

118TH CONGRESS
2D SESSION

S. 3718

To prevent the distribution of intimate visual depictions without consent.

IN THE SENATE OF THE UNITED STATES

JANUARY 31, 2024

Mr. LEE introduced the following bill; which was read twice and referred to
the Committee on the Judiciary

A BILL

To prevent the distribution of intimate visual depictions
without consent.

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 “Preventing Rampant Online Technological Exploitation
6 and Criminal Trafficking Act of 2024” or the “PRO-
7 TECT Act of 2024”.

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. Findings.
- Sec. 3. Definitions.
- Sec. 4. Severability clause.

TITLE I—REGULATING THE UPLOADING OF PORNOGRAPHIC
IMAGES TO ONLINE PLATFORMS

Sec. 101. Verification obligations of covered platform operators.
Sec. 102. Removal of images distributed without consent.
Sec. 103. Obligations of users.

TITLE II—ENFORCEMENT

Sec. 201. Civil enforcement.
Sec. 202. Criminal prohibition on nonconsensual distribution of intimate visual
depictions.

1 SEC. 2. FINDINGS.

2 Congress finds the following:

3 (1) In the United States, reports of child sexual
4 abuse material (referred to in this section as
5 “CSAM”) have grown exponentially in recent years,
6 from 3,000 reports in 1998 to more than 1,000,000
7 in 2014 and 18,400,000 in 2018. The New York
8 Times called it an “almost unfathomable” increase
9 in criminal behavior.

10 (2) The National Center for Missing and Ex-
11 ploited Children (referred to in this section as
12 “NCMEC”), which is based in the United States, re-
13 corded more than 29,300,000 reports of suspected
14 CSAM to its CyberTipline in 2021, the highest num-
15 ber of reports ever received in a single year and a
16 35 percent increase from 2020. Those reports in-
17 cluded 85,000,000 images, videos, and other files of
18 suspected CSAM and incident-related content.

1 (3) Recent trends reported by NCMEC include
2 increasingly graphic and violent sexual abuse im-
3 ages, and videos of infants and young children.

4 (4) The Daily, a podcast hosted by the New
5 York Times, reported in 2019 that CSAM had so
6 overwhelmed law enforcement agencies in the United
7 States that the Federal Bureau of Investigation, for
8 example, had prioritized investigating material de-
9 picting infants and toddlers, not older children.

10 (5) The COVID–19 pandemic has resulted in a
11 surge in the online distribution of CSAM, which was
12 remarkably high even before the pandemic. During
13 the pandemic, NCMEC reported a 106-percent in-
14 crease in the sharing of CSAM globally. The in-
15 creased number of offenders exchanging CSAM dur-
16 ing lockdowns has continued to stimulate demand
17 for CSAM beyond the lockdowns.

18 (6) Project Arachnid is a web platform adminis-
19 tered by the Canadian Centre for Child Protection
20 (referred to in this section as “C3P”) that is de-
21 signed to detect known images of CSAM and issue
22 removal notices to electronic service providers when
23 possible. C3P has reported, “It is a common mis-
24 conception that CSAM and harmful-abusive content
25 are relegated solely to the dark web.”. In fact, 97

1 percent of the illegal media detected by Project
2 Arachnid hides in plain sight on the clear web on
3 image or file hosting services, forums, content deliv-
4 ery networks, and both mainstream adult pornog-
5 raphy websites, such as Pornhub, XVideos,
6 OnlyFans, and YouPorn, and fringe adult pornog-
7 raphy websites.

8 (7) In 2021, NCMEC reported that a majority
9 of CSAM reports, more than 29,157,083 out of
10 29,397,681, came from electronic service providers.

11 (8) An alarming and increasing number of
12 adults are being depicted in online pornography
13 without their knowledge or consent. These individ-
14 uals are often victims of sexual abuse, sex traf-
15 ficking, rape, sexual exploitation, sextortion, and
16 forms of image-based sexual abuse such as non-
17 consensual distribution of sexually explicit material.

18 (9) Most pornography websites do not effec-
19 tively verify the age of the users who upload content
20 to their platforms. Nor do these websites make an
21 effort to effectively verify the age, consent, or iden-
22 tity of all individuals who are depicted in the porno-
23 graphic content.

