsection
8 (a) is intended to continue and build upon Operation Fair-
9 play developed by the Wyoming Attorney General’s office,
10 which has established a secure, dynamic undercover infra-
11 structure that has facilitated online law enforcement in-
12 vestigations of child exploitation, information sharing, and
13 the capacity to collect and aggregate data on the extent
14 of the problems of child exploitation.

15 (c) PURPOSE OF SYSTEM.—The National Internet
16 Crimes Against Children Data System established under
17 subsection (a) shall be dedicated to assisting and sup-
18 porting credentialed law enforcement agencies authorized
19 to investigate child exploitation in accordance with Fed-
20 eral, State, local, and tribal laws, including by providing
21 assistance and support to—

22 (1) Federal agencies investigating and pros-
23 ecuting child exploitation;

24 (2) the ICAC Task Force Program established
25 under section 102;

1 (3) State, local, and tribal agencies inves-
2 tigating and prosecuting child exploitation; and

3 (4) foreign or international law enforcement
4 agencies, subject to approval by the Attorney Gen-
5 eral.

6 (d) CYBER SAFE DECONFLICTION AND INFORMA-
7 TION SHARING.—The National Internet Crimes Against
8 Children Data System established under subsection (a)—

9 (1) shall be housed and maintained within the
10 Department of Justice or a credentialed law enforce-
11 ment agency;

12 (2) shall be made available for a nominal
13 charge to support credentialed law enforcement
14 agencies in accordance with subsection (c); and

15 (3) shall—

16 (A) allow Federal, State, local, and tribal
17 agencies and ICAC task forces investigating
18 and prosecuting child exploitation to contribute
19 and access data for use in resolving case con-
20 flicts;

21 (B) provide, directly or in partnership with
22 a credentialed law enforcement agency, a dy-
23 namic undercover infrastructure to facilitate on-
24 line law enforcement investigations of child ex-
25 ploitation;

1 (C) facilitate the development of essential
2 software and network capability for law enforce-
3 ment participants; and

4 (D) provide software or direct hosting and
5 support for online investigations of child exploi-
6 tation activities, or, in the alternative, provide
7 users with a secure connection to an alternative
8 system that provides such capabilities, provided
9 that the system is hosted within a governmental
10 agency or a credentialed law enforcement agen-
11 cy.

12 (e) COLLECTION AND REPORTING OF DATA.—

13 (1) IN GENERAL.—The National Internet
14 Crimes Against Children Data System established
15 under subsection (a) shall ensure the following:

16 (A) REAL-TIME REPORTING.—All child ex-
17 ploitation cases involving local child victims that
18 are reasonably detectable using available soft-
19 ware and data are, immediately upon their de-
20 tection, made available to participating law en-
21 forcement agencies.

22 (B) HIGH-PRIORITY SUSPECTS.—Every 30
23 days, at minimum, the National Internet
24 Crimes Against Children Data System shall—

1 (i) identify high-priority suspects, as
2 such suspects are determined by the vol-
3 ume of suspected criminal activity or other
4 indicators of seriousness of offense or dan-
5 gerousness to the community or a potential
6 local victim; and

7 (ii) report all such identified high-pri-
8 ority suspects to participating law enforce-
9 ment agencies.

10 (C) ANNUAL REPORTS.—Any statistical
11 data indicating the overall magnitude of child
12 pornography trafficking and child exploitation
13 in the United States and internationally is
14 made available and included in the National
15 Strategy, as is required under section
16 101(c)(16).

17 (2) RULE OF CONSTRUCTION.—Nothing in this
18 subsection shall be construed to limit the ability of
19 participating law enforcement agencies to dissemi-
20 nate investigative leads or statistical information in
21 accordance with State and local laws.

22 (f) MANDATORY REQUIREMENTS OF NETWORK.—
23 The National Internet Crimes Against Children Data Sys-
24 tem established under subsection (a) shall develop, deploy,

1 and maintain an integrated technology and training pro-
2 gram that provides—

3 (1) a secure, online system for Federal law en-
4 forcement agencies, ICAC task forces, and other
5 State, local, and tribal law enforcement agencies for
6 use in resolving case conflicts, as provided in sub-
7 section (d);

8 (2) a secure system enabling online communica-
9 tion and collaboration by Federal law enforcement
10 agencies, ICAC task forces, and other State, local,
11 and tribal law enforcement agencies regarding ongo-
12 ing investigations, investigatory techniques, best
13 practices, and any other relevant news and profes-
14 sional information;

15 (3) a secure online data storage and analysis
16 system for use by Federal law enforcement agencies,
17 ICAC task forces, and other State, local, and tribal
18 law enforcement agencies;

19 (4) secure connections or interaction with State
20 and local law enforcement computer networks, con-
21 sistent with reasonable and established security pro-
22 tocols and guidelines;

23 (5) guidelines for use of the National Internet
24 Crimes Against Children Data System by Federal,

1 State, local, and tribal law enforcement agencies and
2 ICAC task forces; and

3 (6) training and technical assistance on the use
4 of the National Internet Crimes Against Children
5 Data System by Federal, State, local, and tribal law
6 enforcement agencies and ICAC task forces.

