

logical elements that can be used to identify and stop the transmission of child pornography”.

Subsec. (a)(3). Pub. L. 115-395, §4(2)(C), substituted “actual visual depictions of apparent child pornography” for “actual images”.

Subsec. (b). Pub. L. 115-395, §4(3), in heading, substituted “Providers” for “Electronic Communication Service Providers and Remote Computing Service Providers” and, in text, substituted “provider that receives elements relating to any CyberTipline report from NCMEC” for “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” and “shall not relieve the provider from reporting” for “shall not relieve that electronic communication service provider or remote computing service provider from its reporting obligations”.

Subsec. (c). Pub. L. 115-395, §4(4), substituted “providers” for “electronic communication service providers or remote computing service providers”, “CyberTipline report from NCMEC” for “apparent child pornography image of an identified child from the National Center for Missing and Exploited Children”, and “online sexual exploitation of children” for “further transmission of the images”.

Subsec. (d). Pub. L. 115-395, §4(5), substituted “NCMEC may” for “The National Center for Missing and Exploited Children shall”, inserted “, and to foreign law enforcement agencies described in section 2258A(c)(3),” after “local law enforcement”, and substituted “investigation of child sexual exploitation” for “investigation of child pornography” and “visual depiction reported to the CyberTipline” for “image of an identified child reported to the National Center for Missing and Exploited Children”.

Subsec. (e). Pub. L. 115-395, §4(6), inserted “foreign,” before “Federal” and substituted “visual depiction from NCMEC under subsection (d)” for “image of an identified child from the National Center for Missing and Exploited Children under section (d)” and “child sexual exploitation crimes, and prevent future sexual victimization of children” for “child pornography crimes”.

§ 2258D. Limited liability for NCMEC

(a) IN GENERAL.—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 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, §5, Dec. 21, 2018, 132 Stat. 5294.)

Editorial Notes

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.)