24 (10) Pornography websites attract hundreds of
25 millions of visitors daily. The 2 most-visited pornog-

1 raphy websites in 2023, for example, reported at-
2 tracting more than 693,500,000 and 629,500,000
3 monthly users, respectively, each exceeding the traf-
4 fic of Netflix, Twitter, Instagram, Pinterest, or
5 LinkedIn.

6 (11) Pornography websites profit from the con-
7 tent uploaded to their platforms, including content
8 that depicts or involves rape, child exploitation and
9 abuse, and sex trafficking. In 2019, 6 high-level in-
10 dividuals employed by an online pornographic dis-
11 tributor were convicted of sex trafficking. Over an
12 11-year period, that platform generated more than
13 \$17,000,000 in revenue.

14 (12) Not only are high-ranking officers of por-
15 nography websites aware of the proliferation of
16 CSAM material on their platforms, but they appear
17 to knowingly decline to investigate reports of non-
18 consensual or underage sexually explicit materials on
19 the platforms. A 2021 lawsuit revealed that
20 Pornhub's parent company Aylo, at the time known
21 as MindGeed USA Incorporated, had a policy to only
22 review videos flagged for rape or sexual abuse if the
23 video received at least 16 unique reports. If a video
24 had 15 or fewer reports, Pornhub refused to inves-
25 tigate. Internal emails stated that as of May 27,

1 2020, Pornhub had a backlog of 706,425 videos of
2 possible rape or child sexual abuse with 15 or fewer
3 reports. At the time of the lawsuit, only 1 out of
4 Pornhub’s 1,400 total employees was tasked with re-
5 viewing videos reported for violence or CSAM full-
6 time. Pornhub’s chief executive officer called these
7 policies “good and reasonable”.

8 (13) The ongoing exploitation of underage or
9 nonconsenting individuals by highly visited pornog-
10 raphy websites is evidenced by a recent series of suc-
11 cessful lawsuits. One case, involving 22 victims of
12 sex trafficking and fraud, concluded in a nearly
13 \$13,000,000 verdict against a pornography content
14 producer who coerced women and children into pro-
15 ducing sexual content. Another 34 women, some of
16 whom are victims of child sex trafficking, filed a
17 lawsuit against a pornographic website for failing to
18 take proper precautions to verify the content
19 uploaded to its platform and monetizing the illegal
20 content.

21 (14) The internet has revolutionized the por-
22 nography industry, making pornographic content in-
23 comparably more available, accessible, affordable,
24 and anonymous than at any previous time in the his-
25 tory of the United States. Today, substantial majori-

1 ties of teenagers have viewed pornography. A United
2 States population-based probability study found that
3 84 percent of males and 57 percent of females be-
4 tween the ages of 14 and 18 have viewed pornog-
5 raphy, belying the industry’s faux status as so-called
6 “adult entertainment”. Moreover, pornography has
7 contributed to the normalization of sexual violence
8 among the youth of the United States. Numerous
9 studies have demonstrated that viewing pornography
10 harms youth, as it contributes to sexually violent at-
11 titudes and conduct towards children and adults and
12 creates unrealistic expectations for intimate relation-
13 ships. Additionally, research has demonstrated that
14 the demand for online pornography has fueled an in-
15 crease in purchasing sex from prostituted or sex
16 trafficked individuals.

17 (15) The online pornography industry has re-
18 mained unchecked and generally immune from regu-
19 lations. Online creators and distributors of porno-
20 graphic content should be held to standards that re-
21 quire informed and thorough consent as well as age-
22 verification. Currently, no substantive laws govern
23 consent in pornography, which has permitted ramp-
24 ant abuses to occur.

1 (16) Companies should not profit from the sex-
 2 ual exploitation of children and adults. Requiring
 3 pornographic websites to verify the age, consent, and
 4 identity of individuals appearing in pornographic
 5 content on their platforms would substantially curb
 6 the rampant exploitation of all children and adults
 7 online.

8 (17) The harms to victims of CSAM and image-
 9 based sexual abuse are deep and enduring. Every
 10 time an image or video of their exploitation is
 11 shared, their abuse is repeated and amplified.