7 (g) NATIONAL INTERNET CRIMES AGAINST CHIL-
8 DREN DATA SYSTEM STEERING COMMITTEE.—The Attor-
9 ney General shall establish a National Internet Crimes
10 Against Children Data System Steering Committee to pro-
11 vide guidance to the Network relating to the program
12 under subsection (f), and to assist in the development of
13 strategic plans for the System. The Steering Committee
14 shall consist of 10 members with expertise in child exploi-
15 tation prevention and interdiction prosecution, investiga-
16 tion, or prevention, including—

17 (1) 3 representatives elected by the local direc-
18 tors of the ICAC task forces, such representatives
19 shall represent different geographic regions of the
20 country;

21 (2) 1 representative of the Department of Jus-
22 tice Office of Information Services;

23 (3) 1 representative from Operation Fairplay,
24 currently hosted at the Wyoming Office of the Attor-
25 ney General;

1 (4) 1 representative from the law enforcement
2 agency having primary responsibility for hosting and
3 maintaining the National Internet Crimes Against
4 Children Data System;

5 (5) 1 representative of the Federal Bureau of
6 Investigation's Innocent Images National Initiative
7 or Regional Computer Forensic Lab program;

8 (6) 1 representative of the Immigration and
9 Customs Enforcement's Cyber Crimes Center;

10 (7) 1 representative of the United States Postal
11 Inspection Service; and

12 (8) 1 representative of the Department of Jus-
13 tice.

14 (h) AUTHORIZATION OF APPROPRIATIONS.—There
15 are authorized to be appropriated for each of the fiscal
16 years 2009 through 2016, \$2,000,000 to carry out the
17 provisions of this section.

18 **SEC. 106. ICAC GRANT PROGRAM.**

19 (a) ESTABLISHMENT.—

20 (1) IN GENERAL.—The Attorney General is au-
21 thorized to award grants to State and local ICAC
22 task forces to assist in carrying out the duties and
23 functions described under section 104.

24 (2) FORMULA GRANTS.—

1 (A) DEVELOPMENT OF FORMULA.—At
2 least 75 percent of the total funds appropriated
3 to carry out this section shall be available to
4 award or otherwise distribute grants pursuant
5 to a funding formula established by the Attor-
6 ney General in accordance with the require-
7 ments in subparagraph (B).

8 (B) FORMULA REQUIREMENTS.—Any for-
9 mula established by the Attorney General under
10 subparagraph (A) shall—

11 (i) ensure that each State or local
12 ICAC task force shall, at a minimum, re-
13 ceive an amount equal to 0.5 percent of
14 the funds available to award or otherwise
15 distribute grants under subparagraph (A);
16 and

17 (ii) take into consideration the fol-
18 lowing factors:

19 (I) The population of each State,
20 as determined by the most recent de-
21 cennial census performed by the Bu-
22 reau of the Census.

23 (II) The number of investigative
24 leads within the applicant's jurisdic-
25 tion generated by Operation Fairplay,

1 the ICAC Data Network, the
2 CyberTipline, and other sources.

3 (III) The number of criminal
4 cases related to Internet crimes
5 against children referred to a task
6 force for Federal, State, or local pro-
7 secution.

8 (IV) The number of successful
9 prosecutions of child exploitation
10 cases by a task force.

11 (V) The amount of training,
12 technical assistance, and public edu-
13 cation or outreach by a task force re-
14 lated to the prevention, investigation,
15 or prosecution of child exploitation of-
16 fenses.

17 (VI) Such other criteria as the
18 Attorney General determines dem-
19 onstrate the level of need for addi-
20 tional resources by a task force.

21 (3) DISTRIBUTION OF REMAINING FUNDS
22 BASED ON NEED.—

23 (A) IN GENERAL.—Any funds remaining
24 from the total funds appropriated to carry out
25 this section after funds have been made avail-

1 able to award or otherwise distribute formula
2 grants under paragraph (2)(A) shall be distrib-
3 uted to State and local ICAC task forces based
4 upon need, as set forth by criteria established
5 by the Attorney General. Such criteria shall in-
6 clude the factors under paragraph (2)(B)(ii).

7 (B) MATCHING REQUIREMENT.—A State
8 or local ICAC task force shall contribute match-
9 ing non-Federal funds in an amount equal to
10 not less than 25 percent of the amount of funds
11 received by the State or local ICAC task force
12 under subparagraph (A). A State or local ICAC
13 task force that is not able or willing to con-
14 tribute matching funds in accordance with this
15 subparagraph shall not be eligible for funds
16 under subparagraph (A).

17 (C) WAIVER.—The Attorney General may
18 waive, in whole or in part, the matching re-
19 quirement under subparagraph (B) if the State
20 or local ICAC task force demonstrates good
21 cause or financial hardship.

22 (b) APPLICATION.—

23 (1) IN GENERAL.—Each State or local ICAC
24 task force seeking a grant under this section shall
25 submit an application to the Attorney General at

1 such time, in such manner, and accompanied by
2 such information as the Attorney General may rea-
3 sonably require.

