

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 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