12 **SEC. 3. DEFINITIONS.**

13 (a) IN GENERAL.—In this Act:

14 (1) COERCED CONSENT.—The term “coerced
 15 consent” means purported consent obtained from a
 16 person—

17 (A) through fraud, duress, misrepresenta-
 18 tion, undue influence, or nondisclosure;

19 (B) who lacks capacity; or

20 (C) through exploiting or leveraging the
 21 person’s—

22 (i) immigration status;

23 (ii) pregnancy;

24 (iii) disability;

25 (iv) addiction;

1 (v) juvenile status; or

2 (vi) economic circumstances.

3 (2) CONSENT.—The term “consent”—

4 (A) means an agreement that is informed
5 and thorough; and

6 (B) does not include coerced consent.

7 (3) COVERED PLATFORM.—

8 (A) IN GENERAL.—The term “covered
9 platform” means an interactive computer serv-
10 ice that hosts or makes available to the general
11 public pornographic images.

12 (B) AVAILABILITY TO PUBLIC.—For pur-
13 poses of subparagraph (A), the availability of
14 pornographic images to a group of subscribers
15 shall be considered availability to the general
16 public if any member of the general public (sub-
17 ject to reasonable limitations) can obtain a sub-
18 scription.

19 (4) COVERED PLATFORM OPERATOR.—The
20 term “covered platform operator” means a provider
21 of a covered platform.

22 (5) INTERACTIVE COMPUTER SERVICE.—The
23 term “interactive computer service” has the meaning
24 given the term in section 230(f) of the Communica-
25 tions Act of 1934 (47 U.S.C. 230(f)).

1 (6) INTIMATE VISUAL DEPICTION.—The term
2 “intimate visual depiction” means any visual depic-
3 tion—

4 (A) of an individual who is reasonably
5 identifiable from the visual depiction itself or
6 information displayed in connection with the
7 visual depiction, including through—

8 (i) facial recognition;

9 (ii) an identifying marking on the in-
10 dividual, including a birthmark or piercing;

11 (iii) an identifying feature of the
12 background of the visual depiction;

13 (iv) voice matching; or

14 (v) written confirmation from an indi-
15 vidual who is responsible, in whole or in
16 part, for the creation or development of the
17 visual depiction; and

18 (B) in which—

19 (i) the individual depicted is engaging
20 in sexually explicit conduct; or

21 (ii) the naked genitals, anus, pubic
22 area, or post-pubescent female nipple of
23 the individual depicted are visible.

24 (7) PORNOGRAPHIC IMAGE.—The term “porno-
25 graphic image” means—

1 (A) any visual depiction of actual or
2 feigned sexually explicit conduct; or

3 (B) any intimate visual depiction.

4 (8) USER.—The term “user”—

5 (A) means an individual who is an infor-
6 mation content provider (as defined in section
7 230(f) of the Communications Act of 1934 (47
8 U.S.C. 230(f))); and

9 (B) with respect to a covered platform,
10 means an individual described in subparagraph
11 (A) who is responsible, in whole or in part, for
12 the creation or development of pornographic im-
13 ages hosted or made available by the covered
14 platform.

15 (b) TERMS DEFINED IN SECTION 2256 OF TITLE 18,
16 UNITED STATES CODE.—For purposes of subsection
17 (a)—

18 (1) the term “computer” has the meaning given
19 the term in section 2256 of title 18, United States
20 Code;

21 (2) the term “sexually explicit conduct” has the
22 meaning given the term in section 2256(2)(A) of
23 title 18, United States Code; and

24 (3) the term “visual depiction” means a photo-
25 graph, film, video, or modified photograph, film, or

1 video, whether made or produced by electronic, me-
 2 chanical, or other means.

3 **SEC. 4. SEVERABILITY CLAUSE.**

4 If any provision of this Act or an amendment made
 5 by this Act, or the application of such a provision or
 6 amendment to any person or circumstance, is held to be
 7 unconstitutional, the remaining provisions of this Act and
 8 amendments made by this Act, and the application of such
 9 provisions and amendments to any other person or cir-
 10 cumstance, shall not be affected thereby.