4 (2) CONTENTS.—Each application submitted
5 pursuant to paragraph (1) shall—

6 (A) describe the activities for which assist-
7 ance under this section is sought; and

8 (B) provide such additional assurances as
9 the Attorney General determines to be essential
10 to ensure compliance with the requirements of
11 this title.

12 (c) ALLOWABLE USES.—Grants awarded under this
13 section may be used to—

14 (1) hire personnel, investigators, prosecutors,
15 education specialists, and forensic specialists;

16 (2) establish and support forensic laboratories
17 utilized in Internet crimes against children investiga-
18 tions;

19 (3) support investigations and prosecutions of
20 Internet crimes against children;

21 (4) conduct and assist with education programs
22 to help children and parents protect themselves from
23 Internet predators;

1 (5) conduct and attend training sessions related
2 to successful investigations and prosecutions of
3 Internet crimes against children; and

4 (6) fund any other activities directly related to
5 preventing, investigating, or prosecuting Internet
6 crimes against children.

7 (d) REPORTING REQUIREMENTS.—

8 (1) ICAC REPORTS.—To measure the results of
9 the activities funded by grants under this section,
10 and to assist the Attorney General in complying with
11 the Government Performance and Results Act (Pub-
12 lic Law 103–62; 107 Stat. 285), each State or local
13 ICAC task force receiving a grant under this section
14 shall, on an annual basis, submit a report to the At-
15 torney General that sets forth the following:

16 (A) Staffing levels of the task force, in-
17 cluding the number of investigators, prosecu-
18 tors, education specialists, and forensic special-
19 ists dedicated to investigating and prosecuting
20 Internet crimes against children.

21 (B) Investigation and prosecution perform-
22 ance measures of the task force, including—

23 (i) the number of investigations initi-
24 ated related to Internet crimes against
25 children;

1 (ii) the number of arrests related to
2 Internet crimes against children; and

3 (iii) the number of prosecutions for
4 Internet crimes against children, includ-
5 ing—

6 (I) whether the prosecution re-
7 sulted in a conviction for such crime;
8 and

9 (II) the sentence and the statu-
10 tory maximum for such crime under
11 State law.

12 (C) The number of referrals made by the
13 task force to the United States Attorneys office,
14 including whether the referral was accepted by
15 the United States Attorney.

16 (D) Statistics that account for the dispo-
17 sition of investigations that do not result in ar-
18 rests or prosecutions, such as referrals to other
19 law enforcement.

20 (E) The number of investigative technical
21 assistance sessions that the task force provided
22 to nonmember law enforcement agencies.

23 (F) The number of computer forensic ex-
24 aminations that the task force completed.

1 (G) The number of law enforcement agen-
2 cies participating in Internet crimes against
3 children program standards established by the
4 task force.

5 (2) REPORT TO CONGRESS.—Not later than 1
6 year after the date of enactment of this Act, the At-
7 torney General shall submit a report to Congress
8 on—

9 (A) the progress of the development of the
10 ICAC Task Force Program established under
11 section 102; and

12 (B) the number of Federal and State in-
13 vestigations, prosecutions, and convictions in
14 the prior 12-month period related to child ex-
15 ploitation.

16 **SEC. 107. AUTHORIZATION OF APPROPRIATIONS.**

17 (a) IN GENERAL.—There are authorized to be appro-
18 priated to carry out this title—

19 (1) \$60,000,000 for fiscal year 2009;

20 (2) \$60,000,000 for fiscal year 2010;

21 (3) \$60,000,000 for fiscal year 2011;

22 (4) \$60,000,000 for fiscal year 2012; and

23 (5) \$60,000,000 for fiscal year 2013.

24 (b) AVAILABILITY.—Funds appropriated under sub-
25 section (a) shall remain available until expended.

1 **TITLE II—ADDITIONAL MEAS-**
2 **URES TO COMBAT CHILD EX-**
3 **PLOITATION**

4 **SEC. 201. ADDITIONAL REGIONAL COMPUTER FORENSIC**
5 **LABS.**

6 (a) **ADDITIONAL RESOURCES.**—The Attorney Gen-
7 eral shall establish additional computer forensic capacity
8 to address the current backlog for computer forensics, in-
9 cluding for child exploitation investigations. The Attorney
10 General may utilize funds under this title to increase ca-
11 pacity at existing regional forensic laboratories or to add
12 laboratories under the Regional Computer Forensic Lab-
13 oratories Program operated by the Federal Bureau of In-
14 vestigation.

15 (b) **PURPOSE OF NEW RESOURCES.**—The additional
16 forensic capacity established by resources provided under
17 this section shall be dedicated to assist Federal agencies,
18 State and local Internet Crimes Against Children task
19 forces, and other Federal, State, and local law enforce-
20 ment agencies in preventing, investigating, and pros-
21 ecuting Internet crimes against children.

22 (c) **NEW COMPUTER FORENSIC LABS.**—If the Attor-
23 ney General determines that new regional computer foren-
24 sic laboratories are required under subsection (a) to best

1 address existing backlogs, such new laboratories shall be
2 established pursuant to subsection (d).

