

118TH CONGRESS  
1ST SESSION

# S. 1199

To combat the sexual exploitation of children by supporting victims and promoting accountability and transparency by the tech industry.

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IN THE SENATE OF THE UNITED STATES

APRIL 19, 2023

Mr. DURBIN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To combat the sexual exploitation of children by supporting victims and promoting accountability and transparency by the tech industry.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Strengthening Trans-  
5 parency and Obligations to Protect Children Suffering  
6 from Abuse and Mistreatment Act of 2023” or the “STOP  
7 CSAM Act of 2023”.

8 **SEC. 2. MANDATORY REPORTING OF CHILD ABUSE.**

9 (a) IN GENERAL.—Section 226 of the Victims of  
10 Child Abuse Act of 1990 (34 U.S.C. 20341) is amended—

1 (1) in subsection (a)(2)—

2 (A) by striking “A covered individual” and  
3 inserting the following:

4 “(A) IN GENERAL.—A covered individual”;  
5 and

6 (B) by adding at the end the following:

7 “(B) GEOGRAPHIC APPLICABILITY.—Sub-  
8 paragraph (A) shall apply with respect to an in-  
9 cident of child abuse that—

10 “(i) occurred within the United  
11 States; or

12 “(ii)(I) occurred outside the United  
13 States; and

14 “(II) was committed by a United  
15 States citizen or an alien lawfully admitted  
16 for permanent residence.”;

17 (2) in subsection (b)(8), by inserting “and com-  
18 puter repair technicians” after “photo processors”;

19 (3) in subsection (c)—

20 (A) in paragraph (1), by striking “physical  
21 or mental injury” and inserting “physical in-  
22 jury, psychological abuse”;

23 (B) by striking paragraph (3) and insert-  
24 ing the following:

25 “(3) the term ‘psychological abuse’ includes—

1           “(A) a pattern of acts, threats of acts, or  
2 coercive tactics intended to degrade, humiliate,  
3 intimidate, or terrorize, a child; and

4           “(B) the infliction of trauma on a child  
5 through—

6                 “(i) isolation;

7                 “(ii) the withholding of food or other  
8 necessities in order to control behavior;

9                 “(iii) physical restraint; or

10                “(iv) confinement of the child without  
11 the child’s consent and in degrading condi-  
12 tions;”;

13           (C) in paragraph (5)(D)—

14                 (i) by striking “genitals” and insert-  
15 ing “anus, genitals,”; and

16                 (ii) by striking “or animal”;

17           (D) in paragraph (6), by striking “child  
18 prostitution” and inserting “child sex traf-  
19 ficking”;

20           (E) in paragraph (8), by striking “the  
21 term ‘child abuse’” and inserting “the terms  
22 ‘physical injury’ and ‘psychological abuse’”;

23           (F) in paragraph (9)—

24                 (i) in subparagraph (A)—

1 (I) by striking “minor” and in-  
2 sserting “child”; and

3 (II) by striking “or” at the end;  
4 (ii) in subparagraph (B), by adding  
5 “or” at the end; and

6 (iii) by adding at the end the fol-  
7 lowing:

8 “(C) is authorized to interact with a child  
9 by a covered program that is providing any  
10 care, treatment, education, training, instruc-  
11 tion, religious guidance, supervision, or rec-  
12 reational opportunities to that child;”;

13 (G) in paragraph (11), by striking “and”  
14 at the end;

15 (H) in paragraph (12), by striking the pe-  
16 riod and inserting a semicolon; and

17 (I) by adding at the end the following:

18 “(13) the term ‘child’ means a person who is  
19 under the age of 18;

20 “(14) the term ‘computer’ has the meaning  
21 given the term in section 1030 of title 18, United  
22 States Code;

23 “(15) the term ‘covered program’ means any  
24 program that receives, in any 1-year period, benefits  
25 in excess of \$10,000 under a Federal program in-

1       volving a grant (not including a formula grant to a  
2       State, territory, or Tribe), contract, subsidy, loan,  
3       guarantee, insurance, or other form of Federal as-  
4       sistance to provide any care, treatment, education,  
5       training, instruction, religious guidance, supervision,  
6       or recreational opportunities to a child; and

7               “(16) the term ‘privileged communication’  
8       means any communication between 2 parties that,  
9       under any applicable law where the communication  
10      takes place—

11                   “(A) is recognized as privileged;

12                   “(B) is not subject to any exception; and

13                   “(C) is not subject to a reporting require-  
14      ment regardless of any applicable privilege.”;

15      (4) in subsection (d)—

16                   (A) in the first sentence, by striking “an  
17      agency” and inserting “one or more agencies”;  
18      and

19                   (B) by striking “and law enforcement per-  
20      sonnel” and inserting “, law enforcement per-  
21      sonnel, and children’s advocacy center personnel  
22      in a multidisciplinary team setting”;

23      (5) in subsection (i)—

24                   (A) in the heading, by striking “RULE”  
25      and inserting “RULES”;

1 (B) by striking “Nothing” and inserting  
2 the following:

3 “(1) APPLICABILITY TO VICTIMS.—Nothing”;  
4 and

5 (C) by adding at the end the following:

6 “(2) APPLICABILITY TO ATTORNEYS.—Nothing  
7 in this section shall be construed to require a li-  
8 censed attorney to take any action that would violate  
9 any applicable rule of professional conduct.

10 “(3) PRIVILEGED COMMUNICATIONS.—Nothing  
11 in this section shall be construed to require a cov-  
12 ered individual described in subsection (c)(9)(C) who  
13 engages in privileged communication through the  
14 covered individual’s work for the covered program,  
15 whether or not for compensation, to report any in-  
16 formation exclusively received in the context of a  
17 privileged communication.”; and

18 (6) by adding at the end the following:

19 “(j) OUTREACH TO COVERED PROGRAMS.—

20 “(1) IN GENERAL.—Each Federal agency that  
21 has provided Federal assistance to a program that  
22 may cause the program to qualify as a covered pro-  
23 gram shall make reasonable efforts to promote  
24 awareness of the reporting requirements under sub-  
25 section (a) among such programs.

1           “(2) RULE OF CONSTRUCTION.—Paragraph (1)  
2 shall not be construed to require individual notice to  
3 each program to which a Federal agency has pro-  
4 vided Federal assistance as described in that para-  
5 graph.”.

6           (b) CONFORMING AMENDMENT TO TITLE 18,  
7 UNITED STATES CODE.—Section 2258 of title 18, United  
8 States Code, is amended to read as follows:

9           “§ 2258. Failure to report child abuse

10           “(a) DEFINITIONS.—In this section, the terms ‘child  
11 abuse’ and ‘covered individual’ have the meanings given  
12 those terms in section 226 of the Victims of Child Abuse  
13 Act of 1990 (34 U.S.C. 20341).

14           “(b) OFFENSES.—

15           “(1) COVERED PROFESSIONALS.—It shall be  
16 unlawful for a person who, while engaged in a pro-  
17 fessional capacity or activity described in subsection  
18 (b) of section 226 of the Victims of Child Abuse Act  
19 of 1990 (34 U.S.C. 20341) on Federal land or in a  
20 federally operated (or contracted) facility, learns of  
21 facts that give reason to suspect that a child has  
22 suffered an incident of child abuse, to knowingly fail  
23 to make a timely report as required by subsection  
24 (a)(1) of that section.

