

mote 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 identified child from the National Center for Missing and Exploited Children under this section may

use such information only for the purposes described in this section, provided that such use shall not relieve that electronic communication service provider or remote computing service provider from its reporting obligations under section 2258A.

(c) **LIMITATIONS.**—Nothing in subsections¹ (a) or (b) requires electronic communication service providers or remote computing service providers receiving elements relating to any apparent child pornography image of an identified child from the National Center for Missing and Exploited Children to use the elements to stop the further transmission of the images.

(d) **PROVISION OF ELEMENTS TO LAW ENFORCEMENT.**—The National Center for Missing and Exploited Children shall make available to Federal, State, and local law enforcement involved in the investigation of child pornography crimes elements, including hash values, relating to any apparent child pornography image of an identified child reported to the National Center for Missing and Exploited Children.

(e) **USE BY LAW ENFORCEMENT.**—Any Federal, State, or local law enforcement agency that receives elements relating to any apparent child pornography image of an identified child from the National Center for Missing and Exploited Children under section¹ (d) may use such elements only in the performance of the official duties of that agency to investigate child pornography crimes.

(Added Pub. L. 110–401, title V, §501(a), Oct. 13, 2008, 122 Stat. 4249.)

§ 2258D. Limited liability for the National Center for Missing and Exploited Children

(a) **IN GENERAL.**—Except as provided in subsections (b) and (c), a civil claim or criminal charge against the National Center for Missing and Exploited Children, including any director, officer, employee, or agent of such center, arising from the performance of the CyberTipline responsibilities or functions of such center, as described in this section, section 2258A or 2258C of this title, or section 404 of the Missing Children's Assistance Act (42 U.S.C. 5773), or from the effort of such center to identify child victims 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 National Center for Missing and Exploited Children, or a director, officer, employee, or agent of such center—

- (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 injury without legal justification; or

(C) for a purpose unrelated to the performance of any responsibility or function under this section, section 2258A or 2258C of this title, or section 404 of the Missing Children's Assistance Act (42 U.S.C. 5773).

(c) **ORDINARY BUSINESS ACTIVITIES.**—Subsection (a) shall not apply to an act or omission

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

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

relating to an ordinary business activity, including general administration or operations, the use of motor vehicles, or personnel management.

(d) **MINIMIZING ACCESS.**—The National Center for Missing and Exploited Children shall—

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

(2) ensure that any such image is permanently destroyed upon notification from a law enforcement agency.

(Added Pub. L. 110–401, title V, §501(a), Oct. 13, 2008, 122 Stat. 4250.)

§ 2258E. Definitions

In sections 2258A through 2258D—

(1) the terms “attorney for the government” and “State” have the meanings given those terms in rule 1 of the Federal Rules of Criminal Procedure;

(2) the term “electronic communication service” has the meaning given that term in section 2510;

(3) the term “electronic mail address” has the meaning given that term in section 3 of the CAN–SPAM Act of 2003 (15 U.S.C. 7702);

(4) the term “Internet” has the meaning given that term in section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note);

(5) the term “remote computing service” has the meaning given that term in section 2711; and

(6) the term “website” means any collection of material placed in a computer server-based file archive so that it is publicly accessible, over the Internet, using hypertext transfer protocol or any successor protocol.

(Added Pub. L. 110–401, title V, §501(a), Oct. 13, 2008, 122 Stat. 4250.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in par. (1), are set out in the Appendix to this title.

Section 1101 of the Internet Tax Freedom Act, referred to in par. (4), is section 1101 of title XI of div. C of Pub. L. 105–277, which is set out in a note under section 151 of Title 47, Telecommunications.

§ 2259. Mandatory restitution

(a) **IN GENERAL.**—Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter.

(b) **SCOPE AND NATURE OF ORDER.**—

(1) **DIRECTIONS.**—The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim’s losses as determined by the court pursuant to paragraph (2).

(2) **ENFORCEMENT.**—An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.

(3) **DEFINITION.**—For purposes of this subsection, the term “full amount of the victim’s losses” includes any costs incurred by the victim for—

(A) medical services relating to physical, psychiatric, or psychological care;

(B) physical and occupational therapy or rehabilitation;

(C) necessary transportation, temporary housing, and child care expenses;

(D) lost income;

(E) attorneys’ fees, as well as other costs incurred; and

(F) any other losses suffered by the victim as a proximate result of the offense.

(4) **ORDER MANDATORY.**—(A) The issuance of a restitution order under this section is mandatory.

(B) A court may not decline to issue an order under this section because of—

(i) the economic circumstances of the defendant; or

(ii) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

(c) **DEFINITION.**—For purposes of this section, the term “victim” means the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim’s estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.

(Added Pub. L. 103–322, title IV, §40113(b)(1), Sept. 13, 1994, 108 Stat. 1907; amended Pub. L. 104–132, title II, §205(c), Apr. 24, 1996, 110 Stat. 1231.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–132, §205(c)(1), inserted “or 3663A” after “3663”.

Subsec. (b)(1). Pub. L. 104–132, §205(c)(2)(A), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The order of restitution under this section shall direct that—

“(A) the defendant pay to the victim (through the appropriate court mechanism) the full amount of the victim’s losses as determined by the court, pursuant to paragraph (3); and

“(B) the United States Attorney enforce the restitution order by all available and reasonable means.”

Subsec. (b)(2). Pub. L. 104–132, §205(c)(2)(B), struck out “by victim” after “Enforcement” in heading and amended text generally. Prior to amendment, text read as follows: “An order of restitution may also be enforced by a victim named in the order to receive the restitution in the same manner as a judgment in a civil action.”

Subsec. (b)(4)(C), (D). Pub. L. 104–132, §205(c)(2)(C), struck out subpars. (C) and (D), which related to court’s consideration of economic circumstances of defendant in determining schedule of payment of restitution orders, and court’s entry of nominal restitution awards where economic circumstances of defendant do not allow for payment of restitution, respectively.

Subsec. (b)(5) to (10). Pub. L. 104–132, §205(c)(2)(D), struck out pars. (5) to (10), which related, respectively, to more than 1 offender, more than 1 victim, payment schedule, setoff, effect on other sources of compensation, and condition of probation or supervised release.

Subsec. (c). Pub. L. 104–132, §205(c)(3), (4), redesignated subsec. (f) as (c) and struck out former subsec. (c) relating to proof of claim.