3 (d) LOCATION OF NEW LABS.—The location of any
4 new regional computer forensic laboratories under this
5 section shall be determined by the Attorney General, in
6 consultation with the Director of the Federal Bureau of
7 Investigation, the Regional Computer Forensic Laboratory
8 National Steering Committee, and other relevant stake-
9 holders.

10 (e) REPORT.—Not later than 1 year after the date
11 of enactment of this Act, and every year thereafter, the
12 Attorney General shall submit a report to the Congress
13 on how the funds appropriated under this section were uti-
14 lized.

15 (f) AUTHORIZATION OF APPROPRIATIONS.—There
16 are authorized to be appropriated for fiscal years 2009
17 through 2013, \$2,000,000 to carry out the provisions of
18 this section.

19 **TITLE III—EFFECTIVE CHILD**
20 **PORNOGRAPHY PROSECUTION**

21 **SEC. 301. PROHIBIT THE BROADCAST OF LIVE IMAGES OF**
22 **CHILD ABUSE.**

23 Section 2251 of title 18, United States Code is
24 amended—

25 (1) in subsection (a), by—

1 (A) inserting “or for the purpose of trans-
2 mitting a live visual depiction of such conduct”
3 after “for the purpose of producing any visual
4 depiction of such conduct”;

5 (B) inserting “or transmitted” after “if
6 such person knows or has reason to know that
7 such visual depiction will be transported”;

8 (C) inserting “or transmitted” after “if
9 that visual depiction was produced”; and

10 (D) inserting “or transmitted” after “has
11 actually been transported”; and

12 (2) in subsection (b), by—

13 (A) inserting “or for the purpose of trans-
14 mitting a live visual depiction of such conduct”
15 after “for the purpose of producing any visual
16 depiction of such conduct”;

17 (B) inserting “or transmitted” after “per-
18 son knows or has reason to know that such vis-
19 ual depiction will be transported”;

20 (C) inserting “or transmitted” after “if
21 that visual depiction was produced”; and

22 (D) inserting “or transmitted” after “has
23 actually been transported”.

1 **SEC. 302. AMENDMENT TO SECTION 2256 OF TITLE 18,**
2 **UNITED STATES CODE.**

3 Section 2256(5) of title 18, United States Code is
4 amended by—

- 5 (1) striking “and” before “data”;
- 6 (2) after “visual image” by inserting “, and
7 data which is capable of conversion into a visual
8 image that has been transmitted by any means,
9 whether or not stored in a permanent format”.

10 **SEC. 303. AMENDMENT TO SECTION 2260 OF TITLE 18,**
11 **UNITED STATES CODE.**

12 Section 2260(a) of title 18, United States Code, is
13 amended by—

- 14 (1) inserting “or for the purpose of transmit-
15 ting a live visual depiction of such conduct” after
16 “for the purpose of producing any visual depiction of
17 such conduct”; and
- 18 (2) inserting “or transmitted” after “im-
19 ported”.

20 **SEC. 304. PROHIBITING THE ADAPTATION OR MODIFICA-**
21 **TION OF AN IMAGE OF AN IDENTIFIABLE**
22 **MINOR TO PRODUCE CHILD PORNOGRAPHY.**

23 (a) OFFENSE.—Subsection (a) of section 2252A of
24 title 18, United States Code, is amended—

- 25 (1) in paragraph (5), by striking “; or” at the
26 end and inserting a semicolon;

1 (2) in paragraph (6), by striking the period at
2 the end and inserting “; or”; and

3 (3) by inserting after paragraph (6) the fol-
4 lowing:

5 “(7) knowingly produces with intent to dis-
6 tribute, or distributes, by any means, including a
7 computer, in or affecting interstate or foreign com-
8 merce, child pornography that is an adapted or
9 modified depiction of an identifiable minor.”.

10 (b) PUNISHMENT.—Subsection (b) of section 2252A
11 of title 18, United States Code, is amended by adding at
12 the end the following:

13 “(3) Whoever violates, or attempts or conspires
14 to violate, subsection (a)(7) shall be fined under this
15 title or imprisoned not more than 15 years, or
16 both.”.

17 **TITLE IV—NATIONAL INSTITUTE**
18 **OF JUSTICE STUDY OF RISK**
19 **FACTORS**

20 **SEC. 401. NIJ STUDY OF RISK FACTORS FOR ASSESSING**
21 **DANGEROUSNESS.**

22 (a) IN GENERAL.—Not later than 1 year after the
23 date of enactment of this Act, the National Institute of
24 Justice shall prepare a report to identify investigative fac-
25 tors that reliably indicate whether a subject of an online

1 child exploitation investigation poses a high risk of harm
2 to children. Such a report shall be prepared in consulta-
3 tion and coordination with Federal law enforcement agen-
4 cies, the National Center for Missing and Exploited Chil-
5 dren, Operation Fairplay at the Wyoming Attorney Gen-
6 eral's Office, the Internet Crimes Against Children Task
7 Force, and other State and local law enforcement.