1           “(2) COVERED INDIVIDUALS.—It shall be un-  
2           lawful for a covered individual who learns of facts  
3           that give reason to suspect that a child has suffered  
4           an incident of child abuse described in subsection (c)  
5           to knowingly fail to make a timely report as required  
6           by subsection (a)(2) of section 226 of the Victims of  
7           Child Abuse Act of 1990 (34 U.S.C. 20341).

8           “(c) INCIDENTS OF CHILD ABUSE THAT COVERED  
9           INDIVIDUALS MUST REPORT.—An incident of child abuse  
10          referred to in subsection (b)(2) is an incident of child  
11          abuse that—

12                 “(1) occurred within the United States; or

13                 “(2)(A) occurred outside the United States; and

14                 “(B) was committed by a United States citizen  
15          or an alien lawfully admitted for permanent resi-  
16          dence.

17          “(d) PENALTY.—A person or individual who violates  
18          subsection (b) shall be fined under this title or imprisoned  
19          not more than 1 year or both.”.

20          (c) EFFECTIVE DATE.—

21                 (1) IN GENERAL.—Except as provided in para-  
22          graph (2), the amendments made by subsections (a)  
23          and (b) shall take effect on the date that is 120 days  
24          after the date of enactment of this Act.

1           (2) OUTREACH.—The amendment made by sub-  
2           section (a)(5) shall take effect on the date of enact-  
3           ment of this Act.

4           (d) ICAC TASK FORCE SUPPLEMENTAL GRANT PRO-  
5           GRAM.—

6           (1) DEFINITIONS.—In this subsection:

7           (A) CHILD.—The term “child” means an  
8           individual who has not attained 18 years of age.

9           (B) CHILD ABUSE.—The term “child  
10          abuse”—

11           (i) has the meaning given the term  
12           under any applicable State law requiring  
13           reporting of child abuse or neglect by indi-  
14           viduals; or

15           (ii) in the case of a State in which a  
16           law described in clause (i) that defines  
17           “child abuse” is not in effect, has the  
18           meaning given the term in section 226(c)  
19           of the Victims of Child Abuse Act of 1990  
20           (34 U.S.C. 20341(c)).

21           (C) COVERED ENTITY.—The term “cov-  
22           ered entity” means any institution, program, or  
23           organization that provides any care, treatment,  
24           education, training, instruction, religious guid-

1           ance, supervision, or recreational opportunities  
2           to a child.

3           (D) ICAC GRANT PROGRAM.—The term  
4           “ICAC Grant Program” means the grant pro-  
5           gram under section 106 of the PROTECT Our  
6           Children Act of 2008 (34 U.S.C. 21116).

7           (E) ICAC TASK FORCE.—The term “ICAC  
8           Task Force” means a task force that is part of  
9           the National Internet Crimes Against Children  
10          Task Force Program established under section  
11          102 of the PROTECT Our Children Act of  
12          2008 (34 U.S.C. 21112).

13          (F) ELIGIBLE ICAC TASK FORCE.—The  
14          term “Eligible ICAC Task Force” means an  
15          ICAC Task Force that—

16                 (i) was established on or before the  
17                 date of enactment of this Act; and

18                 (ii) is located in a State that, as of  
19                 the last day of the preceding fiscal year,  
20                 had in effect a law that, at a minimum—

21                         (I) with respect to a mandatory  
22                         reporter who learns of facts that give  
23                         reason to suspect that a child has suf-  
24                         fered an incident of child abuse, re-  
25                         quires the mandatory reporter to re-

1 port the suspected child abuse to a  
2 law enforcement agency, a child pro-  
3 tective services agency, or both;

4 (II) requires the report described  
5 in subclause (I) to be made as soon as  
6 possible, and in any event not later  
7 than 48 hours after the mandatory re-  
8 porter learns of the facts that give  
9 reason to suspect that a child has suf-  
10 fered an incident of child abuse;

11 (III) prohibits a covered entity  
12 from—

13 (aa) taking any action to  
14 prevent or discourage reporting  
15 of child abuse; or

16 (bb) retaliating against a  
17 mandatory reporter for making a  
18 report described in subclause (I);  
19 and

20 (IV) provides a criminal, civil, or  
21 administrative penalty for the know-  
22 ing failure by a mandatory reporter to  
23 submit a report in accordance with  
24 the requirement described in sub-  
25 clause (I).

1 (G) MANDATORY REPORTER.—The term  
2 “mandatory reporter” means an individual  
3 who—

4 (i) has attained the age of 18 years;

5 and

6 (ii) is authorized to interact with a  
7 child by a covered entity that is providing  
8 any care, treatment, education, training,  
9 instruction, religious guidance, supervision,  
10 or recreational opportunities to that child.

11 (H) PRIVILEGED COMMUNICATION.—The  
12 term “privileged communication” means any  
13 communication between 2 parties that, under  
14 any applicable law where the communication  
15 takes place—

16 (i) is recognized as privileged;

17 (ii) is not subject to any exception;

18 and

19 (iii) is not subject to a reporting re-  
20 quirement regardless of any applicable  
21 privilege.

22 (2) WAIVER OF MATCH FOR ELIGIBLE ICAC  
23 TASK FORCES.—The Attorney General shall waive  
24 the matching requirement for an Eligible ICAC  
25 Task Force under section 106(a)(3)(B) of the PRO-

1 TECT Our Children Act of 2008 (34 U.S.C.  
2 21116(a)(3)(B)) for not more than 4 fiscal years in  
3 accordance with this subsection.

4 (3) ESTABLISHMENT OF ICAC TASK FORCE SUP-  
5 PLEMENTAL GRANT PROGRAM.—

6 (A) SUPPLEMENTAL GRANT PROGRAM ES-  
7 TABLISHED.—There is established an ICAC  
8 Task Force Supplemental Grant Program with-  
9 in the Department of Justice, under which the  
10 Attorney General shall award grants (referred  
11 to in this subsection as “supplemental grants”)  
12 to an Eligible ICAC Task Force in addition to  
13 any grants distributed to the Eligible ICAC  
14 Task Force under the ICAC Grant Program.

15 (B) GRANT AMOUNT.—The amount of a  
16 supplemental grant awarded to an Eligible  
17 ICAC Task Force shall be not less than 10 per-  
18 cent of the average amount of the 3 most re-  
19 cent awards to the Eligible ICAC Task Force  
20 under the ICAC Grant Program.

21 (C) REMAINING FUNDS.—Any amounts ap-  
22 propriated to carry out this subsection that are  
23 not used for supplemental grants shall be dis-  
24 tributed to any Eligible ICAC Task Force in  
25 accordance with section 106(a)(3)(A) of the

1 PROTECT Our Children Act of 2008 (34  
2 U.S.C. 21116(a)(3)(A)).

3 (D) NUMBER OF SUPPLEMENTAL  
4 GRANTS.—The Attorney General may provide a  
5 supplemental grant to an Eligible ICAC Task  
6 Force for not more than 4 fiscal years.

7 (4) APPLICATION.—An Eligible ICAC Task  
8 Force seeking the waiver described in paragraph (2)  
9 or a supplemental grant shall submit an application  
10 to the Attorney General at such time, in such man-  
11 ner, and containing such information as the Attor-  
12 ney General may reasonably require, including infor-  
13 mation about the law described in paragraph  
14 (1)(F)(ii).

15 (5) RULE OF CONSTRUCTION.—Nothing in  
16 paragraph (1)(F)(ii) shall be construed to require a  
17 State to have in effect a law that requires an indi-  
18 vidual who engages in privileged communication  
19 through the individual’s work for a covered entity,  
20 whether or not for compensation, to report any in-  
21 formation exclusively received in the context of a  
22 privileged communication.

