

Subsec. (d)(6). Pub. L. 115-395, §2(5)(E), redesignated par. (6) as (5).

Subsec. (e). Pub. L. 115-395, §2(6), substituted “A provider” for “An electronic communication service provider or remote computing service provider”.

Subsec. (f). Pub. L. 115-395, §2(7)(A), substituted “a provider” for “an electronic communication service provider or a remote computing service provider” in introductory provisions.

Subsec. (f)(3). Pub. L. 115-395, §2(7)(B), substituted “search, screen, or scan for” for “seek”.

Subsec. (g)(2)(A)(vi). Pub. L. 115-395, §2(8)(A)(i), which directed substitution of “a provider” for “an electronic communication service provider or remote computing service provider”, was executed by making the substitution for “an electronic communication service provider or remote computing provider”, to reflect the probable intent of Congress.

Subsec. (g)(2)(B). Pub. L. 115-395, §2(8)(A)(ii), amended subpar. (B) generally. Prior to amendment, text read as follows:

“(i) LIMITATIONS ON FURTHER DISCLOSURE.—The electronic communication service provider or remote computing service provider shall be prohibited from disclosing the contents of a report provided under subparagraph (A)(vi) to any person, except as necessary to respond to the legal process.

“(ii) EFFECT.—Nothing in subparagraph (A)(vi) authorizes a law enforcement agency to provide child pornography images to an electronic communications service provider or a remote computing service.”

Subsec. (g)(3). Pub. L. 115-395, §2(8)(B)(i), (ii), in heading, substituted “NCMEC” for “THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN” and, in introductory provisions, substituted “NCMEC may disclose by mail, electronic transmission, or other reasonable means, information received in a report under subsection (a) only to” for “The National Center for Missing and Exploited Children may disclose information received in a report under subsection (a) only”.

Subsec. (g)(3)(A). Pub. L. 115-395, §2(8)(B)(iii), substituted “any Federal law enforcement agency” for “to any Federal law enforcement agency” and inserted “or that is involved in the investigation of child sexual exploitation, kidnapping, or enticement crimes” before semicolon at end.

Subsec. (g)(3)(B). Pub. L. 115-395, §2(8)(B)(iv), substituted “any State” for “to any State” and “child sexual exploitation” for “child pornography, child exploitation”.

Subsec. (g)(3)(C). Pub. L. 115-395, §2(8)(B)(v), substituted “any foreign law enforcement agency” for “to any foreign law enforcement agency” and “or that has an established relationship with the Federal Bureau of Investigation, Immigration and Customs Enforcement, or INTERPOL, and is involved in the investigation of child sexual exploitation, kidnapping, or enticement crimes;” for “; and”.

Subsec. (g)(3)(D). Pub. L. 115-395, §2(8)(B)(vi), substituted “a provider” for “an electronic communication service provider or remote computing service provider” and “; and” for period at end.

Subsec. (g)(3)(E). Pub. L. 115-395, §2(8)(B)(vii), added subpar. (E).

Subsec. (g)(4). Pub. L. 115-395, §2(8)(C), added par. (4).

Subsec. (h)(1). Pub. L. 115-395, §2(9)(A), substituted “a completed submission by a provider of a report to the CyberTipline under subsection (a)(1) shall be treated as a request to preserve the contents provided in the report for 90 days after the submission to the CyberTipline” for “the notification to an electronic communication service provider or a remote computing service provider by the CyberTipline of receipt of a report under subsection (a)(1) shall be treated as a request to preserve, as if such request was made pursuant to section 2703(f)”.

Subsec. (h)(2). Pub. L. 115-395, §2(9)(D), in heading, substituted “content” for “images” and, in text, substituted “a provider” for “an electronic communication service provider or a remote computing service”,

“visual depictions” for “images”, and “reasonably accessible and may provide context or additional information about the reported material or person” for “commingled or interspersed among the images of apparent child pornography within a particular communication or user-created folder or directory”. Final substitution, which directed striking out text containing “user created”, was executed instead to text which contained “user-created”, to reflect the probable intent of Congress.

Pub. L. 115-395, §2(9)(B), (C), redesignated par. (3) as (2) and struck out former par. (2). Prior to amendment, text of par. (2) read as follows: “Pursuant to paragraph (1), an electronic communication service provider or a remote computing service shall preserve the contents of the report provided pursuant to subsection (b) for 90 days after such notification by the CyberTipline.”