8 (b) CONTENTS OF ANALYSIS.—The report required
9 by subsection (a) shall include a thorough analysis of po-
10 tential investigative factors in on-line child exploitation
11 cases and an appropriate examination of investigative data
12 from prior prosecutions and case files of identified child
13 victims.

14 (c) REPORT TO CONGRESS.—Not later than 1 year
15 after the date of enactment of this Act, the National Insti-
16 tute of Justice shall submit a report to the House and
17 Senate Judiciary Committees that includes the findings of
18 the study required by this section and makes recommenda-
19 tions on technological tools and law enforcement proce-
20 dures to help investigators prioritize scarce resources to
21 those cases where there is actual hands-on abuse by the
22 suspect.

23 (d) AUTHORIZATION OF APPROPRIATIONS.—There
24 are authorized to be appropriated \$500,000 to the Na-

1 tional Institute of Justice to conduct the study required
2 under this section.

3 **TITLE V—SECURING ADOLES-**
4 **CENTS FROM ONLINE EXPLOI-**
5 **TATION**

6 **SEC. 501. REPORTING REQUIREMENTS OF ELECTRONIC**
7 **COMMUNICATION SERVICE PROVIDERS AND**
8 **REMOTE COMPUTING SERVICE PROVIDERS.**

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

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

15 “(a) DUTY TO REPORT.—

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

23 “(A) provide to the CyberTipline of the
24 National Center for Missing and Exploited Chil-
25 dren, or any successor to the CyberTipline oper-

1 ated by such center, the mailing address, tele-
2 phone number, facsimile number, electronic
3 mail address of, and individual point of contact
4 for, such electronic communication service pro-
5 vider or remote 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 from which there is an appar-
13 ent violation 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 the in-
19 formation is within the custody or control of an electronic
20 communication service provider or a remote computing
21 service provider, the facts and circumstances included in
22 each report under subsection (a)(1) may include the fol-
23 lowing information:

24 “(1) INFORMATION ABOUT THE INVOLVED IN-
25 DIVIDUAL.—Information relating to the identity of

1 any individual who appears to have violated a Fed-
2 eral law described in subsection (a)(2), which may,
3 to the extent reasonably practicable, include the elec-
4 tronic mail address, Internet Protocol address, uni-
5 form resource locator, or any other identifying infor-
6 mation, including self-reported identifying informa-
7 tion.

8 “(2) HISTORICAL REFERENCE.—Information
9 relating to when and how a customer or subscriber
10 of an electronic communication service or a remote
11 computing service uploaded, transmitted, or received
12 apparent child pornography or when and how appar-
13 ent child pornography was reported to, or discovered
14 by the electronic communication service provider or
15 remote computing service provider, including a date
16 and time stamp and time zone.

17 “(3) GEOGRAPHIC LOCATION INFORMATION.—

18 “(A) IN GENERAL.—Information relating
19 to the geographic location of the involved indi-
20 vidual or website, which may include the Inter-
21 net Protocol address or verified billing address,
22 or, if not reasonably available, at least 1 form
23 of geographic identifying information, including
24 area code or zip code.

1 “(B) INCLUSION.—The information de-
2 scribed in subparagraph (A) may also include
3 any geographic information provided to the
4 electronic communication service or remote
5 computing service by the customer or sub-
6 scriber.

7 “(4) IMAGES OF APPARENT CHILD PORNOG-
8 RAPHY.—Any image of apparent child pornography
9 relating to the incident such report is regarding.

10 “(5) COMPLETE COMMUNICATION.—The com-
11 plete communication containing any image of appar-
12 ent child pornography, including—

13 “(A) any data or information regarding
14 the transmission of the communication; and

15 “(B) any images, data, or other digital
16 files contained in, or attached to, the commu-
17 nication.

18 “(c) FORWARDING OF REPORT TO LAW ENFORCE-
19 MENT.—

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

1 “(2) STATE AND LOCAL LAW ENFORCEMENT.—
2 The National Center for Missing and Exploited Chil-
3 dren may forward any report made under subsection
4 (a)(1) to an appropriate law enforcement official of
5 a State or political subdivision of a State for the
6 purpose of enforcing State criminal law.

7 “(3) FOREIGN LAW ENFORCEMENT.—

8 “(A) IN GENERAL.—The National Center
9 for Missing and Exploited Children may for-
10 ward any report made under subsection (a)(1)
11 to any appropriate foreign law enforcement
12 agency designated by the Attorney General
13 under subsection (d)(3), subject to the condi-
14 tions established by the Attorney General under
15 subsection (d)(3).

16 “(B) TRANSMITTAL TO DESIGNATED FED-
17 ERAL AGENCIES.—If the National Center for
18 Missing and Exploited Children forwards a re-
19 port to a foreign law enforcement agency under
20 subparagraph (A), the National Center for
21 Missing and Exploited Children shall concur-
22 rently provide a copy of the report and the
23 identity of the foreign law enforcement agency
24 to—

25 “(i) the Attorney General; or

1 “(ii) the Federal law enforcement
2 agency or agencies designated by the At-
3 torney General under subsection (d)(2).