23 (6) AUTHORIZATION OF APPROPRIATIONS.—  
24 There is authorized to be appropriated to carry out

1 this subsection \$25,000,000 for each of fiscal years  
2 2024 through 2029.

3 **SEC. 3. PROTECTING CHILD VICTIMS AND WITNESSES IN**  
4 **FEDERAL COURT.**

5 (a) IN GENERAL.—Section 3509 of title 18, United  
6 States Code, is amended—

7 (1) in subsection (a)—

8 (A) in paragraph (2)(A), by striking “or  
9 exploitation” and inserting “exploitation, or  
10 kidnapping, including international parental  
11 kidnapping”;

12 (B) in paragraph (3), by striking “physical  
13 or mental injury” and inserting “physical in-  
14 jury, psychological abuse”;

15 (C) by striking paragraph (5) and insert-  
16 ing the following:

17 “(5) the term ‘psychological abuse’ includes—

18 “(A) a pattern of acts, threats of acts, or  
19 coercive tactics intended to degrade, humiliate,  
20 intimidate, or terrorize a child; and

21 “(B) the infliction of trauma on a child  
22 through—

23 “(i) isolation;

24 “(ii) the withholding of food or other  
25 necessities in order to control behavior;

1 “(iii) physical restraint; or

2 “(iv) the confinement of the child  
3 without the child’s consent and in degrad-  
4 ing conditions;”;

5 (D) in paragraph (6), by striking “child  
6 prostitution” and inserting “child sex traf-  
7 ficking”;

8 (E) by striking paragraph (7) and insert-  
9 ing the following:

10 “(7) the term ‘multidisciplinary child abuse  
11 team’ means a professional unit of individuals work-  
12 ing together to investigate child abuse and provide  
13 assistance and support to a victim of child abuse,  
14 composed of representatives from—

15 “(A) health, social service, and legal serv-  
16 ice agencies that represent the child;

17 “(B) law enforcement agencies and pros-  
18 ecutorial offices; and

19 “(C) children’s advocacy centers;”;

20 (F) in paragraph (9)(D)—

21 (i) by striking “genitals” and insert-  
22 ing “anus, genitals,”; and

23 (ii) by striking “or animal”;

24 (G) in paragraph (11), by striking “and”  
25 at the end;

1 (H) in paragraph (12)—

2 (i) by striking “the term ‘child abuse’  
3 does not” and inserting “the terms ‘phys-  
4 ical injury’ and ‘psychological abuse’ do  
5 not”; and

6 (ii) by striking the period and insert-  
7 ing a semicolon; and

8 (I) by adding at the end the following:

9 “(13) the term ‘covered person’ means a person  
10 of any age who—

11 “(A) is or is alleged to be—

12 “(i) a victim of a crime of physical  
13 abuse, sexual abuse, exploitation, or kid-  
14 napping, including international parental  
15 kidnapping; or

16 “(ii) a witness to a crime committed  
17 against another person; and

18 “(B) was under the age of 18 when the  
19 crime described in subparagraph (A) was com-  
20 mitted; and

21 “(14) the term ‘protected information’, with re-  
22 spect to a covered person, includes—

23 “(A) personally identifiable information of  
24 the covered person, including—

25 “(i) the name of the covered person;

1 “(ii) an address;

2 “(iii) a phone number;

3 “(iv) a user name or identifying infor-  
4 mation for an online, social media, or  
5 email account; and

6 “(v) any information that can be used  
7 to distinguish or trace the identity of the  
8 covered person, either alone or when com-  
9 bined with other information that is linked  
10 or linkable to the covered person;

11 “(B) medical, dental, behavioral, psy-  
12 chiatric, or psychological information of the cov-  
13 ered person;

14 “(C) educational or juvenile justice records  
15 of the covered person; and

16 “(D) any other information concerning the  
17 covered person that is deemed ‘protected infor-  
18 mation’ by order of the court under subsection  
19 (d)(5).’;

20 (2) in subsection (b)—

21 (A) in paragraph (1)(C), by striking  
22 “minor” and inserting “child”; and

23 (B) in paragraph (2)—

- 1 (i) in the heading, by striking  
2 “VIDEOTAPED” and inserting “RE-  
3 CORDED”;
- 4 (ii) in subparagraph (A), by striking  
5 “that the deposition be recorded and pre-  
6 served on videotape” and inserting “that a  
7 video recording of the deposition be made  
8 and preserved”;
- 9 (iii) in subparagraph (B)—
- 10 (I) in clause (ii), by striking  
11 “that the child’s deposition be taken  
12 and preserved by videotape” and in-  
13 sserting “that a video recording of the  
14 child’s deposition be made and pre-  
15 served”;
- 16 (II) in clause (iii)—
- 17 (aa) in the matter preceding  
18 subclause (I), by striking “video-  
19 tape” and inserting “recorded”;  
20 and
- 21 (bb) in subclause (IV), by  
22 striking “videotape” and insert-  
23 ing “recording”; and
- 24 (III) in clause (v)—

1 (aa) in the heading, by  
2 striking “VIDEOTAPE” and in-  
3 sserting “VIDEO RECORDING”;

4 (bb) in the first sentence, by  
5 striking “made and preserved on  
6 video tape” and inserting “re-  
7 corded and preserved”; and

8 (cc) in the second sentence,  
9 by striking “videotape” and in-  
10 sserting “video recording”;

11 (iv) in subparagraph (C), by striking  
12 “child’s videotaped” and inserting “video  
13 recording of the child’s”;

14 (v) in subparagraph (D)—

15 (I) by striking “videotaping” and  
16 inserting “deposition”; and

17 (II) by striking “videotaped” and  
18 inserting “recorded”;

19 (vi) in subparagraph (E), by striking  
20 “videotaped” and inserting “recorded”;  
21 and

22 (vii) in subparagraph (F), by striking  
23 “videotape” each place the term appears  
24 and inserting “video recording”;

25 (3) in subsection (d)—

1 (A) in paragraph (1)(A)—

2 (i) in clause (i), by striking “the name  
3 of or any other information concerning a  
4 child” and inserting “a covered person’s  
5 protected information”; and

6 (ii) in clause (ii)—

7 (I) by striking “documents de-  
8 scribed in clause (i) or the informa-  
9 tion in them that concerns a child”  
10 and inserting “a covered person’s pro-  
11 tected information”; and

12 (II) by striking “, have reason to  
13 know such information” and inserting  
14 “(including witnesses or potential wit-  
15 nesses), have reason to know each  
16 item of protected information to be  
17 disclosed”;

18 (B) in paragraph (2)—

19 (i) by striking “the name of or any  
20 other information concerning a child” each  
21 place the term appears and inserting “a  
22 covered person’s protected information”;

23 (ii) by redesignating subparagraphs  
24 (A) and (B) as clauses (i) and (ii), respec-

1                   tively, and adjusting the margins accord-  
2                   ingly;

3                   (iii) by striking “All papers” and in-  
4                   serting the following:

5                   “(A) IN GENERAL.—All papers”; and

6                   (iv) by adding at the end the fol-  
7                   lowing:

8                   “(B) ENFORCEMENT OF VIOLATIONS.—

9                   The court may address a violation of subpara-  
10                  graph (A) in the same manner as disobedience  
11                  or resistance to a lawful court order under sec-  
12                  tion 401(3).”;