11 **TITLE I—REGULATING THE**
 12 **UPLOADING OF PORNO-**
 13 **GRAPHIC IMAGES TO ONLINE**
 14 **PLATFORMS**

15 **SEC. 101. VERIFICATION OBLIGATIONS OF COVERED PLAT-**
 16 **FORM OPERATORS.**

17 (a) VERIFICATION OF USERS.—

18 (1) IN GENERAL.—A covered platform operator
 19 may not upload or allow a user to upload a porno-
 20 graphic image to the covered platform unless the op-
 21 erator has verified, in accordance with paragraph

22 (2)—

23 (A) the identity of the user; and

24 (B) that the user is not less than 18 years
 25 old.

(2) MEANS OF COMPLIANCE.—In carrying out paragraph (1), a covered platform operator shall verify the identity and age of a user by—

(A) requiring use of an adult access code or adult personal identification number;

(B) accepting a digital certificate that verifies age; or

(C) using any other reasonable measure of age verification that the Attorney General has determined to be feasible with available technology.

(3) INSUFFICIENT USER CONFIRMATION.—Merely requiring a user to confirm that the user is not less than 18 years of age, without independent means of verification, shall not satisfy the requirement under paragraph (1).

(b) VERIFICATION OF PARTICIPANTS.—

(1) IN GENERAL.—A covered platform operator may not upload or allow a user to upload a pornographic image to the covered platform unless the operator has verified, in accordance with paragraph (2), that each individual appearing in the pornographic image—

(A) was not less than 18 years of age when the pornographic image was created;

1 (B) has provided explicit written evidence
2 of consent for each sex act in which the indi-
3 vidual engaged during the creation of the por-
4 nographic image; and

5 (C) has provided explicit written consent
6 for the distribution of the specific pornographic
7 image.

8 (2) SEPARATE CONSENT FOR SEX ACT AND FOR
9 DISTRIBUTION OF IMAGE.—

10 (A) CONSENT FOR SEX ACT.—Consent de-
11 scribed in subparagraph (B) of paragraph (1)
12 does not imply or constitute evidence of consent
13 described in subparagraph (C) of that para-
14 graph.

15 (B) CONSENT FOR DISTRIBUTION OF
16 IMAGE.—Consent described in subparagraph
17 (C) of paragraph (1) does not imply or con-
18 stitute evidence of consent described in sub-
19 paragraph (B) of that paragraph.

20 (3) MEANS OF COMPLIANCE.—In carrying out
21 paragraph (1), a covered platform operator shall ob-
22 tain, either from the user seeking to upload the por-
23 nographic image or through other means—

24 (A) a consent form created or approved by
25 the Attorney General under paragraph (4) from

1 each individual appearing in the pornographic
2 image that includes—

3 (i) the name, date of birth, and signa-
4 ture of the individual;

5 (ii) a statement that the individual is
6 not less than 18 years of age, unless no
7 reasonable person could conclude that the
8 individual is less than 30 years of age;

9 (iii) a statement that the consent is
10 for distribution of the specific porno-
11 graphic image;

12 (iv) the geographic area and medium,
13 meaning online, print, or other distribution
14 method, for which the individual provides
15 consent to distribution of the pornographic
16 image;

17 (v) the duration of time for which the
18 individual provides consent to distribution
19 of the pornographic image;

20 (vi) a list of the specific sex acts that
21 the person agrees to engage in for the por-
22 nographic image; and

23 (vii) a statement that explains coerced
24 consent and that the individual has the

1 right to withdraw the individual's consent
 2 at any time; and

3 (B) not less than 1 form of valid identi-
 4 fication for each individual appearing in the
 5 pornographic image—

6 (i) that—

7 (I) was issued by an agency of
 8 the Federal Government or of a State,
 9 local, or foreign government; and

10 (II) contains the name, date of
 11 birth, signature, and photograph of
 12 the individual; and

13 (ii) on which the name, date of birth,
 14 and signature of the individual match the
 15 name, date of birth, and signature of the
 16 individual on the consent form required
 17 under subparagraph (A).

