

117TH CONGRESS
2D SESSION

S. 4991

To prevent the distribution of intimate visual depictions without consent.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28, 2022

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 2022” or the “PRO-
7 TECT Act”.

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 may continue to stimulate demand for
17 CSAM beyond the lockdowns as well.

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 sites, such as Pornhub, XVideos, OnlyFans,
6 and YouPorn, and fringe adult pornography sites.

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

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

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

23 (10) Pornography websites attract hundreds of
24 millions of visitors daily. The leading pornography
25 website in 2020, for example, reported attracting

1 more than 3,500,000,000 monthly users, which ex-
2 ceeds the traffic of Netflix, Twitter, Instagram,
3 Pinterest, or LinkedIn.

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

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

1 (13) The internet has revolutionized the por-
2 nography industry, making pornographic content in-
3 comparably more available, accessible, affordable,
4 and anonymous than at any previous time in the his-
5 tory of the United States. Today, substantial majori-
6 ties of teenagers have viewed pornography. A United
7 States population-based probability study found that
8 84 percent of males and 57 percent of females be-
9 tween the ages of 14 and 18 have viewed pornog-
10 raphy, belying the industry’s faux status as so-called
11 “adult entertainment”. Moreover, pornography has
12 contributed to the normalization of sexual violence
13 among the youth of the United States. Numerous
14 studies have demonstrated that viewing pornography
15 harms youth, as it contributes to sexually violent at-
16 titudes and conduct towards children and adults and
17 creates unrealistic expectations for intimate relation-
18 ships. Additionally, research has demonstrated that
19 the demand for online pornography has fueled an in-
20 crease in purchasing sex from prostituted or sex
21 trafficked individuals.

22 (14) The online pornography industry has re-
23 mained unchecked and generally immune from regu-
24 lations. Online creators and distributors of porno-
25 graphic content should be held to standards that re-

quire informed and thorough consent as well as age-
 verification. Currently, no substantive laws govern
 consent in pornography, which has permitted ramp-
 ant abuses to occur.

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

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

SEC. 3. DEFINITIONS.

(a) IN GENERAL.—In this Act:

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

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

(B) who lacks capacity; or

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

1 (i) immigration status;

2 (ii) pregnancy;

3 (iii) disability;

4 (iv) addiction;

5 (v) juvenile status; or

6 (vi) economic circumstances.

7 (2) CONSENT.—The term “consent”—

8 (A) means an agreement that is informed
9 and thorough; and

10 (B) does not include coerced consent.

11 (3) COVERED PLATFORM.—

12 (A) IN GENERAL.—The term “covered
13 platform” means an interactive computer serv-
14 ice that hosts or makes available to the general
15 public pornographic images.

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

23 (4) COVERED PLATFORM OPERATOR.—The
24 term “covered platform operator” means a provider
25 of a covered platform.

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

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

8 (A) of an individual who is reasonably
 9 identifiable from the visual depiction itself or
 10 information displayed in connection with the
 11 visual depiction, including through—

12 (i) facial recognition;

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

15 (iii) an identifying feature of the
 16 background of the visual depiction;

17 (iv) voice matching; or

18 (v) written confirmation from an indi-
 19 vidual who is responsible, in whole or in
 20 part, for the creation or development of the
 21 visual depiction; and

22 (B) in which—

23 (i) the individual depicted is engaging
 24 in sexually explicit conduct; or

1 (ii) the naked genitals, anus, pubic
2 area, or post-pubescent female nipple of
3 the individual depicted are visible.

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

6 (A) any visual depiction of actual or
7 feigned sexually explicit conduct; or

8 (B) any intimate visual depiction.

9 (8) USER.—The term “user”—

10 (A) means an individual who is an infor-
11 mation content provider (as defined in section
12 230(f) of the Communications Act of 1934 (47
13 U.S.C. 230(f))); and

14 (B) with respect to a covered platform,
15 means an individual described in subparagraph
16 (A) who is responsible, in whole or in part, for
17 the creation or development of pornographic im-
18 ages hosted or made available by the covered
19 platform.

