

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.)

Editorial Notes

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.

(C) **TERMINATION OF PAYMENT.**—A victim’s total aggregate recovery pursuant to this section shall not exceed the full amount of the victim’s demonstrated losses. After the victim has received restitution in the full amount of the victim’s losses as measured by the greatest amount of such losses found in any case involving that victim that has resulted in a final restitution order under this section, the liability of each defendant who is or has been ordered to pay restitution for such losses to that victim shall be terminated. The court may require the victim to provide information concerning the amount of restitution the victim has been paid in other cases for the same losses.

(3) **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.

(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) **DEFINITIONS.**—

(1) **CHILD PORNOGRAPHY PRODUCTION.**—For purposes of this section and section 2259A, the term “child pornography production” means conduct proscribed by subsections (a) through (c) of section 2251, section 2251A, section 2252A(g) (in cases in which the series of felony violations involves at least 1 of the violations listed in this subsection), section 2260(a), or any offense under chapter 109A or chapter 117 that involved the production of child pornography (as such term is defined in section 2256).

(2) **FULL AMOUNT OF THE VICTIM’S LOSSES.**—For purposes of this subsection, the term “full amount of the victim’s losses” includes any costs incurred, or that are reasonably projected to be incurred in the future, by the victim, as a proximate result of the offenses involving the victim, and in the case of trafficking in child pornography offenses, as a proximate result of all trafficking in child pornography offenses involving the same victim, including—

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

(F) any other relevant losses incurred by the victim.

(3) **TRAFFICKING IN CHILD PORNOGRAPHY.**—For purposes of this section and section 2259A, the term “trafficking in child pornography” means conduct proscribed by section 2251(d), 2252, 2252A(a)(1) through (5), 2252A(g) (in cases in which the series of felony violations exclusively involves violations of section 2251(d), 2252, 2252A(a)(1) through (5), or 2260(b)), or 2260(b).

(4) **VICTIM.**—For purposes of this section, the term “victim” means the individual harmed as a result of a commission of a crime under this chapter. 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, may assume the crime victim’s rights under this section, but in no event shall the defendant be named as such representative or guardian.

(d) **DEFINED MONETARY ASSISTANCE.**—

(1) **DEFINED MONETARY ASSISTANCE MADE AVAILABLE AT VICTIM’S ELECTION.**—

(A) **ELECTION TO RECEIVE DEFINED MONETARY ASSISTANCE.**—Subject to paragraphs (2) and (3), when a defendant is convicted of trafficking in child pornography, any victim