

maintains individually identifiable information regarding all performers, including minor performers, employed by that person, pursuant to Federal and State tax, labor, and other laws, labor agreements, or otherwise pursuant to industry standards, where such information includes the name, address, and date of birth of the performer; and

(iii) is not produced, marketed or made available by the person described in clause (ii) to another in circumstances such that an ordinary person would conclude that the matter contains a visual depiction that is child pornography as defined in section 2256(8); or

(B)(i) is subject to the authority and regulation of the Federal Communications Commission acting in its capacity to enforce section 1464 of this title, regarding the broadcast of obscene, indecent or profane programming; and

(ii) is created as a part of a commercial enterprise by a person who certifies to the Attorney General that such person regularly and in the normal course of business collects and maintains individually identifiable information regarding all performers, including minor performers, employed by that person, pursuant to Federal and State tax, labor, and other laws, labor agreements, or otherwise pursuant to industry standards, where such information includes the name, address, and date of birth of the performer.

(2) Nothing in subparagraphs (A) and (B) of paragraph (1) shall be construed to exempt any matter that contains any visual depiction that is child pornography, as defined in section 2256(8), or is actual sexually explicit conduct within the definitions in clauses (i) through (iv) of section 2256(2)(A).

(i)(1) Whoever violates this section shall be imprisoned for not more than 1 year, and² fined in accordance with the provisions of this title, or both.

(2) Whoever violates this section in an effort to conceal a substantive offense involving the causing, transporting, permitting or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct in violation of this title, or to conceal a substantive offense that involved trafficking in material involving the sexual exploitation of a minor, including receiving, transporting, advertising, or possessing material involving the sexual exploitation of a minor with intent to traffic, in violation of this title, shall be imprisoned for not more than 5 years and² fined in accordance with the provisions of this title, or both.

(3) Whoever violates paragraph (2) after having been previously convicted of a violation punishable under that paragraph shall be imprisoned for any period of years not more than 10 years but not less than 2 years, and² fined in accordance with the provisions of this title, or both.

The³ provisions of this section shall not become effective until 90 days after the final regulations implementing this section are published

in the Federal Register. The provisions of this section shall not apply to any matter, or image therein, produced, in whole or in part, prior to the effective date of this section.

(k) On an annual basis, the Attorney General shall submit a report to Congress—

(1) concerning the enforcement of this section and section 2257 by the Department of Justice during the previous 12-month period; and

(2) including—

(A) the number of inspections undertaken pursuant to this section and section 2257;

(B) the number of open investigations pursuant to this section and section 2257;

(C) the number of cases in which a person has been charged with a violation of this section and section 2257; and

(D) for each case listed in response to subparagraph (C), the name of the lead defendant, the federal district in which the case was brought, the court tracking number, and a synopsis of the violation and its disposition, if any, including settlements, sentences, recoveries and penalties.

(Added Pub. L. 109-248, title V, § 503(a), July 27, 2006, 120 Stat. 626.)

REFERENCES IN TEXT

The date of enactment of this subsection, referred to in subsec. (f)(4)(A), means the date of enactment of Pub. L. 109-248, which was approved July 27, 2006.

Final regulations implementing this section, referred to in the undesignated subsec. preceding subsec. (k), were published in the Federal Register on Dec. 18, 2008, see 73 F.R. 77432.

§ 2258. Failure to report child abuse

A person who, while engaged in a professional capacity or activity described in subsection (b) of section 226 of the Victims of Child Abuse Act of 1990 on Federal land or in a federally operated (or contracted) facility, learns of facts that give reason to suspect that a child has suffered an incident of child abuse, as defined in subsection (c) of that section, and fails to make a timely report as required by subsection (a) of that section, shall be fined under this title or imprisoned not more than 1 year or both.

(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.)

REFERENCES IN TEXT

Section 226 of the Victims of Child Abuse Act of 1990, referred to in text, is classified to section 13031 of Title 42, The Public Health and Welfare.

CODIFICATION

Another section 2258 was renumbered section 2260 of this title.

AMENDMENTS

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 electronic communication service providers and remote computing service providers

(a) DUTY TO REPORT.—

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

² So in original.

³ So in original. Probably should be “(j) The”.

(1) **IN GENERAL.**—Whoever, while engaged in providing an electronic communication service or a remote computing service to the public through a facility or means of interstate or foreign commerce, obtains actual knowledge of any facts or circumstances described in paragraph (2) shall, as soon as reasonably possible—

(A) provide to the CyberTipline of the National Center for Missing and Exploited Children, or any successor to the CyberTipline operated by such center, the mailing address, telephone number, facsimile number, electronic mail address of, and individual point of contact for, such electronic communication service provider or remote computing service provider; and

(B) make a report of such facts or circumstances to the CyberTipline, or any successor to the CyberTipline operated by such center.

(2) **FACTS OR CIRCUMSTANCES.**—The facts or circumstances described in this paragraph are any facts or circumstances from which there is an apparent violation of—

(A) section 2251, 2251A, 2252, 2252A, 2252B, or 2260 that involves child pornography; or

(B) section 1466A.

(b) **CONTENTS OF REPORT.**—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 the following information:

(1) **INFORMATION ABOUT THE INVOLVED INDIVIDUAL.**—Information relating to the identity of any individual who appears to have violated 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, or any other identifying information, including self-reported identifying information.

(2) **HISTORICAL REFERENCE.**—Information relating to when and how a customer or subscriber of 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, including a date and time stamp and time zone.

(3) **GEOGRAPHIC LOCATION INFORMATION.**—

(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.