20 (b) TERMS DEFINED IN SECTION 2256 OF TITLE 18,
21 UNITED STATES CODE.—For purposes of subsection
22 (a)—

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

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

4 (3) the term “visual depiction” means a photo-
5 graph, film, video, or modified photograph, film, or
6 video, whether made or produced by electronic, me-
7 chanical, or other means.

8 **SEC. 4. SEVERABILITY CLAUSE.**

9 If any provision of this Act or an amendment made
10 by this Act, or the application of such a provision or
11 amendment to any person or circumstance, is held to be
12 unconstitutional, the remaining provisions of this Act and
13 amendments made by this Act, and the application of such
14 provisions and amendments to any other person or cir-
15 cumstance, shall not be affected thereby.

16 **TITLE I—REGULATING THE**
17 **UPLOADING OF PORNO-**
18 **GRAPHIC IMAGES TO ONLINE**
19 **PLATFORMS**

20 **SEC. 101. VERIFICATION OBLIGATIONS OF COVERED PLAT-**
21 **FORM OPERATORS.**

22 (a) VERIFICATION OF USERS.—

23 (1) IN GENERAL.—A covered platform operator
24 may not upload or allow a user to upload a porno-
25 graphic image to the covered platform unless the op-

1 erator has verified, in accordance with paragraph
2 (2)—

3 (A) the identity of the user; and

4 (B) that the user is not less than 18 years
5 old.

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

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

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

13 (C) using any other reasonable measure of
14 age verification that the Attorney General has
15 determined to be feasible with available tech-
16 nology.

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

22 (b) VERIFICATION OF PARTICIPANTS.—

23 (1) IN GENERAL.—A covered platform operator
24 may not upload or allow a user to upload a porno-
25 graphic image to the covered platform unless the op-

1 erator has verified, in accordance with paragraph
2 (2), that each individual appearing in the porno-
3 graphic image—

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

6 (B) has provided explicit written evidence
7 of consent for each sex act in which the indi-
8 vidual engaged during the creation of the por-
9 nographic image; and

10 (C) has provided explicit written consent
11 for the distribution of the specific pornographic
12 image.

13 (2) SEPARATE CONSENT FOR SEX ACT AND FOR
14 DISTRIBUTION OF IMAGE.—

15 (A) CONSENT FOR SEX ACT.—Consent de-
16 scribed in subparagraph (B) of paragraph (1)
17 does not imply or constitute evidence of consent
18 described in subparagraph (C) of that para-
19 graph.

20 (B) CONSENT FOR DISTRIBUTION OF
21 IMAGE.—Consent described in subparagraph
22 (C) of paragraph (1) does not imply or con-
23 stitute evidence of consent described in sub-
24 paragraph (B) of that paragraph.

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

5 (A) a consent form created or approved by
6 the Attorney General under paragraph (4) from
7 each individual appearing in the pornographic
8 image that includes—

9 (i) the name, date of birth, and signa-
10 ture of the individual;

11 (ii) a statement that the individual is
12 not less than 18 years of age, unless no
13 reasonable person could conclude that the
14 individual is less than 30 years of age;

15 (iii) a statement that the consent is
16 for distribution of the specific porno-
17 graphic image;

18 (iv) the geographic area and medium,
19 meaning online, print, or other distribution
20 method, for which the individual provides
21 consent to distribution of the pornographic
22 image;

23 (v) the duration of time for which the
24 individual provides consent to distribution
25 of the pornographic image;

1 (vi) a list of the specific sex acts that
2 the person agrees to engage in for the por-
3 nographic image; and

4 (vii) a statement that explains coerced
5 consent and that the individual has the
6 right to withdraw the individual's consent
7 at any time; and

8 (B) not less than 1 form of valid identi-
9 fication for each individual appearing in the
10 pornographic image—

11 (i) that—

12 (I) was issued by an agency of
13 the Federal Government or of a State,
14 local, or foreign government; and

15 (II) contains the name, date of
16 birth, signature, and photograph of
17 the individual; and

18 (ii) on which the name, date of birth,
19 and signature of the individual match the
20 name, date of birth, and signature of the
21 individual on the consent form required
22 under subparagraph (A).

