

115TH CONGRESS
1ST SESSION

H. R. 4447

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

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 16, 2017

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

A BILL

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

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 “CyberTipline Mod-
5 ernization Act of 2017”.

1 **SEC. 2. ALTERATIONS TO REPORTING REQUIREMENTS FOR**
2 **ELECTRONIC SERVICE PROVIDERS AND RE-**
3 **MOTE COMPUTING SERVICE PROVIDERS.**

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

6 (1) in the heading, by striking “**ELECTRONIC**
7 **COMMUNICATION SERVICE PROVIDERS AND**
8 **REMOTE COMPUTING SERVICE PROVIDERS**”
9 and inserting “**PROVIDERS**”;

10 (2) by striking “ the National Center for Miss-
11 ing and Exploited Children” each place such term
12 appears and inserting “NCMEC”;

13 (3) in subsection (a)—

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

16 “(1) IN GENERAL.—

17 “(A) DUTY.—In order to reduce the pro-
18 liferation of online child sexual exploitation and
19 to prevent the online sexual exploitation of chil-
20 dren, a provider—

21 “(i) shall, as soon as reasonably pos-
22 sible after obtaining actual knowledge of
23 any facts or circumstances described in
24 paragraph (2)(A), take the actions de-
25 scribed in subparagraph (B); and

1 “(ii) may, after obtaining actual
2 knowledge of any facts or circumstances
3 described in paragraph (2)(B), take the ac-
4 tions described in subparagraph (B).

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

7 “(i) providing to the CyberTipline of
8 NCMEC, or any successor to the Cyber-
9 Tipline operated by NCMEC, the mailing
10 address, telephone number, facsimile num-
11 ber, electronic mailing address of, and indi-
12 vidual point of contact for, such provider;
13 and

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

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

20 “(2) FACTS OR CIRCUMSTANCES.—

21 “(A) APPARENT VIOLATIONS.—The facts
22 or circumstances described in this subparagraph
23 are any facts or circumstances from which there
24 is an apparent violation of section 2251,

1 2251A, 2252, 2252A, 2252B, or 2260 that in-
2 volves child pornography.

3 “(B) IMMINENT VIOLATIONS.—The facts
4 or circumstances described in this subparagraph
5 are any facts or circumstances which indicate a
6 violation of any of the sections described in sub-
7 paragraph (A) involving child pornography may
8 be planned or imminent.”;

9 (4) in subsection (b)—

10 (A) in the matter preceding paragraph
11 (1)—

12 (i) by striking “To the extent” and in-
13 serting “In an effort to prevent the future
14 sexual victimization of children, and to the
15 extent”;

16 (ii) by striking “an electronic commu-
17 nication service provider or a remote com-
18 puting service provider” and inserting “a
19 provider”; and

20 (iii) by striking “may include” and in-
21 serting “may, at the sole discretion of the
22 provider, include”;

23 (B) in paragraph (1)—

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

1 (ii) by inserting “payment information
2 (excluding personally identifiable informa-
3 tion),” after “uniform resource locator,”;

4 (C) in paragraph (2)—

5 (i) by striking “an electronic commu-
6 nication service provider or a remote com-
7 puting service provider” and inserting “a
8 provider”;

9 (ii) by striking “apparent child por-
10 nography” each place it appears and in-
11 sserting “content relating to the report”;
12 and

13 (iii) by striking “the electronic com-
14 munication service provider or a remote
15 computing service provider” and inserting
16 “the provider”;

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

19 “(3) GEOGRAPHIC LOCATION INFORMATION.—
20 Information relating to the geographic location of
21 the involved individual or website, which may include
22 the Internet Protocol address or verified address, or,
23 if not reasonably available, at least one form of geo-
24 graphic identifying information, including area code

1 or zip code, provided by the customer or subscriber,
2 or stored or obtained by the provider.”;

3 (E) in paragraph (4)—

4 (i) in the heading by striking “IM-
5 AGES” and inserting “VISUAL DEPIC-
6 TIONS”;

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

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

11 (F) in paragraph (5)—

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

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

16 (iii) by striking “images” and insert-
17 ing “visual depictions”;

18 (5) by amending subsection (c) to read as fol-
19 lows:

20 “(c) Pursuant to its clearinghouse role as a private,
21 nonprofit organization, and at the conclusion of its non-
22 profit review, NCMEC shall make available each report
23 made under subsection (a)(1) to one or more of the fol-
24 lowing law enforcement agencies:

1 “(1) Any Federal law enforcement agency that
2 is involved in the investigation of child sexual exploi-
3 tation.