13                  (C) in paragraph (3)—

14                  (i) in subparagraph (A)—

15                         (I) by striking “a child from pub-  
16                         lic disclosure of the name of or any  
17                         other information concerning the  
18                         child” and inserting “a covered per-  
19                         son’s protected information from pub-  
20                         lic disclosure”; and

21                         (II) by striking “, if the court de-  
22                         termines that there is a significant  
23                         possibility that such disclosure would  
24                         be detrimental to the child”;

25                  (ii) in subparagraph (B)—

1 (I) in clause (i)—

2 (aa) by striking “a child wit-  
3 ness, and the testimony of any  
4 other witness” and inserting  
5 “any witness”; and

6 (bb) by striking “the name  
7 of or any other information con-  
8 cerning a child” and inserting  
9 “the covered person’s protected  
10 information”; and

11 (II) in clause (ii), by striking  
12 “child” and inserting “covered per-  
13 son”; and

14 (iii) by adding at the end the fol-  
15 lowing:

16 “(C)(i) For purposes of this paragraph, there  
17 shall be a presumption that public disclosure of a  
18 covered person’s protected information would be det-  
19 rimental to the covered person.

20 “(ii) The court shall deny a motion for a pro-  
21 tective order under subparagraph (A) only if the  
22 court finds that the party opposing the motion has  
23 rebutted the presumption under clause (i) of this  
24 subparagraph.”;

25 (D) in paragraph (4)—

1 (i) by striking “This subsection” and  
2 inserting the following:

3 “(A) DISCLOSURE TO CERTAIN PARTIES.—  
4 This subsection”;

5 (ii) in subparagraph (A), as so des-  
6 ignated—

7 (I) by striking “the name of or  
8 other information concerning a child”  
9 and inserting “a covered person’s pro-  
10 tected information”; and

11 (II) by striking “or an adult at-  
12 tendant, or to” and inserting “an  
13 adult attendant, a law enforcement  
14 agency for any intelligence or inves-  
15 tigative purpose, or”; and

16 (iii) by adding at the end the fol-  
17 lowing:

18 “(B) REQUEST FOR PUBLIC DISCLO-  
19 SURE.—If any party requests public disclosure  
20 of a covered person’s protected information to  
21 further a public interest, the court shall deny  
22 the request unless the court finds that—

23 “(i) the party seeking disclosure has  
24 established that there is a compelling pub-

1           lic interest in publicly disclosing the cov-  
2           ered person’s protected information;

3           “ (ii) there is a substantial probability  
4           that the public interest would be harmed if  
5           the covered person’s protected information  
6           is not disclosed;

7           “ (iii) the substantial probability of  
8           harm to the public interest outweighs the  
9           harm to the covered person from public  
10          disclosure of the covered person’s protected  
11          information; and

12          “ (iv) there is no alternative to public  
13          disclosure of the covered person’s protected  
14          information that would adequately protect  
15          the public interest.”; and

16          (E) by adding at the end the following:

17          “(5) OTHER PROTECTED INFORMATION.—The  
18          court may order that information shall be considered  
19          to be ‘protected information’ for purposes of this  
20          subsection if the court finds that the information is  
21          sufficiently personal, sensitive, or identifying that it  
22          should be subject to the protections and presump-  
23          tions under this subsection.”;

24          (4) by striking subsection (f) and inserting the  
25          following:

1 “(f) VICTIM IMPACT STATEMENT.—

2 “(1) PROBATION OFFICER.—In preparing the  
3 presentence report pursuant to rule 32(c) of the  
4 Federal Rules of Criminal Procedure, the probation  
5 officer shall request information from the multidisci-  
6 plinary child abuse team, if applicable, or other ap-  
7 propriate sources to determine the impact of the of-  
8 fense on a child victim and any other children who  
9 may have been affected by the offense.

10 “(2) GUARDIAN AD LITEM.—A guardian ad  
11 litem appointed under subsection (h) shall—

12 “(A) make every effort to obtain and re-  
13 port information that accurately expresses the  
14 views of a child victim, and the views of family  
15 members as appropriate, concerning the impact  
16 of the offense; and

17 “(B) use forms that permit a child victim  
18 to express the child’s views concerning the per-  
19 sonal consequences of the offense, at a level and  
20 in a form of communication commensurate with  
21 the child’s age and ability.”;

22 (5) in subsection (h), by adding at the end the  
23 following:

24 “(4) AUTHORIZATION OF APPROPRIATIONS.—

1           “(A) IN GENERAL.—There is authorized to  
2 be appropriated to the United States courts to  
3 carry out this subsection \$25,000,000 for each  
4 fiscal year.

5           “(B) SUPERVISION OF PAYMENTS.—Pay-  
6 ments from appropriations authorized under  
7 subparagraph (A) shall be made under the su-  
8 pervision of the Director of the Administrative  
9 Office of the United States Courts.”;

10           (6) in subsection (i)—

11           (A) by striking “A child testifying at or at-  
12 tending a judicial proceeding” and inserting the  
13 following:

14           “(1) IN GENERAL.—A child testifying at a judi-  
15 cial proceeding, including in a manner described in  
16 subsection (b),”;

17           (B) in paragraph (1), as so designated—

18           (i) in the third sentence, by striking  
19 “proceeding” and inserting “testimony”;  
20 and

21           (ii) by striking the fifth sentence; and

22           (C) by adding at the end the following:

23           “(2) RECORDING.—If the adult attendant is in  
24 close physical proximity to or in contact with the  
25 child while the child testifies—

1           “(A) at a judicial proceeding, a video re-  
2           cording of the adult attendant shall be made  
3           and shall become part of the court record; or

4           “(B) in a manner described in subsection  
5           (b), the adult attendant shall be visible on the  
6           closed-circuit television or in the recorded depo-  
7           sition.

8           “(3) COVERED PERSONS ATTENDING PRO-  
9           CEEDING.—A covered person shall have the right to  
10          be accompanied by an adult attendant when attend-  
11          ing any judicial proceeding.”;

12          (7) in subsection (j)—

13                 (A) by striking “child” each place the term  
14                 appears and inserting “covered person”; and

15                 (B) in the fourth sentence—

16                         (i) by striking “and the potential”  
17                         and inserting “the potential”;

18                         (ii) by striking “child’s” and inserting  
19                         “covered person’s”; and

20                         (iii) by inserting before the period at  
21                         the end the following: “, and the necessity  
22                         of the continuance to protect the defend-  
23                         ant’s rights”;

1 (8) in subsection (k), by striking “child” each  
 2 place the term appears and inserting “covered per-  
 3 son”; and

4 (9) in subsection (l), by striking “child” each  
 5 place the term appears and inserting “covered per-  
 6 son”.

7 (b) EFFECTIVE DATE.—The amendments made by  
 8 this section shall apply to conduct that occurred before,  
 9 on, or after the date of enactment of this Act.

10 **SEC. 4. FACILITATING PAYMENT OF RESTITUTION; TECH-**  
 11 **NICAL AMENDMENTS TO RESTITUTION STAT-**  
 12 **UTES.**

13 Title 18, United States Code, is amended—

14 (1) in section 1593(c)—

15 (A) by inserting “(1)” after “(c)”;

16 (B) by striking “chapter, including, in”  
 17 and inserting the following: “chapter.

