

Calendar No. 582115TH CONGRESS
2^D SESSION**S. 3170**

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 SENATE OF THE UNITED STATES

JUNE 28, 2018

Mr. CORNYN (for himself, Mrs. FEINSTEIN, Mr. PORTMAN, Ms. KLOBUCHAR, Mr. BLUMENTHAL, Mr. MCCAIN, Mrs. MCCASKILL, Mr. TILLIS, Mr. HATCH, Mr. LEAHY, Mr. GRASSLEY, Mr. DURBIN, and Mr. HELLER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

SEPTEMBER 18, 2018

Reported by Mr. GRASSLEY, without amendment

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “CyberTipline Mod-
3 ernization Act of 2018”.

4 **SEC. 2. ALTERATIONS TO REPORTING REQUIREMENTS FOR**
5 **ELECTRONIC SERVICE PROVIDERS AND RE-**
6 **MOTE COMPUTING SERVICE PROVIDERS.**

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

9 (1) in the heading, by striking “**electronic**
10 **communication service providers and re-**
11 **mote computing service providers**” and in-
12 sserting “**providers**”;

13 (2) 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 (3) 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 (4) by amending subsection (c) to read as fol-
 19 lows:

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

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

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 ignated 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 (5) 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 “the National Center
4 for Missing and Exploited Children” and
5 inserting “NCMEC”; and

6 (iii) by striking “electronic commu-
7 nication service providers, remote com-
8 puting service providers” and inserting
9 “providers”;

10 (D) by striking paragraph (5);

11 (E) by redesignating paragraph (6) as
12 paragraph (5); and

13 (F) by amending paragraph (5), as so re-
14 designated, to read as follows:

15 “(5) NOTIFICATION TO PROVIDERS.—

16 “(A) IN GENERAL.—NCMEC may notify a
17 provider of the information described in sub-
18 paragraph (B), if—

19 “(i) a provider notifies NCMEC that
20 the provider is making a report under this
21 section as the result of a request by a for-
22 eign law enforcement agency; and

23 “(ii) NCMEC forwards the report de-
24 scribed in clause (i) to—

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

3 “(II) another agency in the same
4 country designated by the Attorney
5 General under paragraph (3) or that
6 has an established relationship with
7 the Federal Bureau of Investigation,
8 U.S. Immigration and Customs En-
9 forcement, or INTERPOL and is in-
10 volved in the investigation of child
11 sexual exploitation, kidnapping, or en-
12 tice ment crimes.

13 “(B) INFORMATION DESCRIBED.—The in-
14 formation described in this subparagraph is—

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

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

20 “(C) NOTIFICATION OF INABILITY TO FOR-
21 WARD REPORT.—If a provider notifies NCMEC
22 that the provider is making a report under this
23 section as the result of a request by a foreign
24 law enforcement agency and NCMEC is unable
25 to forward the report as described in subpara-

1 graph (A)(ii), NCMEC shall notify the provider
2 that NCMEC was unable to forward the re-
3 port.”;

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

7 (7) in subsection (f)—

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

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

14 (8) in subsection (g)—

15 (A) in paragraph (2)—

16 (i) in subparagraph (A)(vi), by strik-
17 ing “an electronic communication service
18 provider or remote computing service pro-
19 vider” and inserting “a provider”; and

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

22 “(B) LIMITATION.—Nothing in subpara-
23 graph (A)(vi) authorizes a law enforcement
24 agency to provide visual depictions of apparent
25 child pornography to a provider.”;

1 (B) in paragraph (3)—

2 (i) in the paragraph heading, by strik-
3 ing “THE NATIONAL CENTER FOR MISSING
4 AND EXPLOITED CHILDREN” and inserting
5 “NCMEC”;

6 (ii) in the matter preceding subpara-
7 graph (A)—

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

11 (II) by inserting after “may dis-
12 close” the following: “by mail, elec-
13 tronic transmission, or other reason-
14 able means,”; and

15 (III) by striking “only” and in-
16 sserting “only to”;

17 (iii) in subparagraph (A)—

18 (I) by striking “ to any Federal
19 law enforcement agency” and insert-
20 ing “any Federal law enforcement
21 agency”; and

22 (II) by inserting before the semi-
23 colon at the end the following: “or
24 that is involved in the investigation of

1 child sexual exploitation, kidnapping,
2 or enticement crimes”;

3 (iv) in subparagraph (B)—

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

6 (II) by striking “child pornog-
7 raphy, child exploitation” and insert-
8 ing “child sexual exploitation”;

9 (v) in subparagraph (C)—

10 (I) by striking “to any foreign
11 law enforcement agency” and insert-
12 ing “any foreign law enforcement
13 agency”; and

14 (II) by striking “; and” and in-
15 serting “or that has an established re-
16 lationship with the Federal Bureau of
17 Investigation, Immigration and Cus-
18 toms Enforcement, or INTERPOL,
19 and is involved in the investigation of
20 child sexual exploitation, kidnapping,
21 or enticement crimes;”;

22 (vi) in subparagraph (D)—

23 (I) by striking “to an electronic
24 communication service provider or re-

1 mote computing service provider” and
2 inserting “a provider”; and

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

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

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

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

10 “(4) PERMITTED DISCLOSURE BY A PRO-
11 VIDER.—A provider that submits a report under
12 subsection (a)(1) may disclose by mail, electronic
13 transmission, or other reasonable means, informa-
14 tion, including visual depictions contained in the re-
15 port, in a manner consistent with permitted disclo-
16 sures under paragraphs (3) through (8) of section
17 2702(b) only to a law enforcement agency described
18 in subparagraph (A), (B), or (C) of paragraph (3),
19 to NCMEC, or as necessary to respond to legal proc-
20 ess.”; and