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

7 “(3) A foreign law enforcement agency des-
8 igned by the Attorney General under subsection
9 (d)(3) or a foreign law enforcement agency that has
10 an established relationship with the Federal Bureau
11 of Investigation, Immigration and Customs Enforce-
12 ment, or INTERPOL, and is involved in the inves-
13 tigation of child sexual exploitation, kidnapping, or
14 enticement crimes.”;

15 (6) in subsection (d)—

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

19 (B) in paragraph (3)—

20 (i) in the matter preceding subpara-
21 graph (A), by striking “shall promptly”
22 and inserting “may”; and

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

25 (C) in paragraph (4)—

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

3 (ii) by striking “electronic commu-
4 nication service providers, remote com-
5 puting service providers” and inserting
6 “providers”;

7 (D) by striking paragraph (5);

8 (E) by redesignating paragraph (6) as
9 paragraph (5); and

10 (F) in paragraph (5) (as so redesi-
11 gnated)—

12 (i) in the matter preceding subpara-
13 graph (A)—

14 (I) by striking “an electronic
15 communication service provider or re-
16 mote computing service provider” and
17 inserting “a provider”;

18 (II) by striking “the electronic
19 communication service provider or re-
20 mote computing service provider” and
21 inserting “the provider”; and

22 (III) by striking “shall” and in-
23 serting “may”;

24 (ii) in subparagraph (A)—

1 (I) by striking “the Center” and
2 inserting “NCMEC”;

3 (II) by inserting after “des-
4 ignated by the Attorney General
5 under paragraph (3)” the following:
6 “or that has an established relation-
7 ship with the Federal Bureau of In-
8 vestigation, Immigration and Customs
9 Enforcement, or INTERPOL, and is
10 involved in the investigation of child
11 sexual exploitation, kidnapping, or en-
12 tice ment crimes”; and

13 (III) by striking “electronic com-
14 munication service provider or remote
15 computing service provider” and in-
16 serting “provider”;

17 (iii) by amending subparagraph (B) to
18 read as follows:

19 “(B) notify the provider if NCMEC was
20 unable to forward the report.”;

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

24 (8) in subsection (f)—

1 (A) in the matter preceding paragraph (1),
2 by striking “an electronic communication serv-
3 ice provider or remote computing service pro-
4 vider” and inserting “a provider”;

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

7 (9) in subsection (g)—

8 (A) in paragraph (2)—

9 (i) in subparagraph (A)(vi), by strik-
10 ing “an electronic communication service
11 provider or remote computing service pro-
12 vider” and inserting “a provider”; and

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

15 “(B) LIMITATION.—Nothing in subpara-
16 graph (A)(vi) authorizes a law enforcement
17 agency to provide visual depictions of apparent
18 child pornography to a provider.”;

19 (B) in paragraph (3)—

20 (i) in the matter preceding subpara-
21 graph (A)—

22 (I) by inserting after “may dis-
23 close” the following: “by mail, elec-
24 tronic transmission, or other reason-
25 able means,”; and

1 (II) by striking “only” and in-
2 serting “only to”;

3 (ii) in subparagraph (A)—

4 (I) by striking “ to any Federal
5 law enforcement agency” and insert-
6 ing “any Federal law enforcement
7 agency”; and

8 (II) by inserting before the semi-
9 colon at the end the following: “or
10 that is involved in the investigation of
11 child sexual exploitation, kidnapping,
12 or enticement crimes”;