18 (4) CREATION AND APPROVAL OF CONSENT
 19 FORMS BY ATTORNEY GENERAL.—

20 (A) ATTORNEY GENERAL CONSENT
 21 FORM.—

22 (i) IN GENERAL.—Not later than 60
 23 days after the date of enactment of this
 24 Act, the Attorney General shall create and

1 make available to the public a consent
2 form for purposes of paragraph (3)(A).

3 (ii) AVAILABILITY.—On and after the
4 date that is 90 days after the date of en-
5 actment of this Act, a covered platform op-
6 erator shall make the consent form created
7 under clause (i) available to users in both
8 written and electronic format.

9 (B) APPROVAL OF ALTERNATIVE CONSENT
10 FORMS.—For purposes of paragraph (3)(A), a
11 user may submit to a covered platform an alter-
12 native consent form created by a user or cov-
13 ered platform operator if the alternative consent
14 form has been approved by the Attorney Gen-
15 eral.

16 (c) EFFECTIVE DATE; APPLICABILITY.—This section
17 shall—

18 (1) take effect on the date that is 90 days after
19 the date of enactment of this Act; and

20 (2) apply to any pornographic image uploaded
21 to a covered platform before, on, or after that effec-
22 tive date.

23 (d) RULES OF CONSTRUCTION.—

1 (1) OBLIGATIONS AND CRIMINAL LIABILITY
 2 UNDER OTHER LAWS.—Nothing in this section shall
 3 be construed to—

4 (A) affect any obligation of a covered plat-
 5 form under any other provision of Federal or
 6 State law; or

7 (B) impact or otherwise limit the criminal
 8 liability of a user or other individual under a
 9 Federal or State obscenity law.

10 (2) FIRST AMENDMENT-PROTECTED SPEECH.—
 11 Nothing in this section shall be construed to prohibit
 12 or impose a prior restraint on speech that is pro-
 13 tected by the First Amendment to the Constitution
 14 of the United States.

15 **SEC. 102. REMOVAL OF IMAGES DISTRIBUTED WITHOUT**
 16 **CONSENT.**

17 (a) DEFINITIONS.—In this section:

18 (1) AUTHORIZED REPRESENTATIVE.—The term
 19 “authorized representative”, with respect to an indi-
 20 vidual, means—

21 (A) a person authorized in writing under
 22 State or other applicable law by the individual
 23 to act on behalf of the individual with regard to
 24 the matter in question; or

1 (B) in the case of an individual under the
 2 age of 18, a parent or legal guardian of the in-
 3 dividual.

4 (2) ELIGIBLE PERSON.—The term “eligible per-
 5 son”, with respect to a pornographic image uploaded
 6 to a covered platform, means—

7 (A) an individual who appears in the por-
 8 nographic image and has not provided consent
 9 to, or has withdrawn consent in compliance
 10 with the laws of the applicable jurisdiction for,
 11 the distribution of the pornographic image;

12 (B) an authorized representative of an in-
 13 dividual described in subparagraph (A); or

14 (C) a Federal, State, Tribal, or local law
 15 enforcement officer acting pursuant to a valid
 16 court order.

17 (b) MECHANISM FOR REMOVAL.—A covered platform
 18 operator shall—

19 (1) establish a procedure for removing a porno-
 20 graphic image from the covered platform at the re-
 21 quest of a person; and

22 (2) designate 1 or more employees of the oper-
 23 ator to be responsible for handling requests for re-
 24 moval of pornographic images.

1 (c) NOTICE.—A covered platform operator shall dis-
2 play a prominently visible notice on the website or mobile
3 application of the covered platform that provides instruc-
4 tions on how a person can request the removal of a porno-
5 graphic image.

6 (d) RESPONSE TO REQUESTS FOR REMOVAL.—

7 (1) REQUESTS FROM ELIGIBLE PERSONS.—If a
8 covered platform operator receives a request from an
9 eligible person, through any request mechanism of-
10 fered by the operator under subsection (b), to re-
11 move a pornographic image that is being hosted by
12 the covered platform without the consent of an indi-
13 vidual who appears in the pornographic image, the
14 operator shall remove the pornographic image as
15 quickly as possible, and in any event not later than
16 72 hours after receiving the request.