18 “(2) In”; and

19 (C) in paragraph (2), as so designated, by  
 20 inserting “may assume the rights of the crime  
 21 victim under this section” after “suitable by the  
 22 court”;

23 (2) in section 2248(c)—

24 (A) by striking “For purposes” and insert-  
 25 ing the following:

1 “(1) IN GENERAL.—For purposes”;

2 (B) by striking “chapter, including, in”  
3 and inserting the following: “chapter.

4 “(2) ASSUMPTION OF CRIME VICTIM’S  
5 RIGHTS.—In”; and

6 (C) in paragraph (2), as so designated, by  
7 inserting “may assume the rights of the crime  
8 victim under this section” after “suitable by the  
9 court”;

10 (3) in section 2259—

11 (A) in subsection (b)—

12 (i) in paragraph (1), by striking “DI-  
13 RECTIONS.—Except as provided in para-  
14 graph (2), the” and inserting “RESTITU-  
15 TION FOR CHILD PORNOGRAPHY PRODUC-  
16 TION.—If the defendant was convicted of  
17 child pornography production, the”; and

18 (ii) in paragraph (2)(B), by striking  
19 “\$3,000.” and inserting the following: “—

20 “(i) \$3,000; or

21 “(ii) 10 percent of the full amount of  
22 the victim’s losses, if the full amount of  
23 the victim’s losses is less than \$3,000.”;

24 and

25 (B) in subsection (c)—

1 (i) by striking paragraph (1) and in-  
2 serting the following:

3 “(1) CHILD PORNOGRAPHY PRODUCTION.—For  
4 purposes of this section and section 2259A, the term  
5 ‘child pornography production’ means—

6 “(A) a violation of subsection (a), (b), or  
7 (c) of section 2251, or an attempt or conspiracy  
8 to violate any of those subsections under sub-  
9 section (e) of that section;

10 “(B) a violation of section 2251A;

11 “(C) a violation of section 2252(a)(4) or  
12 2252A(a)(5), or an attempt or conspiracy to  
13 violate either of those sections under section  
14 2252(b)(2) or 2252A(b)(2), to the extent such  
15 conduct involves child pornography—

16 “(i) produced by the defendant; or

17 “(ii) that the defendant attempted or  
18 conspired to produce;

19 “(D) a violation of section 2252A(g) if the  
20 series of felony violations involves not fewer  
21 than 1 violation—

22 “(i) described in subparagraph (A),  
23 (B), (E), or (F) of this paragraph;

24 “(ii) of section 1591; or

1                   “(iii) of section 1201, chapter 109A,  
2                   or chapter 117, if the victim is a minor;

3                   “(E) a violation of subsection (a) of section  
4                   2260, or an attempt or conspiracy to violate  
5                   that subsection under subsection (c)(1) of that  
6                   section;

7                   “(F)(i) a violation of section 2260B(a)(2)  
8                   for promoting or facilitating an offense—

9                   “(I) described in subparagraph (A),  
10                  (B), (D), or (E) of this paragraph; or

11                  “(II) under section 2422(b); or

12                  “(ii) attempting or conspiring to promote  
13                  or facilitate an offense described in clause (i) of  
14                  this subparagraph under section 2260B(b); and

15                  “(G) a violation of chapter 109A or chap-  
16                  ter 117, if the offense involves the production  
17                  or attempted production of, or conspiracy to  
18                  produce, child pornography.”; and

19                  (ii) by striking paragraph (3) and in-  
20                  serting the following:

21                  “(3) TRAFFICKING IN CHILD PORNOGRAPHY.—

22                  For purposes of this section and section 2259A, the  
23                  term ‘trafficking in child pornography’ means—

24                  “(A) a violation of subsection (d) of section  
25                  2251 or an attempt or conspiracy to violate

1           that subsection under subsection (e) of that sec-  
2           tion;

3           “(B) a violation of paragraph (1), (2), or  
4           (3) of subsection (a) of section 2252, or an at-  
5           tempt or conspiracy to violate any of those  
6           paragraphs under subsection (b)(1) of that sec-  
7           tion;

8           “(C) a violation of section 2252(a)(4) or  
9           2252A(a)(5), or an attempt or conspiracy to  
10          violate either of those sections under section  
11          2252(b)(2) or 2252A(b)(2), to the extent such  
12          conduct involves child pornography—

13                 “(i) not produced by the defendant; or

14                 “(ii) that the defendant did not at-  
15          tempt or conspire to produce;

16          “(D) a violation of paragraph (1), (2), (3),  
17          (4), or (6) of subsection (a) of section 2252A,  
18          or an attempt or conspiracy to violate any of  
19          those paragraphs under subsection (b)(1) of  
20          that section;

21          “(E) a violation of subsection (a)(7) of sec-  
22          tion 2252A, or an attempt or conspiracy to vio-  
23          late that subsection under subsection (b)(3) of  
24          that section;

1           “(F) a violation of section 2252A(g) if the  
2 series of felony violations exclusively involves  
3 violations described in this paragraph;

4           “(G) a violation of subsection (b) of sec-  
5 tion 2260, or an attempt or conspiracy to vio-  
6 late that subsection under subsection (c)(2) of  
7 that section;

8           “(H)(i) a violation of subsection (a)(1) of  
9 section 2260B, or a violation of subsection  
10 (a)(2) of that section for promoting or facili-  
11 tating an offense described in this paragraph;  
12 or

13           “(ii) an attempt or conspiracy to commit  
14 the conduct described in clause (i) of this sub-  
15 paragraph under section 2260B(b).”;

16 (4) in section 2259A(a)—

17           (A) in paragraph (1), by striking “under  
18 section 2252(a)(4) or 2252A(a)(5)” and insert-  
19 ing “described in section 2259(c)(3)(C)”; and

20           (B) in paragraph (2), by striking “any  
21 other offense for trafficking in child pornog-  
22 raphy” and inserting “any offense for traf-  
23 ficking in child pornography other than an of-  
24 fense described in section 2259(c)(3)(C)”;  
25

(5) in section 2429—

1 (A) in subsection (b)(3), by striking  
2 “2259(b)(3)” and inserting “2259(c)(2)”; and

3 (B) in subsection (d)—

4 (i) by inserting “(1)” after “(d)”;  
5

6 (ii) by striking “chapter, including,  
7 in” and inserting the following: “chapter.

8 “(2) In”; and

9 (iii) in paragraph (2), as so des-  
10 ignated, by inserting “may assume the  
11 rights of the crime victim under this sec-  
12 tion” after “suitable by the court”; and

13 (6) in section 3664, by adding at the end the  
14 following:

15 “(q) TRUSTEE OR OTHER FIDUCIARY.—

16 “(1) IN GENERAL.—

17 “(A) APPOINTMENT OF TRUSTEE OR  
18 OTHER FIDUCIARY.—When the court issues an  
19 order of restitution under section 1593, 2248,  
20 2259, 2429, or 3663, or subparagraphs (A)(i)  
21 and (B) of section 3663A(c)(1), for a victim de-  
22 scribed in subparagraph (B) of this paragraph,  
23 the court, at its own discretion or upon motion  
24 by the Government, may appoint a trustee or  
other fiduciary to hold any amount paid for res-

1 titution in a trust or other official account for  
2 the benefit of the victim.

3 “(B) COVERED VICTIMS.—A victim re-  
4 ferred to in subparagraph (A) is a victim who  
5 is—

6 “(i) under the age of 18 at the time  
7 of the proceeding;

8 “(ii) incompetent or incapacitated; or

9 “(iii) subject to paragraph (3), a for-  
10 eign citizen or stateless person residing  
11 outside the United States.

