

prevent future victimization, and except as provided in subsections (b) and (c), a civil claim or criminal charge against NCMEC, including any director, officer, employee, or agent of NCMEC, arising from the performance of the CyberTipline responsibilities or functions of NCMEC, as described in this section, section 2258A or 2258C of this title, or section 404 of the Missing Children's Assistance Act (34 U.S.C. 11293), or from the efforts of NCMEC 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 NCMEC, or a director, officer, employee, or agent of NCMEC—

(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 (34 U.S.C. 11293).

(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.**—NCMEC shall—

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

(2) ensure that any such visual depiction 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; amended Pub. L. 115-395, §6, Dec. 21, 2018, 132 Stat. 5294.)

#### AMENDMENTS

2018—Pub. L. 115-395, §5(1), substituted “NCMEC” for “the National Center for Missing and Exploited Children” in section catchline.

Subsec. (a). Pub. L. 115-395, §5(2), substituted “Pursuant to its clearinghouse role as a private, nonprofit organization and its mission to help find missing children, reduce online sexual exploitation of children and prevent future victimization, and except as provided” for “Except as provided”, “against NCMEC” for “against the National Center for Missing and Exploited Children”, “(34 U.S.C. 11293)” for “(42 U.S.C. 5773)”, “of NCMEC” for “of such center” wherever appearing, and “from the efforts” for “from the effort”.

Subsec. (b). Pub. L. 115-395, §5(3), substituted “if NCMEC” for “if the National Center for Missing and Exploited Children”, “of NCMEC” for “of such center”, and “(34 U.S.C. 11293)” for “(42 U.S.C. 5773)”.

Subsec. (d). Pub. L. 115-395, §5(4), substituted “NCMEC” for “The National Center for Missing and Exploited Children” in introductory provisions and “visual depiction” for “image” in pars. (1) and (2).

#### § 2258E. Definitions

In sections 2258A through 2258E—

(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;

(6) the term “provider” means an electronic communication service provider or remote computing service;

(7) the term “NCMEC” means the National Center for Missing & Exploited Children; and

(8) 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; amended Pub. L. 115-395, §6, Dec. 21, 2018, 132 Stat. 5294.)

#### 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.

#### AMENDMENTS

2018—Pub. L. 115-395, §6(1), substituted “2258E” for “2258D” in introductory provisions.

Pars. (6) to (8). Pub. L. 115-395, §6(2)–(4), added pars. (6) and (7) and redesignated former par. (6) as (8).

#### § 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.**—Except as provided in paragraph (2), 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.

(2) **RESTITUTION FOR TRAFFICKING IN CHILD PORNOGRAPHY.**—If the defendant was convicted of trafficking in child pornography, the court shall order restitution under this section in an amount to be determined by the court as follows:

(A) **DETERMINING THE FULL AMOUNT OF A VICTIM'S LOSSES.**—The court shall determine the full amount of the victim's losses that were incurred or are reasonably projected to be incurred by the victim as a result of the trafficking in child pornography depicting the victim.

(B) **DETERMINING A RESTITUTION AMOUNT.**—After completing the determination required under subparagraph (A), the court shall order restitution in an amount that reflects the defendant's relative role in the causal process that underlies the victim's losses, but which is no less than \$3,000.