17 (2) REQUESTS FROM PERSONS OTHER THAN
18 ELIGIBLE PERSONS.—If a covered platform operator
19 receives a request from a person other than an eligi-
20 ble person, through any request mechanism offered
21 by the operator under subsection (b), to remove a
22 pornographic image that is being hosted by the cov-
23 ered platform without the consent of an individual
24 who appears in the pornographic image, not later
25 than 72 hours after receiving the request—

1 (A) the operator shall review the records of
2 the operator with respect to the pornographic
3 image to determine whether the pornographic
4 image was uploaded to the platform in accord-
5 ance with the verification requirements under
6 subsections (a) and (b) of section 101; and

7 (B) if the operator determines under sub-
8 paragraph (A) that the pornographic image was
9 not uploaded to the platform in accordance with
10 the verification requirements under subsections
11 (a) and (b) of section 101, the operator shall
12 remove the pornographic image.

13 (e) BLOCKING RE-UPLOADS.—In the case of a porno-
14 graphic image that has been removed from a covered plat-
15 form in accordance with this section, the covered platform
16 operator shall block the pornographic image, and any al-
17 tered or edited version of the pornographic image, from
18 being uploaded to the covered platform again.

19 (f) EFFECTIVE DATE; APPLICABILITY.—

20 (1) IN GENERAL.—This section shall—

21 (A) except as provided in paragraph (2),
22 take effect on the date that is 90 days after the
23 date of enactment of this Act; and

1 (B) apply to any pornographic image
 2 uploaded to a covered platform before, on, or
 3 after that effective date.

4 (2) BLOCKING RE-UPLOADS.—Subsection (e)
 5 shall take effect on the date that is 180 days after
 6 the date of enactment of this Act.

7 **SEC. 103. OBLIGATIONS OF USERS.**

8 (a) CONSENT REQUIREMENT.—A user of a covered
 9 platform may not upload a pornographic image of an indi-
 10 vidual to the covered platform without the consent of the
 11 individual.

12 (b) DETERMINATION OF CONSENT.—For purposes of
 13 subsection (a), whether an individual has provided consent
 14 to the uploading of an image shall be determined in ac-
 15 cordance with this Act and applicable State law.

16 **TITLE II—ENFORCEMENT**

17 **SEC. 201. CIVIL ENFORCEMENT.**

18 (a) VERIFICATION OBLIGATIONS OF COVERED PLAT-
 19 FORM OPERATORS.—

20 (1) CIVIL PENALTY FOR FAILURE TO VERIFY
 21 USERS.—

22 (A) IN GENERAL.—The Attorney General
 23 may impose a civil penalty on any covered plat-
 24 form operator that violates section 101(a) in an
 25 amount of not more than \$10,000 for each day

1 during which a pornographic image remains on
2 the covered platform in violation of that section,
3 beginning 24 hours after the Attorney General
4 provides notice of the violation to the operator.

5 (B) PER-DAY AND PER-IMAGE BASIS.—A
6 civil penalty under subparagraph (A) shall ac-
7 crue on a per-day and per-image basis.

8 (C) USE OF PROCEEDS.—Notwithstanding
9 section 3302 of title 31, United States Code,
10 the Attorney General may use the proceeds
11 from a civil penalty collected under subpara-
12 graph (A) to carry out enforcement under this
13 section.

14 (2) CIVIL LIABILITY FOR FAILURE TO VERIFY
15 PARTICIPANTS.—If a covered platform operator vio-
16 lates section 101(b) with respect to a pornographic
17 image, any person aggrieved by the violation may
18 bring a civil action against the covered platform op-
19 erator in an appropriate district court of the United
20 States for damages in an amount equal to the great-
21 er of—

22 (A) \$10,000 for each day during which a
23 pornographic image remains on the covered
24 platform in violation of that section, calculated
25 on a per-day and per-image basis; or

1 (B) actual damages.