Subsec. (h)(3). Pub. L. 115-395, §2(9)(E), which directed substitution of “A provider” for “An electronic communication service or remote computing service”, was executed by making the substitution for “An electronic communications service or remote computing service”, to reflect the probable intent of Congress.

Pub. L. 115-395, §2(9)(C), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (h)(4), (5). Pub. L. 115-395, §2(9)(C), redesignated pars. (4) and (5) as (3) and (4), respectively.

Statutory Notes and Related Subsidiaries

GUIDELINES

Pub. L. 118-59, §4(b), May 7, 2024, 138 Stat. 1017, provided that: “Not later than 180 days after the date of enactment of this Act [May 7, 2024], the National Center for Missing & Exploited Children may issue guidelines, as appropriate, to providers required or permitted to take actions described in section 2258A(a)(1)(B) of title 18, United States Code, on the relevant identifiers for content that may indicate sex trafficking of children, as described in section 1591 of that title, or enticement, as described in section 2422(b) of that title.”

§ 2258B. Limited liability for the reporting, storage, and handling of certain visual depictions of apparent child pornography to the National Center for Missing & Exploited Children

(a) IN GENERAL.—Except as provided in subsection (b), a civil claim or criminal charge against a provider or domain name registrar, including any director, officer, employee, or agent of such provider or domain name registrar arising from the performance of the reporting or preservation responsibilities of such provider or domain name registrar under this section, section 2258A, or section 2258C may not be brought in any Federal or State court.

(b) INTENTIONAL, RECKLESS, OR OTHER MISCONDUCT.—Subsection (a) shall not apply to a claim or charge if the provider or domain name registrar, or a director, officer, employee, or agent of that provider or domain name registrar—

- (1) engaged in intentional misconduct; or
- (2) acted, or failed to act—
 - (A) with actual malice;
 - (B) with reckless disregard to a substantial risk of causing physical injury without legal justification; or
 - (C) for a purpose unrelated to the performance of any responsibility or function under sections¹ 2258A, 2258C, 2702, or 2703.

(c) MINIMIZING ACCESS.—A provider and domain name registrar shall—

¹ So in original. Probably should be “section”.

(1) minimize the number of employees that are provided access to any visual depiction provided under section 2258A or 2258C; and

(2) ensure that any such visual depiction is permanently destroyed, upon a request from a law enforcement agency to destroy the visual depiction.

(d) LIMITED LIABILITY FOR NCMEC-CONTRACTED VENDORS.—

(1) IN GENERAL.—Except as provided in paragraph (2), a civil claim or criminal charge may not be brought in any Federal or State court against a vendor contractually retained and designated by NCMEC to support the duties of NCMEC under section 404(b)(1)(K) of the Juvenile Justice and Delinquency Prevention Act of 1974 (34 U.S.C. 11293(b)(1)(K)).

(2) INTENTIONAL, RECKLESS, OR OTHER MISCONDUCT.—Paragraph (1) shall not apply to a claim or charge if the vendor—

(A) engaged in—

- (i) intentional misconduct; or
- (ii) negligent conduct; or

(B) acted, or failed to act—

- (i) with actual malice;
- (ii) with reckless disregard to a substantial risk of causing injury without legal justification; or
- (iii) for a purpose unrelated to the performance of any responsibility or function—

(I) set forth in paragraph (1); or

(II) pursuant to sections¹ 2258A, 2258C, 2702, or 2703.

(3) VENDOR CYBERSECURITY REQUIREMENTS.—With respect to any visual depiction provided pursuant to the duties of NCMEC under section 404(b)(1)(K) of the Juvenile Justice and Delinquency Prevention Act of 1974 (34 U.S.C. 11293(b)(1)(K)) that is stored or transferred by a vendor contractually retained and designated by NCMEC to support such duties of NCMEC, a vendor shall—

(A) secure such visual depiction in a manner that is consistent with the most recent version of the Cybersecurity Framework developed by the National Institute of Standards and Technology, or any successor thereto;

(B) minimize the number of employees that may be able to obtain access to such visual depiction;

(C) employ end-to-end encryption for data storage and transfer functions, or an equivalent technological standard;

(D) undergo an independent annual cybersecurity audit to determine whether such visual depiction is secured as required under subparagraph (A); and

(E) promptly address all issues identified by an audit described in subparagraph (D).