13 (iii) in subparagraph (B)—

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

16 (II) by striking “child pornog-
17 raphy, child exploitation” and insert-
18 ing “child sexual exploitation”;

19 (iv) in subparagraph (C)—

20 (I) by striking “to any foreign
21 law enforcement agency” and insert-
22 ing “any foreign law enforcement
23 agency”; and

24 (II) by striking “; and” and in-
25 serting “or that has an established re-

1 relationship with the Federal Bureau of
2 Investigation, Immigration and Customs
3 Enforcement, or INTERPOL,
4 and is involved in the investigation of
5 child sexual exploitation, kidnapping,
6 or enticement crimes;”;

7 (v) in subparagraph (D)—

8 (I) by striking “to an electronic
9 communication service provider or re-
10 mote computing service provider” and
11 inserting “a provider”; and

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

14 (vi) by adding after subparagraph (D)
15 the following:

16 “(E) respond to legal process, as nec-
17 essary.”; and

18 (C) by adding at the end the following:

19 “(4) PERMITTED DISCLOSURE BY A PRO-
20 VIDER.—A provider that submits a report under
21 subsection (a)(1) may disclose by mail, electronic
22 transmission, or other reasonable means, informa-
23 tion, including visual depictions contained in the re-
24 port, in a manner consistent with permitted disclo-
25 sures under paragraphs (3) through (8) of section

1 2702(b) only to a law enforcement agency described
2 in subparagraph (A), (B), or (C), of paragraph (3),
3 to NCMEC, or as necessary to respond to legal proc-
4 ess.”; and

5 (10) in subsection (h)—

6 (A) in paragraph (1)—

7 (i) by striking “the notification to an
8 electronic communication service provider
9 or a remote computing service provider by
10 the CyberTipline” and inserting “a com-
11 pleted submission by a provider of a report
12 to the CyberTipline”; and

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

18 (B) by striking paragraph (2);

19 (C) by redesignating paragraphs (3)
20 through (5) as paragraphs (2) through (4), re-
21 spectively;

22 (D) in paragraph (2) (as so redesign-
23 nated)—

24 (i) in the heading, by striking “IM-
25 AGES” and inserting “CONTENT”;

1 (ii) by striking “an electronic commu-
 2 nication service provider or a remote com-
 3 puting service” and inserting “a provider”;

4 (iii) by inserting “videos,” after “im-
 5 ages,”; and

6 (iv) by striking “commingled or inter-
 7 spersed among the images of apparent
 8 child pornography within a particular com-
 9 munication or user created folder or direc-
 10 tory” and inserting “reasonably accessible
 11 and may provide context or additional in-
 12 formation about the reported material or
 13 person”; and

14 (E) in paragraph (3) (as so redesignated),
 15 by striking “An electronic communication serv-
 16 ice provider or a remote computing service” and
 17 inserting “A provider”.

18 **SEC. 3. LIMITED LIABILITY FOR PROVIDERS OR DOMAIN**
 19 **NAME REGISTRARS.**

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

22 (1) in the heading—

23 (A) by striking “**electronic commu-**
 24 **nication service providers, remote**

1 **computing service providers,”** and in-
2 serting “**providers**”; and

3 (B) by striking “**registrar**” and insert-
4 ing “**registrars**”;

5 (2) in subsection (a)—

6 (A) by striking “an electronic communica-
7 tion service provider, remote computing service
8 provider,” and inserting “a provider”; and

9 (B) by striking “such electronic commu-
10 nication service provider, remote computing
11 service provider,” and inserting “such pro-
12 vider”;

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

17 (4) in subsection (c)—

18 (A) by striking “image” each place it ap-
19 pears and inserting “visual depiction”;

20 (B) in the matter preceding paragraph (1),
21 by striking “An electronic communication serv-
22 ice provider, a remote computing service pro-
23 vider,” and inserting “A provider”.