(4) **IMAGES OF APPARENT CHILD PORNOGRAPHY.**—Any image of apparent child pornog-

raphy relating to the incident such report is regarding.

(5) **COMPLETE COMMUNICATION.**—The complete communication containing any image of apparent child pornography, including—

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

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

(c) **FORWARDING OF REPORT TO LAW ENFORCEMENT.**—

(1) **IN GENERAL.**—The National Center for Missing and Exploited Children shall forward each report made under subsection (a)(1) to any appropriate law enforcement agency designated by the Attorney General under subsection (d)(2).

(2) **STATE AND LOCAL LAW ENFORCEMENT.**—The National Center for Missing and Exploited Children may forward any report made under subsection (a)(1) to an appropriate law enforcement official of a State or political subdivision of a State for the purpose of enforcing State criminal law.

(3) **FOREIGN LAW ENFORCEMENT.**—

(A) **IN GENERAL.**—The National Center for Missing and Exploited Children may forward any report made under subsection (a)(1) to any appropriate foreign law enforcement agency designated by the Attorney General under subsection (d)(3), subject to the conditions established by the Attorney General under subsection (d)(3).

(B) **TRANSMITTAL TO DESIGNATED FEDERAL AGENCIES.**—If the National Center for Missing and Exploited Children forwards a report to a foreign law enforcement agency under subparagraph (A), the National Center for Missing and Exploited Children shall concurrently provide a copy of the report and the identity of the foreign law enforcement agency to—

(i) the Attorney General; or

(ii) the Federal law enforcement agency or agencies designated by the Attorney General under subsection (d)(2).

(d) **ATTORNEY GENERAL RESPONSIBILITIES.**—

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

(2) **DESIGNATION OF FEDERAL AGENCIES.**—The Attorney General shall designate promptly the 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 shall promptly—

(A) in consultation with the Secretary of State, designate the 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 shall maintain

and make available to the Department of State, the National Center for Missing and Exploited Children, electronic communication service providers, remote computing service 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) SENSE OF CONGRESS REGARDING DESIGNATION OF FOREIGN AGENCIES.—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).

(6) NOTIFICATION TO PROVIDERS.—If an electronic communication service provider or remote computing service provider notifies the National Center for Missing and Exploited Children that the electronic communication service provider or remote computing service provider is making a report under this section as the result of a request by a foreign law enforcement agency, the National Center for Missing and Exploited Children shall—

(A) if the Center forwards the report to the requesting foreign law enforcement agency or another agency in the same country designated by the Attorney General under paragraph (3), notify the electronic communication service provider or remote computing service provider of—

(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; or

(B) notify the electronic communication service provider or remote computing service provider if the Center declines to forward the report because the Center, in consultation with the Attorney General, determines that no law enforcement agency in the foreign country has been designated by the Attorney General under paragraph (3).

(e) FAILURE TO REPORT.—An electronic communication service provider or remote computing service 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 an electronic communication service provider or a remote computing service 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 seek 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 an electronic communication service provider or remote computing 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) LIMITATIONS.—

(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.

(3) PERMITTED DISCLOSURES BY THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN.—The National Center for Missing and Exploited Children may disclose information

received in a report under subsection (a) only—

(A) to any Federal law enforcement agency designated by the Attorney General under subsection (d)(2);

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

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

(D) to an electronic communication service provider or remote computing service provider as described in section 2258C.

(h) PRESERVATION.—

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

(2) PRESERVATION OF REPORT.—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.

(3) PRESERVATION OF COMMINGLED IMAGES.—Pursuant to paragraph (1), an electronic communication service provider or a remote computing service shall preserve any images, data, or other digital files that are commingled or interspersed among the images of apparent child pornography within a particular communication or user-created folder or directory.

(4) PROTECTION OF PRESERVED MATERIALS.—An electronic communications service or remote computing service 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.

(5) 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.)

§ 2258B. Limited liability for electronic communication service providers, remote computing service providers, or domain name registrar¹

(a) IN GENERAL.—Except as provided in subsection (b), a civil claim or criminal charge against an electronic communication service provider, a remote computing service provider, or domain² name registrar, including any director, officer, employee, or agent of such electronic communication service provider, remote computing service provider, or domain name registrar arising from the performance of the re-

porting or preservation responsibilities of such electronic communication service provider, remote computing service 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 electronic communication service provider, remote computing service provider, or domain name registrar, or a director, officer, employee, or agent of that electronic communication service provider, remote computing service 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,³ sections 2258A, 2258C, 2702, or 2703.

(c) MINIMIZING ACCESS.—An electronic communication service provider, a remote computing service provider, and domain² name registrar shall—

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

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

(Added Pub. L. 110-401, title V, §501(a), Oct. 13, 2008, 122 Stat. 4248.)

§ 2258C. Use to combat child pornography of technical elements relating to images reported to the CyberTipline

(a) ELEMENTS.—

(1) IN GENERAL.—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 for the sole and exclusive purpose of permitting that electronic communication service provider or remote computing service provider to stop the further transmission of images.

(2) INCLUSIONS.—The elements authorized under paragraph (1) may include hash values or other unique identifiers associated with a specific image, Internet location of images, and other technological elements that can be used to identify and stop the transmission of child pornography.

(3) EXCLUSION.—The elements authorized under paragraph (1) may not include the actual images.

(b) USE BY ELECTRONIC COMMUNICATION SERVICE PROVIDERS AND REMOTE COMPUTING SERVICE PROVIDERS.—Any electronic communication service provider or remote computing service provider that receives elements relating to any apparent child pornography image of an identi-

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

² So in original. Probably should be preceded by “a”.

³ So in original. Probably should be followed by “or”.