4 “(d) ATTORNEY GENERAL RESPONSIBILITIES.—

5 “(1) IN GENERAL.—The Attorney General shall
6 enforce this section.

7 “(2) DESIGNATION OF FEDERAL AGENCIES.—

8 The Attorney General shall designate promptly the
9 Federal law enforcement agency or agencies to
10 which a report shall be forwarded under subsection
11 (c)(1).

12 “(3) DESIGNATION OF FOREIGN AGENCIES.—

13 The Attorney General shall promptly—

14 “(A) in consultation with the Secretary of
15 State, designate the foreign law enforcement
16 agencies to which a report may be forwarded
17 under subsection (c)(3);

18 “(B) establish the conditions under which
19 such a report may be forwarded to such agen-
20 cies; and

21 “(C) develop a process for foreign law en-
22 forcement agencies to request assistance from
23 Federal law enforcement agencies in obtaining
24 evidence related to a report referred under sub-
25 section (c)(3).

1 “(4) REPORTING DESIGNATED FOREIGN AGEN-
2 CIES.—The Attorney General shall maintain and
3 make available to the Department of State, the Na-
4 tional Center for Missing and Exploited Children,
5 electronic communication service providers, remote
6 computing service providers, the Committee on the
7 Judiciary of the Senate, and the Committee on the
8 Judiciary of the House of Representatives a list of
9 the foreign law enforcement agencies designated
10 under paragraph (3).

11 “(5) SENSE OF CONGRESS REGARDING DES-
12 IGNATION OF FOREIGN AGENCIES.—It is the sense
13 of Congress that—

14 “(A) combating the international manufac-
15 turing, possession, and trade in online child
16 pornography requires cooperation with com-
17 petent, qualified, and appropriately trained for-
18 eign law enforcement agencies; and

19 “(B) the Attorney General, in cooperation
20 with the Secretary of State, should make a sub-
21 stantial effort to expand the list of foreign
22 agencies designated under paragraph (3).

23 “(6) NOTIFICATION TO PROVIDERS.—If an elec-
24 tronic communication service provider or remote
25 computing service provider notifies the National

1 Center for Missing and Exploited Children that the
2 electronic communication service provider or remote
3 computing service provider is making a report under
4 this section as the result of a request by a foreign
5 law enforcement agency, the National Center for
6 Missing and Exploited Children shall—

7 “(A) if the Center forwards the report to
8 the requesting foreign law enforcement agency
9 or another agency in the same country des-
10 ignated by the Attorney General under para-
11 graph (3), notify the electronic communication
12 service provider or remote computing service
13 provider of—

14 “(i) the identity of the foreign law en-
15 forcement agency to which the report was
16 forwarded; and

17 “(ii) the date on which the report was
18 forwarded; or

19 “(B) notify the electronic communication
20 service provider or remote computing service
21 provider if the Center declines to forward the
22 report because the Center, in consultation with
23 the Attorney General, determines that no law
24 enforcement agency in the foreign country has

1 been designated by the Attorney General under
2 paragraph (3).

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

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

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

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

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

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

21 “(3) affirmatively seek facts or circumstances
22 described in sections (a) and (b).

23 “(g) CONDITIONS OF DISCLOSURE INFORMATION
24 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 BY LAW EN-
6 FORCEMENT.—

7 “(A) IN GENERAL.—A law enforcement
8 agency may disclose information in a report re-
9 ceived under subsection (c)—

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

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

17 “(iii) to such other government per-
18 sonnel (including personnel of a State or
19 subdivision of a State) as are determined
20 to be necessary by an attorney for the gov-
21 ernment to assist the attorney in the per-
22 formance of the official duties of the attor-
23 ney in enforcing Federal criminal law;

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

1 ficial of a State or subdivision of a State
2 for the purpose of enforcing such State
3 law;

4 “(v) to a defendant in a criminal case
5 or the attorney for that defendant, subject
6 to the terms and limitations under section
7 3509(m) or a similar State law, to the ex-
8 tent the information relates to a criminal
9 charge pending against that defendant;

10 “(vi) subject to subparagraph (B), to
11 an electronic communication service pro-
12 vider or remote computing provider if nec-
13 essary to facilitate response to legal proc-
14 ess issued in connection to a criminal in-
15 vestigation, prosecution, or post-conviction
16 remedy relating to that report; and

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

21 “(B) LIMITATIONS.—

22 “(i) LIMITATIONS ON FURTHER DIS-
23 CLOSURE.—The electronic communication
24 service provider or remote computing serv-
25 ice provider shall be prohibited from dis-

1 closing the contents of a report provided
2 under subparagraph (A)(vi) to any person,
3 except as necessary to respond to the legal
4 process.

5 “(ii) EFFECT.—Nothing in subpara-
6 graph (A)(vi) authorizes a law enforcement
7 agency to provide child pornography im-
8 ages to an electronic communications serv-
9 ice provider or a remote computing service.