1 **SEC. 4. USE TO COMBAT CHILD PORNOGRAPHY OF TECH-**
2 **NICAL ELEMENTS RELATING TO REPORTS**
3 **MADE TO CYBERTIPLINE.**

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

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

9 (2) in subsection (a)—

10 (A) in paragraph (1)—

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

14 (ii) by striking “apparent child por-
15 nography image of an identified child” and
16 inserting “CyberTipline report”;

17 (iii) by striking “an electronic commu-
18 nication service provider or a remote com-
19 puting service provider” and inserting “a
20 provider”;

21 (iv) by striking “that electronic com-
22 munication service provider or remote com-
23 puting service provider” and inserting
24 “that provider”; and

1 (v) by striking “further transmission
2 of images” and inserting “online sexual ex-
3 ploitation of children”;

4 (B) in paragraph (2), by striking “specific
5 image, Internet location of images, and other
6 technological elements that can be used to iden-
7 tify and stop the transmission of child pornog-
8 raphy” and inserting “specific visual depiction,
9 including an Internet location and any other
10 elements provided in a CyberTipline report that
11 can be used to identify, prevent, curtail, or stop
12 the transmission of child pornography and pre-
13 vent the online sexual exploitation of children”;
14 and

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

18 (3) in subsection (b)—

19 (A) in the heading, by striking “**elec-**
20 **tronic communication service pro-**
21 **viders and remote computing service**
22 **providers**” and inserting “**providers**”;

23 (B) by striking “electronic communication
24 service provider or remote computing service

1 provider” each place it appears and inserting
2 “provider”;

3 (C) by striking “apparent child pornog-
4 raphy image of an identified child from the Na-
5 tional Center for Missing and Exploited Chil-
6 dren” and inserting “CyberTipline report from
7 NCMEC”;

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

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

12 (4) in subsection (c)—

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

16 (B) by striking “apparent child pornog-
17 raphy image of an identified child from the Na-
18 tional Center for Missing and Exploited Chil-
19 dren” and inserting “CyberTipline report from
20 NCMEC”; and

21 (C) by striking “further transmission of
22 the images” and inserting “online sexual exploi-
23 tation of children”;

24 (5) in subsection (d)—

1 (A) by striking “The National Center for
2 Missing and Exploited Children shall” and in-
3 serting “NCMEC may”;

4 (B) by inserting after “local law enforce-
5 ment” the following: “, and to foreign law en-
6 forcement agencies described in section
7 2258A(c)(3)”;

8 (C) by striking “investigation of child por-
9 nography” and inserting “investigation of child
10 sexual exploitation”;

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

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

17 (6) in subsection (e)—

18 (A) by inserting before “Federal” the fol-
19 lowing: “foreign,”;

20 (B) by striking “image of an identified
21 child from the National Center for Missing and
22 Exploited Children” and inserting “visual depic-
23 tion from NCMEC”;

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

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

7 **SEC. 5. LIMITED LIABILITY FOR NCMEC.**

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

10 (1) in the heading, by striking “**the National**
11 **Center for Missing and Exploited Chil-**
12 **dren**” and inserting “**NCMEC**”;

13 (2) in subsection (a)—

14 (A) by striking “Except as provided” and
15 inserting “Pursuant to its clearinghouse role as
16 a private, nonprofit organization and its mis-
17 sion to help find missing children, reduce online
18 sexual exploitation of children and prevent fu-
19 ture victimization, and except as provided”;

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

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

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

3 (E) by striking “from the effort” and in-
4 serting “from the efforts”;

5 (3) in subsection (b)—

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

9 (B) by striking “such center” and insert-
10 ing “NCMEC”; and

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

13 (4) in subsection (d)—

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

18 (B) by striking “image” each place it ap-
19 pears and inserting “visual depiction”.

20 **SEC. 6. DEFINITIONS.**

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

23 (1) in paragraph (5), by striking “and” at the
24 end;

1 (2) in paragraph (6), by striking the period at
2 the end and inserting a semicolon; and

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

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

8 “(8) the term ‘NCMEC’ means the National
9 Center for Missing & Exploited Children; and

10 “(9) the term ‘visual depiction’ has the meaning
11 given such term in section 1466A(f).”.

○