12 “(2) ORDER.—When the court appoints a trust-  
13 ee or other fiduciary under paragraph (1), the court  
14 shall issue an order specifying—

15 “(A) the duties of the trustee or other fi-  
16 duciary, which shall require—

17 “(i) the administration of the trust or  
18 maintaining an official account in the best  
19 interests of the victim; and

20 “(ii) disbursing payments from the  
21 trust or account—

22 “(I) to the victim; or

23 “(II) to any individual or entity  
24 on behalf of the victim;

25 “(B) that the trustee or other fiduciary—

1                   “(i) shall avoid any conflict of inter-  
2                   est;

3                   “(ii) may not profit from the adminis-  
4                   tration of the trust or maintaining an offi-  
5                   cial account for the benefit of the victim  
6                   other than as specified in the order; and

7                   “(iii) may not delegate administration  
8                   of the trust or maintaining the official ac-  
9                   count to any other person;

10                  “(C) if and when the trust or the duties of  
11                  the other fiduciary will expire; and

12                  “(D) the fees payable to the trustee or  
13                  other fiduciary to cover expenses of admin-  
14                  istering the trust or maintaining the official ac-  
15                  count for the benefit of the victim, and the  
16                  schedule for payment of those fees.

17                  “(3) FACT-FINDING REGARDING FOREIGN CITI-  
18                  ZENS AND STATELESS PERSON.—In the case of a  
19                  victim who is a foreign citizen or stateless person re-  
20                  siding outside the United States and is not under  
21                  the age of 18 at the time of the proceeding or in-  
22                  competent or incapacitated, the court may appoint a  
23                  trustee or other fiduciary under paragraph (1) only  
24                  if the court finds it necessary to—

1           “(A) protect the safety or security of the  
2 victim; or

3           “(B) provide a reliable means for the vic-  
4 tim to access or benefit from the restitution  
5 payments.

6           “(4) PAYMENT OF FEES.—

7           “(A) IN GENERAL.—The court may, with  
8 respect to the fees of the trustee or other fidu-  
9 ciary—

10                   “(i) pay the fees in whole or in part;

11                   or

12                   “(ii) order the defendant to pay the  
13 fees in whole or in part.

14           “(B) APPLICABILITY OF OTHER PROVI-  
15 SIONS.—With respect to a court order under  
16 subparagraph (A)(ii) requiring a defendant to  
17 pay fees—

18                   “(i) subsection (f)(3) shall apply to  
19 the court order in the same manner as  
20 that subsection applies to a restitution  
21 order;

22                   “(ii) subchapter C of chapter 227  
23 (other than section 3571) shall apply to  
24 the court order in the same manner as

1           that subchapter applies to a sentence of a  
2           fine; and

3           “(iii) subchapter B of chapter 229  
4           shall apply to the court order in the same  
5           manner as that subchapter applies to the  
6           implementation of a sentence of a fine.

7           “(C) EFFECT ON OTHER PENALTIES.—Im-  
8           position of payment under subparagraph (A)(ii)  
9           shall not relieve a defendant of, or entitle a de-  
10          fendant to a reduction in the amount of, any  
11          special assessment, restitution, other fines, pen-  
12          alties, or costs, or other payments required  
13          under the defendant’s sentence.

14          “(D) SCHEDULE.—Notwithstanding any  
15          other provision of law, if the court orders the  
16          defendant to make any payment under subpara-  
17          graph (A)(ii), the court may provide a payment  
18          schedule that is concurrent with the payment of  
19          any other financial obligation described in sub-  
20          paragraph (C).

21          “(5) AUTHORIZATION OF APPROPRIATIONS.—

22          “(A) IN GENERAL.—There is authorized to  
23          be appropriated to the United States courts to  
24          carry out this subsection \$15,000,000 for each  
25          fiscal year.

1           “(B) SUPERVISION OF PAYMENTS.—Pay-  
 2           ments from appropriations authorized under  
 3           subparagraph (A) shall be made under the su-  
 4           pervision of the Director of the Administrative  
 5           Office of the United States Courts.”.

6 **SEC. 5. CYBERTIPLINE IMPROVEMENTS, AND ACCOUNT-**  
 7           **ABILITY AND TRANSPARENCY BY THE TECH**  
 8           **INDUSTRY.**

9           (a) IN GENERAL.—Chapter 110 of title 18, United  
 10 States Code, is amended—

11           (1) in section 2258A—

12           (A) by striking subsections (a), (b), and (c)  
 13           and inserting the following:

14           “(a) DUTY TO REPORT.—

15           “(1) DUTY.—In order to reduce the prolifera-  
 16           tion of online child exploitation and to prevent the  
 17           online sexual exploitation of children, as soon as rea-  
 18           sonably possible after obtaining actual knowledge of  
 19           any facts or circumstances described in paragraph  
 20           (2) or any apparent child pornography on the pro-  
 21           vider’s service, network, or platform, and in any  
 22           event not later than 60 days after obtaining such  
 23           knowledge, a provider shall—

1           “(A) submit to the CyberTipline of  
2 NCMEC, or any successor to the CyberTipline  
3 operated by NCMEC, a report containing—

4           “(i) the mailing address, telephone  
5 number, facsimile number, electronic mail-  
6 ing address of, and individual point of con-  
7 tact for, such provider; and

8           “(ii) information described in sub-  
9 section (b) concerning such facts or cir-  
10 cumstances or apparent child pornography;  
11 and

12           “(B) if applicable, remove the apparent  
13 child pornography that is the subject of the re-  
14 port described in subparagraph (A), if such  
15 child pornography is publicly available.

16           “(2) FACTS OR CIRCUMSTANCES.—The facts or  
17 circumstances described in this paragraph are any  
18 facts or circumstances indicating an apparent,  
19 planned, or imminent violation of section 2251,  
20 2251A, 2252, 2252A, 2252B, or 2260.

21           “(3) PERMITTED ACTIONS BASED ON REASON-  
22 ABLE BELIEF.—In order to reduce the proliferation  
23 of online child exploitation and to prevent the online  
24 sexual exploitation of children, if a provider has a  
25 reasonable belief that any facts or circumstances de-

1 scribed in paragraph (2) exist, the provider may sub-  
2 mit to the CyberTipline of NCMEC, or any suc-  
3 cessor to the CyberTipline operated by NCMEC, a  
4 report described in paragraph (1)(A).

5 “(b) CONTENTS OF REPORT.—

6 “(1) IN GENERAL.—In an effort to prevent the  
7 future sexual victimization of children, and to the  
8 extent the information is within the custody or con-  
9 trol of a provider, each report provided under sub-  
10 section (a)(1)(A)—

11 “(A) shall include, to the extent that it is  
12 applicable and reasonably available—

13 “(i) identifying information regarding  
14 any individual who is the subject of the re-  
15 port, including name, address, electronic  
16 mail address, user or account identifica-  
17 tion, Internet Protocol address, and uni-  
18 form resource locator;

19 “(ii) the terms of service in effect at  
20 the time of—

21 “(I) the apparent violation; or

22 “(II) the detection of apparent  
23 child pornography or a planned or im-  
24 minent violation;

1           “(iii) a copy of any apparent child  
2 pornography that is the subject of the re-  
3 port that was identified in a publicly avail-  
4 able location;

5           “(iv) for each item of apparent child  
6 pornography included in the report under  
7 clause (iii) or paragraph (2)(C), informa-  
8 tion indicating whether—

9                   “(I) the reported child pornog-  
10 raphy was publicly available; or

11                   “(II) the provider, in its sole dis-  
12 cretion, viewed the reported child por-  
13 nography, or any copy thereof, at any  
14 point concurrent with or prior to the  
15 submission of the report; and

16           “(v) for each item of apparent child  
17 pornography that is the subject of the re-  
18 port, an indication as to whether the child  
19 pornography—

20                   “(I) has previously been the sub-  
21 ject of a report under paragraph  
22 (1)(A) or (3) of subsection (a); or

23                   “(II) is the subject of multiple  
24 contemporaneous reports due to rapid  
25 and widespread distribution; and

1           “(B) may, at the sole discretion of the pro-  
2           vider, include the information described in para-  
3           graph (2) of this subsection.

