

115TH CONGRESS  
2D SESSION

# S. 3170

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## AN ACT

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 serting “**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 sserting “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 sserting “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 or a remote computing  
7 service” and inserting “a provider”;

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

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

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

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

1 (E) in paragraph (4)—

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

5 (ii) by striking “image” and inserting  
6 “visual depiction”; and

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

9 (F) in paragraph (5)—

10 (i) by striking “image” and inserting  
11 “visual depiction”;

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

14 (iii) by striking “images” and insert-  
15 ing “visual depictions”;

16 (4) by amending subsection (c) to read as fol-  
17 lows:

18 “(c) FORWARDING OF REPORT TO LAW ENFORCE-  
19 MENT.—Pursuant to its clearinghouse role as a private,  
20 nonprofit organization, and at the conclusion of its review  
21 in furtherance of its nonprofit mission, NCMEC shall  
22 make available each report made under subsection (a)(1)  
23 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 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           (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 ticement 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 a 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 serting “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 or remote computing service” and inserting  
 8 “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, a remote computing serv-  
 23 ice provider,” and inserting “a provider”; and

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

1 service provider,” each place it appears and in-  
 2 serting “such provider”;

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 PROVIDERS  
10 AND REMOTE COMPUTING SERVICE PRO-  
11 VIDERS” 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 serting “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 the matter preceding paragraph (1), by  
11 striking “2258D” and inserting “2258E”;

12 (2) in paragraph (5), by striking “and” at the  
13 end;

14 (3) by redesignating paragraph (6) as para-  
15 graph (8); and

16 (4) by inserting after paragraph (5) the fol-  
17 lowing:

18 “(6) the term ‘provider’ means an electronic  
19 communication service provider or remote computing  
20 service;

21 “(7) the term ‘NCMEC’ means the National  
22 Center for Missing & Exploited Children; and”.

23 **SEC. 7. TECHNICAL AND CONFORMING AMENDMENT.**

24 The table of sections for chapter 110 of title 18,  
25 United States Code, is amended by striking the items re-

1 lating to sections 2258A, 2258B, 2258C, and 2258D and

2 inserting the following:

“2258A. Reporting requirements of providers.

“2258B. Limited liability for providers or domain name registrars.

“2258C. Use to combat child pornography of technical elements relating to reports made to the CyberTipline.

“2258D. Limited liability for NCMEC.”.

Passed the Senate September 27, 2018.

Attest:

*Secretary.*

115<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 3170**

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**AN ACT**

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.