2 (b) REMOVAL OF IMAGES DISTRIBUTED WITHOUT
3 CONSENT.—

4 (1) CIVIL PENALTY FOR FAILURE TO ESTAB-
5 LISH MECHANISM FOR REMOVAL.—

6 (A) IN GENERAL.—The Attorney General
7 may impose a civil penalty on any covered plat-
8 form operator that violates section 102(b) in an
9 amount of not more than \$10,000 for each day
10 during which the covered platform remains in
11 violation of that section, beginning 24 hours
12 after the Attorney General provides notice of
13 the violation to the operator.

14 (B) USE OF PROCEEDS.—Notwithstanding
15 section 3302 of title 31, United States Code,
16 the Attorney General may use the proceeds
17 from a civil penalty collected under subpara-
18 graph (A) to carry out enforcement under this
19 section.

20 (2) CIVIL PENALTY FOR FAILURE TO DISPLAY
21 NOTICE OF MECHANISM FOR REMOVAL.—The Attor-
22 ney General may impose a civil penalty on any cov-
23 ered platform operator that violates section 102(c)
24 in an amount of not more than \$5,000 for each day
25 during which the covered platform remains in viola-

tion of that section, beginning 24 hours after the Attorney General provides notice of the violation to the operator.

(3) CIVIL LIABILITY FOR FAILURE TO MAKE
TIMELY REMOVAL.—

(A) IN GENERAL.—If a covered platform operator violates section 102(d) with respect to a pornographic image, any person aggrieved by the violation may bring a civil action against the covered platform operator in an appropriate district court of the United States for damages in an amount equal to the greater of—

(i) \$10,000 for each day during which the pornographic image remains on the covered platform in violation of that section, calculated on a per-day and per-image basis; or

(ii) actual damages.

(B) GOOD FAITH EXCEPTION.—

(i) IN GENERAL.—A covered platform operator shall not be liable under subparagraph (A) for a violation of section 102(d) if, in allowing the upload of a pornographic image to the covered platform, the operator reasonably relied on verification mate-

1 rials, in accordance with section 101(b)(3),
2 that were later found to be fraudulent,
3 provided that the operator removes the
4 pornographic image not later than 24
5 hours after discovering that the verification
6 materials are fraudulent.

7 (ii) FAILURE TO REMOVE.—If a cov-
8 ered platform operator fails to remove a
9 pornographic image within 24 hours of dis-
10 covering that the verification materials are
11 fraudulent, as described in clause (i), dam-
12 ages under subparagraph (A)(i) shall be
13 calculated with respect to each day on or
14 after the date on which that 24-hour pe-
15 riod expires.

16 (4) CIVIL LIABILITY FOR FAILURE TO BLOCK
17 RE-UPLOADS.—If a covered platform operator vio-
18 lates section 102(e) with respect to a pornographic
19 image, any person aggrieved by the violation may
20 bring a civil action against the covered platform op-
21 erator in an appropriate district court of the United
22 States for damages in an amount equal to the great-
23 er of—

1 (A) \$10,000 for each day during which the
 2 pornographic image remains on the covered
 3 platform in violation of that section; or

4 (B) actual damages.

5 (c) CIVIL LIABILITY FOR VIOLATION OF USER OBLI-
 6 GATIONS.—If a user of a covered platform violates section
 7 103 with respect to a pornographic image, any person ag-
 8 grieved by the violation may bring a civil action against
 9 the user in an appropriate district court of the United
 10 States for damages in an amount equal to the greater of—

11 (1) \$10,000 for each day during which the por-
 12 nographic image remains on the covered platform in
 13 violation of that section, calculated on a per-day and
 14 per-image basis; or

15 (2) actual damages.

16 (d) RELATION TO COMMUNICATIONS DECENCY
 17 ACT.—Nothing in this section shall be construed to affect
 18 section 230 of the Communications Act of 1934 (47
 19 U.S.C. 230).

20 **SEC. 202. CRIMINAL PROHIBITION ON NONCONSENSUAL**
 21 **DISTRIBUTION OF INTIMATE VISUAL DEPIC-**
 22 **TIONS.**

23 (a) IN GENERAL.—Chapter 88 of title 18, United
 24 States Code, is amended by adding at the end the fol-
 25 lowing:

1 **“§ 1802. Nonconsensual distribution of intimate vis-**
 2 **ual depictions**

3 “(a) DEFINITIONS.—In this section:

4 “(1) INFORMATION CONTENT PROVIDER.—The
 5 term ‘information content provider’ has the meaning
 6 given the term in section 230(f) of the Communica-
 7 tions Act of 1934 (47 U.S.C. 230(f)).