4           “(2) OTHER INFORMATION.—The information  
5           referred to in paragraph (1)(B) is the following:

6           “(A) HISTORICAL REFERENCE.—Informa-  
7           tion relating to when and how a customer or  
8           subscriber of a provider uploaded, transmitted,  
9           or received content relating to the report or  
10          when and how content relating to the report  
11          was reported to, or discovered by the provider,  
12          including a date and time stamp and time zone.

13          “(B) GEOGRAPHIC LOCATION INFORMA-  
14          TION.—Information relating to the geographic  
15          location of the involved individual or website,  
16          which may include the Internet Protocol ad-  
17          dress or verified address, or, if not reasonably  
18          available, at least one form of geographic iden-  
19          tifying information, including area code or zip  
20          code, provided by the customer or subscriber, or  
21          stored or obtained by the provider.

22          “(C) APPARENT CHILD PORNOGRAPHY.—  
23          Any apparent child pornography not described  
24          in paragraph (1)(A)(iii), or other content re-  
25          lated to the subject of the report.

1           “(D) COMPLETE COMMUNICATION.—The  
2 complete communication containing any appar-  
3 ent child pornography or other content, includ-  
4 ing—

5           “(i) any data or information regard-  
6 ing the transmission of the communication;  
7 and

8           “(ii) any visual depictions, data, or  
9 other digital files contained in, or attached  
10 to, the communication.

11          “(E) TECHNICAL IDENTIFIER.—An indus-  
12 try-standard hash value or other similar indus-  
13 try-standard technical identifier for any re-  
14 ported visual depiction as it existed on the pro-  
15 vider’s service, network, or platform.

16          “(F) DESCRIPTION.—For any item of ap-  
17 parent child pornography that is the subject of  
18 the report, an indication of whether—

19           “(i) the depicted sexually explicit con-  
20 duct involves—

21           “(I) genital, oral, or anal sexual  
22 intercourse;

23           “(II) bestiality;

24           “(III) masturbation;

1                   “(IV) sadistic or masochistic  
2                   abuse; or

3                   “(V) lascivious exhibition of the  
4                   anus, genitals, or pubic area of any  
5                   person; and

6                   “(ii) the depicted minor is—

7                   “(I) an infant or toddler;

8                   “(II) prepubescent;

9                   “(III) pubescent;

10                  “(IV) post-pubescent; or

11                  “(V) of an indeterminate age or  
12                  developmental stage.”;

13                  “(c) FORWARDING OF REPORT AND OTHER INFOR-  
14                  MATION TO LAW ENFORCEMENT.—

15                  “(1) IN GENERAL.—Pursuant to its clearing-  
16                  house role as a private, nonprofit organization, and  
17                  at the conclusion of its review in furtherance of its  
18                  nonprofit mission, NCMEC shall make available  
19                  each report submitted under paragraph (1)(A) or  
20                  (3) of subsection (a) to one or more of the following  
21                  law enforcement agencies:

22                  “(A) Any Federal law enforcement agency  
23                  that is involved in the investigation of child sex-  
24                  ual exploitation, kidnapping, or enticement  
25                  crimes.

1           “(B) Any State or local law enforcement  
2 agency that is involved in the investigation of  
3 child sexual exploitation.

4           “(C) A foreign law enforcement agency  
5 designated by the Attorney General under sub-  
6 section (d)(3) or a foreign law enforcement  
7 agency that has an established relationship with  
8 the Federal Bureau of Investigation, Immigra-  
9 tion and Customs Enforcement, or  
10 INTERPOL, and is involved in the investiga-  
11 tion of child sexual exploitation, kidnapping, or  
12 enticement crimes.

13           “(2) TECHNICAL IDENTIFIERS.—If a report  
14 submitted under paragraph (1)(A) or (3) of sub-  
15 section (a) contains an industry-standard hash value  
16 or other similar industry-standard technical identi-  
17 fier—

18           “(A) NCMEC may compare that hash  
19 value or identifier with any database or reposi-  
20 tory of visual depictions owned or operated by  
21 NCMEC; and

22           “(B) if the comparison under subpara-  
23 graph (A) results in a match, NCMEC may in-  
24 clude the matching visual depiction from its  
25 database or repository when forwarding the re-

1 port to an agency described in subparagraph  
2 (A) or (B) of paragraph (1).”;

3 (B) in subsection (d)—

4 (i) in paragraph (2), by striking “sub-  
5 section (c)(1)” and inserting “subsection  
6 (c)(1)(A)”; and

7 (ii) in paragraph (3)—

8 (I) in subparagraph (A), by strik-  
9 ing “subsection (c)(3)” and inserting  
10 “subsection (c)(1)(C)”; and

11 (II) in subparagraph (C), by  
12 striking “subsection (c)(3)” and in-  
13 serting “subsection (c)(1)(C)”;  
14 (C) by striking subsection (e) and inserting  
15 the following:

16 “(e) FAILURE TO COMPLY WITH REQUIREMENTS.—  
17 “(1) CRIMINAL PENALTY.—  
18 “(A) OFFENSE.—It shall be unlawful for a  
19 provider to knowingly—  
20 “(i) fail to submit a report under sub-  
21 section (a)(1)(A) within the time period re-  
22 quired by that subsection; or  
23 “(ii) fail to preserve material as re-  
24 quired under subsection (h).  
25 “(B) PENALTY.—

1           “(i) IN GENERAL.—A provider that  
2           violates subparagraph (A) shall be fined—

3                   “(I) in the case of an initial vio-  
4                   lation, not more than \$150,000; and

5                   “(II) in the case of any second or  
6                   subsequent violation, not more than  
7                   \$300,000.

8           “(ii) HARM TO INDIVIDUALS.—The  
9           maximum fine under clause (i) shall be tri-  
10          pled if an individual is harmed as a direct  
11          and proximate result of the applicable vio-  
12          lation.

13          “(2) CIVIL PENALTY.—

14                   “(A) VIOLATIONS RELATING TO  
15                   CYBERTIPLINE REPORTS, CONTENT REMOVAL,  
16                   AND MATERIAL PRESERVATION.—A provider  
17                   shall be liable to the United States Government  
18                   for a civil penalty in an amount of not less than  
19                   \$50,000 and not more than \$100,000 if the  
20                   provider knowingly—

21                   “(i) fails to submit a report under  
22                   subsection (a)(1)(A) within the time period  
23                   required by that subsection;

1 “(ii) fails to remove apparent child  
2 pornography as required under subsection  
3 (a)(1)(B);

4 “(iii) fails to preserve material as re-  
5 quired under subsection (h); or

6 “(iv) submits a report under sub-  
7 section (a)(1)(A) that—

8 “(I) contains materially false or  
9 fraudulent information; or

10 “(II) omits information described  
11 in subsection (b)(1)(A) that is reason-  
12 ably available.