23 (4) CREATION AND APPROVAL OF CONSENT
24 FORMS BY ATTORNEY GENERAL.—

1 (A) ATTORNEY GENERAL CONSENT
2 FORM.—

3 (i) IN GENERAL.—Not later than 60
4 days after the date of enactment of this
5 Act, the Attorney General shall create and
6 make available to the public a consent
7 form for purposes of paragraph (3)(A).

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

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

21 (c) EFFECTIVE DATE; APPLICABILITY.—This section
22 shall—

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

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

4 (d) RULES OF CONSTRUCTION.—

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

8 (A) affect any obligation of a covered platform under any other provision of Federal or
 9 State law; or
 10

11 (B) impact or otherwise limit the criminal liability of a user or other individual under a
 12 Federal or State obscenity law.
 13

14 (2) FIRST AMENDMENT-PROTECTED SPEECH.—
 15 Nothing in this section shall be construed to prohibit
 16 or impose a prior restraint on speech that is protected by the First Amendment to the Constitution
 17 of the United States.
 18

19 **SEC. 102. REMOVAL OF IMAGES DISTRIBUTED WITHOUT**
 20 **CONSENT.**

21 (a) DEFINITIONS.—In this section:

22 (1) AUTHORIZED REPRESENTATIVE.—The term
 23 “authorized representative”, with respect to an individual, means—
 24

1 (A) a person authorized in writing under
 2 State or other applicable law by the individual
 3 to act on behalf of the individual with regard to
 4 the matter in question; or

5 (B) in the case of an individual under the
 6 age of 18, a parent or legal guardian of the in-
 7 dividual.

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

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

16 (B) an authorized representative of an in-
 17 dividual described in subparagraph (A); or

18 (C) a Federal, State, Tribal, or local law
 19 enforcement officer acting pursuant to a valid
 20 court order.

21 (b) MECHANISM FOR REMOVAL.—A covered platform
 22 operator shall—

23 (1) establish a procedure for removing a porno-
 24 graphic image from the covered platform at the re-
 25 quest of a person; and

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

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

9 (d) RESPONSE TO REQUESTS FOR REMOVAL.—

10 (1) REQUESTS FROM ELIGIBLE PERSONS.—If a
11 covered platform operator receives a request from an
12 eligible person, through any request mechanism of-
13 fered by the operator under subsection (b), to re-
14 move a pornographic image that is being hosted by
15 the covered platform without the consent of an indi-
16 vidual who appears in the pornographic image, the
17 operator shall remove the pornographic image as
18 quickly as possible, and in any event not later than
19 72 hours after receiving the request.

20 (2) REQUESTS FROM PERSONS OTHER THAN
21 ELIGIBLE PERSONS.—If a covered platform operator
22 receives a request from a person other than an eligi-
23 ble person, through any request mechanism offered
24 by the operator under subsection (b), to remove a
25 pornographic image that is being hosted by the cov-

1 ered platform without the consent of an individual
2 who appears in the pornographic image, not later
3 than 72 hours after receiving the request—

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

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

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

22 (f) EFFECTIVE DATE; APPLICABILITY.—

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

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

4 (B) apply to any pornographic image
 5 uploaded to a covered platform before, on, or
 6 after that effective date.

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

10 **SEC. 103. OBLIGATIONS OF USERS.**

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

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

19 **TITLE II—ENFORCEMENT**

20 **SEC. 201. CIVIL ENFORCEMENT.**

21 (a) VERIFICATION OBLIGATIONS OF COVERED PLAT-
 22 FORM OPERATORS.—

23 (1) CIVIL PENALTY FOR FAILURE TO VERIFY
 24 USERS.—

1 (A) IN GENERAL.—The Attorney General
2 may impose a civil penalty on any covered plat-
3 form operator that violates section 101(a) in an
4 amount of not more than \$10,000 for each day
5 during which a pornographic image remains on
6 the covered platform in violation of that section,
7 beginning 24 hours after the Attorney General
8 provides notice of the violation to the operator.