10 “(3) PERMITTED DISCLOSURES BY THE NA-
11 TIONAL CENTER FOR MISSING AND EXPLOITED
12 CHILDREN.—The National Center for Missing and
13 Exploited Children may disclose information received
14 in a report under subsection (a) only—

15 “(A) to any Federal law enforcement agen-
16 cy designated by the Attorney General under
17 subsection (d)(2);

18 “(B) to any State, local, or tribal law en-
19 forcement agency involved in the investigation
20 of child pornography, child exploitation, kidnap-
21 ping, or enticement crimes;

22 “(C) to any foreign law enforcement agen-
23 cy designated by the Attorney General under
24 subsection (d)(3); and

1 “(D) to an electronic communication serv-
2 ice provider or remote computing service pro-
3 vider as described in section 2258C.

4 “(h) PRESERVATION.—

5 “(1) IN GENERAL.—For the purposes of this
6 section, the notification to an electronic communica-
7 tion service provider or a remote computing service
8 provider by the CyberTipline of receipt of a report
9 under subsection (a)(1) shall be treated as a request
10 to preserve, as if such request was made pursuant
11 to section 2703(f).

12 “(2) PRESERVATION OF REPORT.—Pursuant to
13 paragraph (1), an electronic communication service
14 provider or a remote computing service shall pre-
15 serve the contents of the report provided pursuant to
16 subsection (b) for 90 days after such notification by
17 the CyberTipline.

18 “(3) PRESERVATION OF COMMINGLED IM-
19 AGES.—Pursuant to paragraph (1), an electronic
20 communication service provider or a remote com-
21 puting service shall preserve any images, data, or
22 other digital files that are commingled or inter-
23 spersed among the images of apparent child pornog-
24 raphy within a particular communication or user-
25 created folder or directory.

1 computing service provider, or domain name registrar
2 under this section, section 2258A, or section 2258C may
3 not be brought in any Federal or State court.

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

11 “(1) engaged in intentional misconduct; or

12 “(2) acted, or failed to act—

13 “(A) with actual malice;

14 “(B) with reckless disregard to a substan-
15 tial risk of causing physical injury without legal
16 justification; or

17 “(C) for a purpose unrelated to the per-
18 formance of any responsibility or function
19 under this section, sections 2258A, 2258C,
20 2702, or 2703.

21 “(c) MINIMIZING ACCESS.—An electronic commu-
22 nication service provider, a remote computing service pro-
23 vider, and domain name registrar shall—

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

4 “(2) ensure that any such image is permanently
5 destroyed, upon a request from a law enforcement
6 agency to destroy the image.

7 **“SEC. 2258C. USE TO COMBAT CHILD PORNOGRAPHY OF**
8 **TECHNICAL ELEMENTS RELATING TO IM-**
9 **AGES REPORTED TO THE CYBERTIPLINE.**

10 “(a) ELEMENTS.—

11 “(1) IN GENERAL.—The National Center for
12 Missing and Exploited Children may provide ele-
13 ments relating to any apparent child pornography
14 image of an identified child to an electronic commu-
15 nication service provider or a remote computing
16 service provider for the sole and exclusive purpose of
17 permitting that electronic communication service
18 provider or remote computing service provider to
19 stop the further transmission of images.

20 “(2) INCLUSIONS.—The elements authorized
21 under paragraph (1) may include hash values or
22 other unique identifiers associated with a specific
23 image, Internet location of images, and other tech-
24 nological elements that can be used to identify and
25 stop the transmission of child pornography.

1 “(3) EXCLUSION.—The elements authorized
2 under paragraph (1) may not include the actual im-
3 ages.

4 “(b) USE BY ELECTRONIC COMMUNICATION SERVICE
5 PROVIDERS AND REMOTE COMPUTING SERVICE PRO-
6 VIDERS.—Any electronic communication service provider
7 or remote computing service provider that receives ele-
8 ments relating to any apparent child pornography image
9 of an identified child from the National Center for Missing
10 and Exploited Children under this section may use such
11 information only for the purposes described in this section,
12 provided that such use shall not relieve that electronic
13 communication service provider or remote computing serv-
14 ice provider from its reporting obligations under section
15 2258A.

16 “(c) LIMITATIONS.—Nothing in subsections (a) or
17 (b) requires electronic communication service providers or
18 remote computing service providers receiving elements re-
19 lating to any apparent child pornography image of an
20 identified child from the National Center for Missing and
21 Exploited Children to use the elements to stop the further
22 transmission of the images.

23 “(d) PROVISION OF ELEMENTS TO LAW ENFORCE-
24 MENT.—The National Center for Missing and Exploited
25 Children shall make available to Federal, State, and local

1 law enforcement involved in the investigation of child por-
2 nography crimes elements, including hash values, relating
3 to any apparent child pornography image of an identified
4 child reported to the National Center for Missing and Ex-
5 ploited Children.

6 “(e) USE BY LAW ENFORCEMENT.—Any Federal,
7 State, or local law enforcement agency that receives ele-
8 ments relating to any apparent child pornography image
9 of an identified child from the National Center for Missing
10 and Exploited Children under section (d) may use such
11 elements only in the performance of the official duties of
12 that agency to investigate child pornography crimes.