8 “(2) INTERACTIVE COMPUTER SERVICE.—The
 9 term ‘interactive computer service’ has the meaning
 10 given the term in section 230(f) of the Communica-
 11 tions Act of 1934 (47 U.S.C. 230(f)).

12 “(3) INTIMATE VISUAL DEPICTION.—The term
 13 ‘intimate visual depiction’ means any visual depic-
 14 tion—

15 “(A) of an individual who is reasonably
 16 identifiable from the visual depiction itself or
 17 information displayed in connection with the
 18 visual depiction, including through—

19 “(i) facial recognition;

20 “(ii) an identifying marking on the in-
 21 dividual, including a birthmark or piercing;

22 “(iii) an identifying feature of the
 23 background of the visual depiction;

24 “(iv) voice matching; or

25 “(v) written confirmation from an in-
 26 dividual who is responsible, in whole or in

1 part, for the creation or development of the
 2 visual depiction; and

3 “(B) in which—

4 “(i) the individual depicted is engag-
 5 ing in sexually explicit conduct; or

6 “(ii) the naked genitals, anus, pubic
 7 area, or post-pubescent female nipple of
 8 the individual depicted are visible and are
 9 depicted with the objective intent to
 10 arouse, titillate, or gratify the sexual de-
 11 sires of a person.

12 “(4) SEXUALLY EXPLICIT CONDUCT.—The term
 13 ‘sexually explicit conduct’ has the meaning given
 14 that term in section 2256(2)(A).

15 “(5) VISUAL DEPICTION.—The term ‘visual de-
 16 piction’ means a photograph, film, video, or modified
 17 photograph, film, or video, whether made or pro-
 18 duced by electronic, mechanical, or other means.

19 “(b) OFFENSE.—Except as provided in subsection
 20 (d), it shall be unlawful for any information content pro-
 21 vider to knowingly use any interactive computer service
 22 to publish an intimate visual depiction of an individual
 23 with knowledge of or reckless disregard for—

24 “(1) the lack of consent of the individual to the
 25 publication; and

1 “(2) the reasonable expectation of the indi-
2 vidual that the depiction would not be published
3 through an interactive computer service without the
4 individual’s consent.

5 “(c) PENALTY.—Any person who violates subsection
6 (b) shall be fined under this title, imprisoned for not more
7 than 5 years, or both.

8 “(d) EXCEPTIONS.—

9 “(1) LAW ENFORCEMENT, LAWFUL REPORTING,
10 AND OTHER LEGAL PROCEEDINGS.—Subsection
11 (b)—

12 “(A) does not prohibit any lawful law en-
13 forcement, correctional, or intelligence activity;

14 “(B) shall not apply to an individual acting
15 in good faith to report unlawful activity or in
16 pursuance of a legal or other lawful obligation;
17 and

18 “(C) shall not apply to a document produc-
19 tion or filing associated with a legal proceeding.

20 “(2) RULE OF CONSTRUCTION.—Nothing in
21 this subsection shall affect the liability protection
22 provided under section 230 of the Communications
23 Act of 1934 (47 U.S.C. 230).

24 “(e) VENUE AND EXTRATERRITORIALITY.—

1 “(1) VENUE.—A prosecution under this section
2 may be brought in a district in which—

3 “(A) the defendant or the depicted indi-
4 vidual resides; or

5 “(B) the intimate visual depiction is dis-
6 tributed or made available.

7 “(2) EXTRATERRITORIALITY.—There is
8 extraterritorial Federal jurisdiction over an offense
9 under this section if the defendant or the depicted
10 individual is a citizen or permanent resident of the
11 United States.”.

12 (b) CLERICAL AMENDMENT.—The table of sections
13 for chapter 88 of title 18, United States Code, is amended
14 by adding at the end the following:

“1802. Nonconsensual distribution of intimate visual depictions.”.