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

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

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

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

5 (B) actual damages.

6 (b) REMOVAL OF IMAGES DISTRIBUTED WITHOUT
 7 CONSENT.—

8 (1) CIVIL PENALTY FOR FAILURE TO ESTAB-
 9 LISH MECHANISM FOR REMOVAL.—

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

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

24 (2) CIVIL PENALTY FOR FAILURE TO DISPLAY
 25 NOTICE OF MECHANISM FOR REMOVAL.—The Attor-

1 ney General may impose a civil penalty on any cov-
 2 ered platform operator that violates section 102(c)
 3 in an amount of not more than \$5,000 for each day
 4 during which the covered platform remains in viola-
 5 tion of that section, beginning 24 hours after the At-
 6 torney General provides notice of the violation to the
 7 operator.

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

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

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

22 (ii) actual damages.

23 (B) GOOD FAITH EXCEPTION.—

24 (i) IN GENERAL.—A covered platform
 25 operator shall not be liable under subpara-

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

(ii) FAILURE TO REMOVE.—If a covered platform operator fails to remove a pornographic image within 24 hours of discovering that the verification materials are fraudulent, as described in clause (i), damages under subparagraph (A)(i) shall be calculated with respect to each day on or after the date on which that 24-hour period expires.

(4) CIVIL LIABILITY FOR FAILURE TO BLOCK RE-UPLOADS.—If a covered platform operator violates section 102(e) 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

1 States for damages in an amount equal to the great-
 2 er of—

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

6 (B) actual damages.

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

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

17 (2) actual damages.

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

1 **SEC. 202. CRIMINAL PROHIBITION ON NONCONSENSUAL**
 2 **DISTRIBUTION OF INTIMATE VISUAL DEPIC-**
 3 **TIONS.**

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

7 **“§ 1802. Nonconsensual distribution of intimate vis-**
 8 **ual depictions**

9 “(a) DEFINITIONS.—In this section:

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

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

18 “(3) INTIMATE VISUAL DEPICTION.—The term
 19 ‘intimate visual depiction’ means any visual depic-
 20 tion—

21 “(A) of an individual who is reasonably
 22 identifiable from the visual depiction itself or
 23 information displayed in connection with the
 24 visual depiction, including through—

25 “(i) facial recognition;

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

3 “(iii) an identifying feature of the
 4 background of the visual depiction;

5 “(iv) voice matching; or

6 “(v) written confirmation from an in-
 7 dividual who is responsible, in whole or in
 8 part, for the creation or development of the
 9 visual depiction; and

10 “(B) in which—

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

13 “(ii) the naked genitals, anus, pubic
 14 area, or post-pubescent female nipple of
 15 the individual depicted are visible and are
 16 depicted with the objective intent to
 17 arouse, titillate, or gratify the sexual de-
 18 sires of a person.

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

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

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

6 “(1) the lack of consent of the individual to the
 7 publication; and

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

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

15 “(d) EXCEPTIONS.—

16 “(1) LAW ENFORCEMENT, LAWFUL REPORTING,
 17 AND OTHER LEGAL PROCEEDINGS.—Subsection
 18 (b)—

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

21 “(B) shall not apply to an individual acting
 22 in good faith to report unlawful activity or in
 23 pursuance of a legal or other lawful obligation;
 24 and

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

3 “(2) RULE OF CONSTRUCTION.—Nothing in
4 this subsection shall affect the liability protection
5 provided under section 230 of the Communications
6 Act of 1934 (47 U.S.C. 230).

7 “(e) VENUE AND EXTRATERRITORIALITY.—

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

10 “(A) the defendant or the depicted indi-
11 vidual resides; or

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

14 “(2) EXTRATERRITORIALITY.—There is
15 extraterritorial Federal jurisdiction over an offense
16 under this section if the defendant or the depicted
17 individual is a citizen or permanent resident of the
18 United States.”.

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

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