(e) LIMITED LIABILITY FOR REPORTING APPARENT CHILD PORNOGRAPHY BY AN INDIVIDUAL DEPICTED IN THE CHILD PORNOGRAPHY AS A MINOR, OR A REPRESENTATIVE OF SUCH INDIVIDUAL.—

(1) IN GENERAL.—Except as provided in paragraph (2), a civil claim or criminal charge may not be brought in any Federal or State court against an individual depicted in child pornog-

raphy as a minor, or a representative of such individual, arising from a report to the NCMEC CyberTipline by the individual, or the representative of such individual, of information that relates to the child pornography in which the individual is depicted as a minor, including a copy of the child pornography.

(2) INTENTIONAL, RECKLESS, OR OTHER MISCONDUCT.—Paragraph (1) shall not apply to a claim or charge if the individual, or the representative of such individual—

(A) engaged in—

- (i) intentional misconduct;
- (ii) negligent conduct; or
- (iii) any activity which constitutes a violation of section 2251; or

(B) acted, or failed to act—

- (i) with actual malice; or
- (ii) with reckless disregard to a substantial risk of causing injury without legal justification.

(3) MINIMIZING ACCESS.—With respect to any child pornography reported to the NCMEC CyberTipline by an individual depicted in the child pornography as a minor, or a representative of such individual, NCMEC shall minimize access to the child pornography and ensure the appropriate deletion of the child pornography, as set forth in section 2258D.

(4) DEFINITION.—For purposes of this subsection, the term “representative”, with respect to an individual depicted in child pornography—

(A) means—

(i) the parent or legal guardian of the individual, if the individual is under 18 years of age;

(ii) the legal guardian or other person appointed by a court to represent the individual;

(iii) a legal representative retained by the individual;

(iv) a representative of the estate of the individual; or

(v) a person who is a mandated reporter under section 226(a)(1) of the Victims of Child Abuse Act of 1990 (34 U.S.C. 20341(a)(1)); and

(B) does not include a person who engaged in any activity which constitutes a violation of section 2251.

(Added Pub. L. 110–401, title V, §501(a), Oct. 13, 2008, 122 Stat. 4248; amended Pub. L. 115–395, §3, Dec. 21, 2018, 132 Stat. 5292; Pub. L. 118–59, §2(a), May 7, 2024, 138 Stat. 1014.)

Editorial Notes

AMENDMENTS

2024—Pub. L. 118–59, §2(a)(1), substituted “the reporting, storage, and handling of certain visual depictions of apparent child pornography to the National Center for Missing & Exploited Children” for “providers or domain name registrars” in section catchline.

Subsec. (b). Pub. L. 118–59, §2(a)(2)(A), inserted “or charge” after “a claim” in introductory provisions.

Subsec. (b)(2)(C). Pub. L. 118–59, §2(a)(2)(B), struck out “this section,” after “or function under”.

Subsecs. (d), (e). Pub. L. 118–59, §2(a)(3), added subsecs. (d) and (e).

2018—Pub. L. 115-395, §3(1), substituted “providers, or domain name registrars” for “electronic communication service providers, remote computing service providers, or domain name registrar” in section catchline.

Subsec. (a). Pub. L. 115-395, §3(2), substituted “a provider” for “an electronic communication service provider, a remote computing service provider,” and substituted “such provider” for “such electronic communication service provider, remote computing service provider,” in two places.

Subsec. (b). Pub. L. 115-395, §3(3), substituted “provider” for “electronic communication service provider, remote computing service provider,” in two places in introductory provisions.

Subsec. (c). Pub. L. 115-395, §3(4), substituted “A provider” for “An electronic communication service provider, a remote computing service provider,” in introductory provisions and “visual depiction” for “image” wherever appearing in pars. (1) and (2).

Statutory Notes and Related Subsidiaries

APPLICABILITY

Pub. L. 118-59, §2(b), May 7, 2024, 138 Stat. 1016, provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to a civil claim or criminal charge that is filed on or after the date of enactment of this Act [May 7, 2024].”

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

(a) ELEMENTS.—

(1) IN GENERAL.—NCMEC may provide elements relating to any CyberTipline report to a provider for the sole and exclusive purpose of permitting that provider to stop the online sexual exploitation of children.

