

(Added Pub. L. 101-647, title II, §226(g)(1), Nov. 29, 1990, 104 Stat. 4808; amended Pub. L. 109-248, title II, §209, July 27, 2006, 120 Stat. 615; Pub. L. 115-126, title I, §101(b), Feb. 14, 2018, 132 Stat. 319.)

Editorial Notes

REFERENCES IN TEXT

Section 226 of the Victims of Child Abuse Act of 1990, referred to in text, is classified to section 20341 of Title 34, Crime Control and Law Enforcement.

CODIFICATION

Another section 2258 was renumbered section 2260 of this title.

AMENDMENTS

2018—Pub. L. 115-126 inserted “or a covered individual as described in subsection (a)(2) of such section 226 who,” after “facility,”.

2006—Pub. L. 109-248 substituted “fined under this title or imprisoned not more than 1 year or both” for “guilty of a Class B misdemeanor”.

§ 2258A. Reporting requirements of providers

(a) DUTY TO REPORT.—

(1) IN GENERAL.—

(A) DUTY.—In order to reduce the proliferation of online child sexual exploitation and to prevent the online sexual exploitation of children, a provider—

(i) shall, as soon as reasonably possible after obtaining actual knowledge of any facts or circumstances described in paragraph (2)(A), take the actions described in subparagraph (B); and

(ii) may, after obtaining actual knowledge of any facts or circumstances described in paragraph (2)(B), take the actions described in subparagraph (B).

(B) ACTIONS DESCRIBED.—The actions described in this subparagraph are—

(i) providing to the CyberTipline of NCMEC, or any successor to the CyberTipline operated by NCMEC, the mailing address, telephone number, facsimile number, electronic mailing address of, and individual point of contact for, such provider; and

(ii) making a report of such facts or circumstances to the CyberTipline, or any successor to the CyberTipline operated by NCMEC.

(2) FACTS OR CIRCUMSTANCES.—

(A) APPARENT VIOLATIONS.—The facts or circumstances described in this subparagraph are any facts or circumstances from which there is an apparent violation of section 2251, 2251A, 2252, 2252A, 2252B, or 2260 that involves child pornography.

(B) IMMINENT VIOLATIONS.—The facts or circumstances described in this subparagraph are any facts or circumstances which indicate a violation of any of the sections described in subparagraph (A) involving child pornography may be planned or imminent.

(b) CONTENTS OF REPORT.—In an effort to prevent the future sexual victimization of children, and to the extent the information is within the

custody or control of a provider, the facts and circumstances included in each report under subsection (a)(1) may, at the sole discretion of the provider, include the following information:

(1) INFORMATION ABOUT THE INVOLVED INDIVIDUAL.—Information relating to the identity of any individual who appears to have violated or plans to violate a Federal law described in subsection (a)(2), which may, to the extent reasonably practicable, include the electronic mail address, Internet Protocol address, uniform resource locator, payment information (excluding personally identifiable information), or any other identifying information, including self-reported identifying information.

(2) HISTORICAL REFERENCE.—Information relating to when and how a customer or subscriber of a provider uploaded, transmitted, or received content relating to the report or when and how content relating to the report was reported to, or discovered by the provider, including a date and time stamp and time zone.

(3) GEOGRAPHIC LOCATION INFORMATION.—Information relating to the geographic location of the involved individual or website, which may include the Internet Protocol address or verified address, or, if not reasonably available, at least one form of geographic identifying information, including area code or zip code, provided by the customer or subscriber, or stored or obtained by the provider.

(4) VISUAL DEPICTIONS OF APPARENT CHILD PORNOGRAPHY.—Any visual depiction of apparent child pornography or other content relating to the incident such report is regarding.

(5) COMPLETE COMMUNICATION.—The complete communication containing any visual depiction of apparent child pornography or other content, including—

(A) any data or information regarding the transmission of the communication; and

(B) any visual depictions, data, or other digital files contained in, or attached to, the communication.

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

(1) Any Federal law enforcement agency that is involved in the investigation of child sexual exploitation, kidnapping, or enticement crimes.

(2) Any State or local law enforcement agency that is involved in the investigation of child sexual exploitation.

(3) A foreign law enforcement agency designated by the Attorney General under subsection (d)(3) or a foreign law enforcement agency 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.

(d) ATTORNEY GENERAL RESPONSIBILITIES.—

(1) IN GENERAL.—The Attorney General shall enforce this section.

(2) DESIGNATION OF FEDERAL AGENCIES.—The Attorney General may designate a Federal law enforcement agency or agencies to which a report shall be forwarded under subsection (c)(1).

(3) DESIGNATION OF FOREIGN AGENCIES.—The Attorney General may—

(A) in consultation with the Secretary of State, designate foreign law enforcement agencies to which a report may be forwarded under subsection (c)(3);

(B) establish the conditions under which such a report may be forwarded to such agencies; and

(C) develop a process for foreign law enforcement agencies to request assistance from Federal law enforcement agencies in obtaining evidence related to a report referred under subsection (c)(3).