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

16 “(a) IN GENERAL.—Except as provided in sub-
17 sections (b) and (c), a civil claim or criminal charge
18 against the National Center for Missing and Exploited
19 Children, including any director, officer, employee, or
20 agent of such center, arising from the performance of the
21 CyberTipline responsibilities or functions of such center,
22 as described in this section, section 2258A or 2258C of
23 this title, or section 404 of the Missing Children’s Assist-
24 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) TECHNICAL AND 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) TECHNICAL CORRECTIONS.—Section 2702
8 of title 18, United States Code, is amended—

9 (A) in subsection (b)(6), by striking “sec-
10 tion 227 of the Victims of Child Abuse Act of
11 1990 (42 U.S.C. 13032)” and inserting “sec-
12 tion 2258A”; and

13 (B) in subsection (c)(5), by striking “sec-
14 tion 227 of the Victims of Child Abuse Act of
15 1990 (42 U.S.C. 13032)” and inserting “sec-
16 tion 2258A”.

17 (3) TABLE OF SECTIONS.—The table of sections
18 for chapter 110 of title 18, United States Code, is
19 amended by inserting after the item relating to sec-
20 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 to combat child pornography of technical elements relating to im-
ages reported to the CyberTipline.

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

“2258E. Definitions.”.

1 **SEC. 502. REPORTS.**

2 (a) ATTORNEY GENERAL REPORT ON IMPLEMENTA-
3 TION, INVESTIGATIVE METHODS AND INFORMATION
4 SHARING.—Not later than 12 months after the date of
5 enactment of this Act, the Attorney General shall submit
6 a report to the Committee on the Judiciary of Senate and
7 the Committee on the Judiciary of the House of Rep-
8 resentatives on —

9 (1) the structure established in this Act, includ-
10 ing the respective functions of the National Center
11 for Missing and Exploited Children, Department of
12 Justice, and other entities that participate in infor-
13 mation sharing under this Act;

14 (2) an assessment of the legal and constitu-
15 tional implications of such structure;

16 (3) the privacy safeguards contained in the re-
17 porting requirements, including the training, quali-
18 fications, recruitment and screening of all Federal
19 and non-Federal personnel implementing this Act;
20 and

21 (4) information relating to the aggregate num-
22 ber of incidents reported under section 2258A(b) of
23 title 18, United States Code, to Federal and State
24 law enforcement agencies based on the reporting re-
25 quirements under this Act and the aggregate num-
26 ber of times that elements are provided to commu-

1 nication service providers under section 2258C of
2 such title.

3 (b) GAO AUDIT AND REPORT ON EFFICIENCY AND
4 EFFECTIVENESS.—Not later than 2 years after the date
5 of enactment of this Act, the Comptroller General shall
6 conduct an audit and submit a report to the Committee
7 on the Judiciary of the Senate and to the Committee on
8 the Judiciary of the House of Representatives on—

9 (1) the efforts, activities, and actions of the
10 CyberTipline of the National Center for Missing and
11 Exploited Children, or any successor to the
12 CyberTipline, and the Attorney General in achieving
13 the goals and purposes of this Act, as well as in car-
14 rying out any responsibilities or duties assigned to
15 each such individual or agency under this Act;

16 (2) any legislative, administrative, or regulatory
17 changes that the Comptroller General recommends
18 be taken by or on behalf of the Attorney General to
19 better achieve such goals and purposes, and to more
20 effectively carry out such responsibilities and duties;

21 (3) the effectiveness of any actions taken and
22 efforts made by the CyberTipline of the National
23 Center for Missing and Exploited Children, or any
24 successor to the CyberTipline and the Attorney Gen-
25 eral to—

1 (A) minimize duplicating the efforts, mate-
2 rials, facilities, and procedures of any other
3 Federal agency responsible for the enforcement,
4 investigation, or prosecution of child pornog-
5 raphy crimes; and

6 (B) enhance the efficiency and consistency
7 with which Federal funds and resources are ex-
8 pended to enforce, investigate, or prosecute
9 child pornography crimes, including the use of
10 existing personnel, materials, technologies, and
11 facilities; and

12 (4) any actions or efforts that the Comptroller
13 General recommends be taken by the Attorney Gen-
14 eral to reduce duplication of efforts and increase the
15 efficiency and consistency with which Federal funds
16 and resources are expended to enforce, investigate,
17 or prosecute child pornography crimes.

18 **SEC. 503. SEVERABILITY.**

19 If any provision of this title or amendment made by
20 this title is held to be unconstitutional, the remainder of
21 the provisions of this title or amendments made by this
22 title—

23 (1) shall remain in full force and effect; and

1 (2) shall not be affected by the holding.

 Passed the Senate September 25 (legislative day,
September 17), 2008.

Attest:

Secretary.

110TH CONGRESS
2^D SESSION

S. 1738

AN ACT

To require the Department of Justice to develop and implement a National Strategy Child Exploitation Prevention and Interdiction, to improve the Internet Crimes Against Children Task Force, to increase resources for regional computer forensic labs, and to make other improvements to increase the ability of law enforcement agencies to investigate and prosecute child predators.