(2) INCLUSIONS.—The elements authorized under paragraph (1) may include hash values or other unique identifiers associated with a specific visual depiction, including an Internet location and any other elements provided in a CyberTipline report that can be used to identify, prevent, curtail, or stop the transmission of child pornography and prevent the online sexual exploitation of children.

(3) EXCLUSION.—The elements authorized under paragraph (1) may not include the actual visual depictions of apparent child pornography.

(b) USE BY PROVIDERS.—Any provider that receives elements relating to any CyberTipline report from NCMEC under this section may use such information only for the purposes described in this section, provided that such use shall not relieve the provider from reporting under section 2258A.

(c) LIMITATIONS.—Nothing in subsections¹ (a) or (b) requires providers receiving elements relating to any CyberTipline report from NCMEC to use the elements to stop the online sexual exploitation of children.

(d) PROVISION OF ELEMENTS TO LAW ENFORCEMENT.—NCMEC may make available to Federal, State, and local law enforcement, and to foreign law enforcement agencies described in section 2258A(c)(3), involved in the investigation of child sexual exploitation crimes elements, including hash values, relating to any apparent child pornography visual depiction reported to the CyberTipline.

(e) USE BY LAW ENFORCEMENT.—Any foreign, Federal, State, or local law enforcement agency that receives elements relating to any apparent child pornography visual depiction from NCMEC under subsection (d) may use such elements only in the performance of the official duties of that agency to investigate child sexual exploitation crimes, and prevent future sexual victimization of children.

(Added Pub. L. 110-401, title V, §501(a), Oct. 13, 2008, 122 Stat. 4249; amended Pub. L. 115-395, §4, Dec. 21, 2018, 132 Stat. 5292.)

Editorial Notes

AMENDMENTS

2018—Pub. L. 115-395, §4(1), substituted “to reports made to” for “to images reported to” in section catchline.

Subsec. (a)(1). Pub. L. 115-395, §4(2)(A), substituted “NCMEC may provide elements relating to any CyberTipline report to a provider” for “The National Center for Missing and Exploited Children may provide elements relating to any apparent child pornography image of an identified child to an electronic communication service provider or a remote computing service provider” and “that provider to stop the online sexual exploitation of children” for “that electronic communication service provider or remote computing service provider to stop the further transmission of images”.

Subsec. (a)(2). Pub. L. 115-395, §4(2)(B), substituted “specific visual depiction, including an Internet location and any other elements provided in a CyberTipline report that can be used to identify, prevent, curtail, or stop the transmission of child pornography and prevent the online sexual exploitation of children” for “specific image, Internet location of images, and other technological elements that can be used to identify and stop the transmission of child pornography”.

Subsec. (a)(3). Pub. L. 115-395, §4(2)(C), substituted “actual visual depictions of apparent child pornography” for “actual images”.

Subsec. (b). Pub. L. 115-395, §4(3), in heading, substituted “Providers” for “Electronic Communication Service Providers and Remote Computing Service Providers” and, in text, substituted “provider that receives elements relating to any CyberTipline report from NCMEC” for “electronic communication service provider or remote computing service provider that receives elements relating to any apparent child pornography image of an identified child from the National Center for Missing and Exploited Children” and “shall not relieve the provider from reporting” for “shall not relieve that electronic communication service provider or remote computing service provider from its reporting obligations”.

Subsec. (c). Pub. L. 115-395, §4(4), substituted “providers” for “electronic communication service providers or remote computing service providers”, “CyberTipline report from NCMEC” for “apparent child pornography image of an identified child from the National Center for Missing and Exploited Children”, and “online sexual exploitation of children” for “further transmission of the images”.

Subsec. (d). Pub. L. 115-395, §4(5), substituted “NCMEC may” for “The National Center for Missing and Exploited Children shall”, inserted “, and to foreign law enforcement agencies described in section 2258A(c)(3),” after “local law enforcement”, and substituted “investigation of child sexual exploitation” for “investigation of child pornography” and “visual depiction reported to the CyberTipline” for “image of an identified child reported to the National Center for Missing and Exploited Children”.

Subsec. (e). Pub. L. 115-395, §4(6), inserted “foreign,” before “Federal” and substituted “visual depiction

¹ So in original. Probably should be “subsection”.