(4) REPORTING DESIGNATED FOREIGN AGENCIES.—The Attorney General may maintain and make available to the Department of State, NCMEC, providers, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives a list of the foreign law enforcement agencies designated under paragraph (3).

(5) NOTIFICATION TO PROVIDERS.—

(A) IN GENERAL.—NCMEC may notify a provider of the information described in subparagraph (B), if—

(i) a provider notifies NCMEC that the provider is making a report under this section as the result of a request by a foreign law enforcement agency; and

(ii) NCMEC forwards the report described in clause (i) to—

(I) the requesting foreign law enforcement agency; or

(II) another agency in the same country designated by the Attorney General under paragraph (3) or that has an established relationship with the Federal Bureau of Investigation, U.S. Immigration and Customs Enforcement, or INTERPOL and is involved in the investigation of child sexual exploitation, kidnapping, or enticement crimes.

(B) INFORMATION DESCRIBED.—The information described in this subparagraph is—

(i) the identity of the foreign law enforcement agency to which the report was forwarded; and

(ii) the date on which the report was forwarded.

(C) NOTIFICATION OF INABILITY TO FORWARD REPORT.—If a provider notifies NCMEC that the provider is making a report under this section as the result of a request by a foreign law enforcement agency and NCMEC is unable to forward the report as described in subparagraph (A)(ii), NCMEC shall notify the provider that NCMEC was unable to forward the report.

(e) FAILURE TO REPORT.—A provider that knowingly and willfully fails to make a report required under subsection (a)(1) shall be fined—

(1) in the case of an initial knowing and willful failure to make a report, not more than \$150,000; and

(2) in the case of any second or subsequent knowing and willful failure to make a report, not more than \$300,000.

(f) PROTECTION OF PRIVACY.—Nothing in this section shall be construed to require a provider to—

(1) monitor any user, subscriber, or customer of that provider;

(2) monitor the content of any communication of any person described in paragraph (1); or

(3) affirmatively search, screen, or scan for facts or circumstances described in sections (a) and (b).

(g) CONDITIONS OF DISCLOSURE INFORMATION CONTAINED WITHIN REPORT.—

(1) IN GENERAL.—Except as provided in paragraph (2), a law enforcement agency that receives a report under subsection (c) shall not disclose any information contained in that report.

(2) PERMITTED DISCLOSURES BY LAW ENFORCEMENT.—

(A) IN GENERAL.—A law enforcement agency may disclose information in a report received under subsection (c)—

(i) to an attorney for the government for use in the performance of the official duties of that attorney;

(ii) to such officers and employees of that law enforcement agency, as may be necessary in the performance of their investigative and recordkeeping functions;

(iii) to such other government personnel (including personnel of a State or subdivision of a State) as are determined to be necessary by an attorney for the government to assist the attorney in the performance of the official duties of the attorney in enforcing Federal criminal law;

(iv) if the report discloses a violation of State criminal law, to an appropriate official of a State or subdivision of a State for the purpose of enforcing such State law;

(v) to a defendant in a criminal case or the attorney for that defendant, subject to the terms and limitations under section 3509(m) or a similar State law, to the extent the information relates to a criminal charge pending against that defendant;

(vi) subject to subparagraph (B), to a provider if necessary to facilitate response to legal process issued in connection to a criminal investigation, prosecution, or post-conviction remedy relating to that report; and

(vii) as ordered by a court upon a showing of good cause and pursuant to any protective orders or other conditions that the court may impose.

(B) LIMITATION.—Nothing in subparagraph (A)(vi) authorizes a law enforcement agency to provide visual depictions of apparent child pornography to a provider.

(3) PERMITTED DISCLOSURES BY NCMEC.—NCMEC may disclose by mail, electronic transmission, or other reasonable means, information received in a report under subsection (a) only to—

(A) any Federal law enforcement agency designated by the Attorney General under subsection (d)(2) or that is involved in the investigation of child sexual exploitation, kidnapping, or enticement crimes;

(B) any State, local, or tribal law enforcement agency involved in the investigation of child sexual exploitation, kidnapping, or enticement crimes;

(C) any foreign law enforcement agency designated by the Attorney General under subsection (d)(3) 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;

(D) a provider as described in section 2258C; and

(E) respond to legal process, as necessary.

(4) PERMITTED DISCLOSURE BY A PROVIDER.—A provider that submits a report under subsection (a)(1) may disclose by mail, electronic transmission, or other reasonable means, information, including visual depictions contained in the report, in a manner consistent with permitted disclosures under paragraphs (3) through (8) of section 2702(b) only to a law enforcement agency described in subparagraph (A), (B), or (C) of paragraph (3), to NCMEC, or as necessary to respond to legal process.

(h) PRESERVATION.—

(1) IN GENERAL.—For the purposes of this section, 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.