21 (9) in subsection (h)—

22 (A) in paragraph (1)—

23 (i) by striking “the notification to an
24 electronic communication service provider
25 or a remote computing service provider by

1 the CyberTipline of receipt of a report”
2 and inserting “a completed submission by
3 a provider of a report to the CyberTip-
4 line”; and

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

10 (B) by striking paragraph (2);

11 (C) by redesignating paragraphs (3)
12 through (5) as paragraphs (2) through (4), re-
13 spectively;

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

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

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

20 (iii) by striking “images” and insert-
21 ing “visual depictions”; and

22 (iv) by striking “commingled or inter-
23 spersed among the images of apparent
24 child pornography within a particular com-
25 munication or user created folder or direc-

1 tory” and inserting “reasonably accessible
 2 and may provide context or additional in-
 3 formation about the reported material or
 4 person”; and

5 (E) in paragraph (3), as so redesignated,
 6 by striking “An electronic communication serv-
 7 ice provider or a remote computing service” and
 8 inserting “A provider”.

9 **SEC. 3. LIMITED LIABILITY FOR PROVIDERS OR DOMAIN**
 10 **NAME REGISTRARS.**

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

13 (1) in the heading—

14 (A) by striking “**electronic commu-**
 15 **nication service providers, remote**
 16 **computing service providers,”** and in-
 17 serting “**providers**”; and

18 (B) by striking “**registrar**” and insert-
 19 ing “**registrars**”;

20 (2) in subsection (a)—

21 (A) by striking “an electronic communica-
 22 tion service provider, remote computing service
 23 provider,” and inserting “a provider”; and

24 (B) by striking “such electronic commu-
 25 nication service provider, remote computing

1 service provider,” and inserting “such pro-
2 vider”;

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

7 (4) in subsection (c)—

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

10 (B) in the matter preceding paragraph (1),
11 by striking “An electronic communication serv-
12 ice provider, a remote computing service pro-
13 vider,” and inserting “A provider”.

14 **SEC. 4. USE TO COMBAT CHILD PORNOGRAPHY OF TECH-**
15 **NICAL ELEMENTS RELATING TO REPORTS**
16 **MADE TO CYBERTIPLINE.**

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

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

22 (2) in subsection (a)—

23 (A) in paragraph (1)—

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

4 (ii) by striking “apparent child por-
5 nography image of an identified child” and
6 inserting “CyberTipline report”;

7 (iii) by striking “an electronic commu-
8 nication service provider or a remote com-
9 puting service provider” and inserting “a
10 provider”;

11 (iv) by striking “that electronic com-
12 munication service provider or remote com-
13 puting service provider” and inserting
14 “that provider”; and

15 (v) by striking “further transmission
16 of images” and inserting “online sexual ex-
17 ploitation of children”;

18 (B) in paragraph (2), by striking “specific
19 image, Internet location of images, and other
20 technological elements that can be used to iden-
21 tify and stop the transmission of child pornog-
22 raphy” and inserting “specific visual depiction,
23 including an Internet location and any other
24 elements provided in a CyberTipline report that
25 can be used to identify, prevent, curtail, or stop

1 the transmission of child pornography and pre-
2 vent the online sexual exploitation of children”;
3 and

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

7 (3) in subsection (b)—

8 (A) in the heading, by striking “**elec-**
9 **tronic communication service pro-**
10 **viders and remote computing service**
11 **providers**” and inserting “**providers**”;

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

16 (C) 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”;

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

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

25 (4) in subsection (c)—

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

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

9 (C) by striking “further transmission of
10 the images” and inserting “online sexual exploi-
11 tation of children”;

12 (5) in subsection (d)—

13 (A) by striking “The National Center for
14 Missing and Exploited Children shall” and in-
15 sserting “NCMEC may”;

16 (B) by inserting after “local law enforce-
17 ment” the following: “, and to foreign law en-
18 forcement agencies described in section
19 2258A(c)(3)”;

20 (C) by striking “investigation of child por-
21 nography” and inserting “investigation of child
22 sexual exploitation”;

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

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

5 (6) in subsection (e)—

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

8 (B) by striking “image of an identified
9 child from the National Center for Missing and
10 Exploited Children under section (d)” and in-
11 sserting “visual depiction from NCMEC under
12 subsection (d)”;

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

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

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

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

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

25 (2) in subsection (a)—

1 (A) by striking “Except as provided” and
2 inserting “Pursuant to its clearinghouse role as
3 a private, nonprofit organization and its mis-
4 sion to help find missing children, reduce online
5 sexual exploitation of children and prevent fu-
6 ture victimization, and except as provided”;

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

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

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

14 (E) by striking “from the effort” and in-
15 sserting “from the efforts”;

16 (3) in subsection (b)—

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

20 (B) by striking “such center” and insert-
21 ing “NCMEC”; and

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

24 (4) in subsection (d)—

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

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

7 **SEC. 6. DEFINITIONS.**

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

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

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

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

16 “(7) the term ‘provider’ means an electronic
17 communication service provider or remote computing
18 service; and

19 “(8) the term ‘NCMEC’ means the National
20 Center for Missing & Exploited Children.”.

Calendar No. 582

115TH CONGRESS
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S. 3170

A BILL

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