(2) PRESERVATION OF COMMINGLED CONTENT.—Pursuant to paragraph (1), a provider shall preserve any visual depictions, data, or other digital files that are reasonably accessible and may provide context or additional information about the reported material or person.

(3) PROTECTION OF PRESERVED MATERIALS.—A provider preserving materials under this section shall maintain the materials in a secure location and take appropriate steps to limit access by agents or employees of the service to the materials to that access necessary to comply with the requirements of this subsection.

(4) AUTHORITIES AND DUTIES NOT AFFECTED.—Nothing in this section shall be construed as replacing, amending, or otherwise interfering with the authorities and duties under section 2703.

(Added Pub. L. 110-401, title V, §501(a), Oct. 13, 2008, 122 Stat. 4243; amended Pub. L. 115-395, §2, Dec. 21, 2018, 132 Stat. 5287.)

Editorial Notes

AMENDMENTS

2018—Pub. L. 115-395, §2(1), substituted “providers” for “electronic communication service providers and remote computing service providers” in section catchline.

Subsec. (a)(1). Pub. L. 115-395, §2(2)(A), amended par. (1) generally. Prior to amendment, par. (1) related to general reporting duty of electronic communication service providers.

Subsec. (a)(2). Pub. L. 115-395, §2(2)(B), amended par. (2) generally. Prior to amendment, par. (2) described facts or circumstances of apparent violations requiring report.

Subsec. (b). Pub. L. 115-395, §2(3)(A), in introductory provisions, substituted “In an effort to prevent the future sexual victimization of children, and to the extent the information is within the custody or control of a provider, the facts and circumstances included in each report under subsection (a)(1) may, at the sole discretion of the provider, include” for “To the extent the information is within the custody or control of an electronic communication service provider or a remote computing service provider, the facts and circumstances included in each report under subsection (a)(1) may include”.

Subsec. (b)(1). Pub. L. 115-395, §2(3)(B), inserted “or plans to violate” after “who appears to have violated” and “payment information (excluding personally identifiable information),” after “uniform resource locator.”.

Subsec. (b)(2). Pub. L. 115-395, §2(3)(C), substituted “a provider uploaded, transmitted, or received content relating to the report or when and how content relating to the report was reported to, or discovered by the provider” for “an electronic communication service or a remote computing service uploaded, transmitted, or received apparent child pornography or when and how apparent child pornography was reported to, or discovered by the electronic communication service provider or remote computing service provider”.

Subsec. (b)(3). Pub. L. 115-395, §2(3)(D), amended par. (3) generally. Prior to amendment, text read as follows: “(A) IN GENERAL.—Information relating to the geographic location of the involved individual or website, which may include the Internet Protocol address or verified billing address, or, if not reasonably available, at least 1 form of geographic identifying information, including area code or zip code.

“(B) INCLUSION.—The information described in subparagraph (A) may also include any geographic information provided to the electronic communication service or remote computing service by the customer or subscriber.”

Subsec. (b)(4). Pub. L. 115-395, §2(3)(E), in heading, substituted “Visual depictions” for “Images” and, in text, substituted “visual depiction” for “image” and inserted “or other content” after “apparent child pornography”.

Subsec. (b)(5). Pub. L. 115-395, §2(3)(F), substituted “visual depiction” for “image” and inserted “or other content” after “apparent child pornography” in introductory provisions and substituted “visual depictions” for “images” in subpar. (B).

Subsec. (c). Pub. L. 115-395, §2(4), amended subsec. (c) generally. Prior to amendment, subsec. (c) related to forwarding of reports to domestic and foreign law enforcement agencies.

Subsec. (d)(2). Pub. L. 115-395, §2(5)(A), substituted “may designate a” for “shall designate promptly the”.

Subsec. (d)(3). Pub. L. 115-395, §2(5)(B), substituted “may” for “shall promptly” in introductory provisions and “designate” for “designate the” in subpar. (A).

Subsec. (d)(4). Pub. L. 115-395, §2(5)(C), substituted “may” for “shall”, “NCMEC” for “the National Center for Missing and Exploited Children”, and “providers” for “electronic communication service providers, remote computing service providers”.

Subsec. (d)(5). Pub. L. 115-395, §2(5)(E), (F), redesignated par. (6) as (5) and amended it generally. Prior to amendment, par. related to contents of Center’s notification to providers of report forwarded at request of foreign law enforcement agency.

Pub. L. 115-395, §2(5)(D), struck out par. (5). Text read as follows: “It is the sense of Congress that—

“(A) combating the international manufacturing, possession, and trade in online child pornography requires cooperation with competent, qualified, and appropriately trained foreign law enforcement agencies; and

“(B) the Attorney General, in cooperation with the Secretary of State, should make a substantial effort to expand the list of foreign agencies designated under paragraph (3).”

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.

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

(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 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 this section,¹ sections 2258A, 2258C, 2702, or 2703.

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

(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.

(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.)

¹ So in original. The comma probably should be “or”.