13 “(B) ANNUAL REPORT VIOLATIONS.—A  
14 provider shall be liable to the United States  
15 Government for a civil penalty in an amount of  
16 not less than \$100,000 and not more than  
17 \$1,000,000 if the provider knowingly—

18 “(i) fails to submit an annual report  
19 as required under subsection (i); or

20 “(ii) submits an annual report under  
21 subsection (i) that—

22 “(I) contains a materially false,  
23 fraudulent, or misleading statement;  
24 or

1                   “(II) omits information described  
2                   in subsection (i)(1) that is reasonably  
3                   available.

4                   “(C) HARM TO INDIVIDUALS.—The  
5                   amount of a civil penalty under subparagraph  
6                   (A) or (B) shall be tripled if an individual is  
7                   harmed as a direct and proximate result of the  
8                   applicable violation.

9                   “(D) COSTS OF CIVIL ACTIONS.—A pro-  
10                  vider that commits a violation described in sub-  
11                  paragraph (A) or (B) shall be liable to the  
12                  United States Government for the costs of a  
13                  civil action brought to recover a civil penalty  
14                  under that subparagraph.

15                  “(E) ENFORCEMENT.—This paragraph  
16                  shall be enforced in accordance with sections  
17                  3731, 3732, and 3733 of title 31, except that  
18                  a civil action to recover a civil penalty under  
19                  subparagraph (A) or (B) of this paragraph may  
20                  only be brought by the United States Govern-  
21                  ment.

22                  “(3) DEPOSIT OF FINES AND PENALTIES.—  
23                  Notwithstanding any other provision of law, any  
24                  criminal fine or civil penalty collected under this  
25                  subsection shall be deposited into the Child Pornog-

1 raphy Victims Reserve as provided in section  
2 2259B.”;

3 (D) in subsection (f), by striking para-  
4 graph (3) and inserting the following:

5 “(3) affirmatively search, screen, or scan for—

6 “(A) facts or circumstances described in  
7 subsection (a)(2);

8 “(B) information described in subsection  
9 (b)(2); or

10 “(C) any apparent child pornography, in-  
11 cluding any copy of apparent child pornography  
12 removed pursuant to subsection (a)(1)(B).”;

13 (E) in subsection (g)—

14 (i) in paragraph (2)(A)—

15 (I) in clause (iii), by inserting  
16 “or personnel at a children’s advocacy  
17 center” after “State”;

18 (II) in clause (iv), by striking  
19 “State or subdivision of a State” and  
20 inserting “State, subdivision of a  
21 State, or children’s advocacy center”;

22 (ii) in paragraph (3), in the matter  
23 preceding subparagraph (A), by inserting  
24 “paragraph (1)(A) or (3) of” before “sub-  
25 section (a)”;

1 (iii) in paragraph (4), by striking  
2 “subsection (a)(1)” and inserting “para-  
3 graph (1)(A) or (3) of subsection (a)”;  
4 (F) in subsection (h)—

5 (i) in paragraph (1), by striking “sub-  
6 section (a)(1)” and inserting “paragraph  
7 (1)(A) or (3) of subsection (a)”;

8 (ii) by adding at the end the fol-  
9 lowing:

10 “(5) RELATION TO REPORTING REQUIRE-  
11 MENT.—Submission of a report as required under  
12 paragraph (1)(A) or (3) of subsection (a) does not  
13 satisfy the obligations under this subsection.”;

14 (G) by adding at the end the following:

15 “(i) ANNUAL REPORT.—

16 “(1) IN GENERAL.—Not later than March 31 of  
17 the second year beginning after the date of enact-  
18 ment of the STOP CSAM Act of 2023, and of each  
19 year thereafter, a provider that had more than  
20 1,000,000 unique monthly visitors or users during  
21 each month of the preceding year and accrued rev-  
22 enue of more than \$50,000,000 during the preceding  
23 year shall submit to the Attorney General and the  
24 Chair of the Federal Trade Commission a report,  
25 disaggregated by subsidiary, that provides the fol-

1       lowing information for the preceding year to the ex-  
2       tent such information is applicable and reasonably  
3       available:

4               “(A) CYBERTIPLINE DATA.—

5                       “(i) The total number of reports that  
6                       the provider submitted under paragraph  
7                       (1)(A) or (3) of subsection (a).

8                       “(ii) The total number of publicly  
9                       available items of apparent child pornog-  
10                      raphy that the provider removed under  
11                      subsection (a)(1)(B).

12                      “(iii) Which items of information de-  
13                      scribed in subsection (b)(2) are routinely  
14                      included in the reports submitted by the  
15                      provider under paragraph (1)(A) or (3) of  
16                      subsection (a).

17               “(B) REPORT AND REMOVE DATA.—With  
18       respect to section 7 of the STOP CSAM Act of  
19       2023—

20                      “(i) a description of the provider’s  
21                      designated reporting system;

22                      “(ii) the number of notifications re-  
23                      ceived;

1           “(iii) the number of proscribed visual  
2           depictions involving a minor that were re-  
3           moved; and

4           “(iv) the total amount of any fine or-  
5           dered and paid.

6           “(C) OTHER REPORTING TO THE PRO-  
7           VIDER.—

8           “(i) The measures the provider has in  
9           place to receive other reports concerning  
10          child sexual exploitation and abuse using  
11          the provider’s product or on the provider’s  
12          service, platform, or network.

13          “(ii) The average time for responding  
14          to reports described in clause (i).

15          “(iii) The number of reports described  
16          in clause (i) that the provider received.

17          “(iv) A summary description of the  
18          actions taken upon receipt of the reports  
19          described in clause (i).

20          “(D) POLICIES.—

21          “(i) A description of the policies of  
22          the provider with respect to the commis-  
23          sion of child sexual exploitation and abuse  
24          using the provider’s product or on the pro-  
25          vider’s service, platform, or network, in-

1 cluding how child sexual exploitation and  
2 abuse is defined.

3 “(ii) A description of possible con-  
4 sequences for violations of the policies de-  
5 scribed in clause (i).

6 “(iii) The methods of informing users  
7 of the policies described in clause (i).

8 “(iv) The process for adjudicating po-  
9 tential violations of the policies described  
10 in clause (i).

11 “(E) CULTURE OF SAFETY.—

12 “(i) The measures and technologies  
13 that the provider deploys to protect the  
14 safety of children using the provider’s  
15 product, service, platform, or network.

16 “(ii) The measures and technologies  
17 that the provider deploys to prevent the  
18 use of the provider’s product, service, plat-  
19 form, or network by individuals seeking to  
20 commit child sexual exploitation and abuse.

21 “(iii) Factors that interfere with the  
22 provider’s ability to detect or evaluate in-  
23 stances of child sexual exploitation and  
24 abuse.

1                   “(iv) An assessment of the efficacy of  
2                   the measures and technologies described in  
3                   clauses (i) and (ii) and the impact of the  
4                   factors described in clause (iii).

5                   “(F) SAFETY BY DESIGN.—The measures  
6                   that the provider takes before launching a new  
7                   product, service, platform, or network to as-  
8                   sess—

9                   “(i) the safety risks for children; and

10                   “(ii) whether and how individuals  
11                   could use the new product, service, plat-  
12                   form, or network to commit child sexual  
13                   exploitation and abuse.

14                   “(G) TRENDS AND PATTERNS.—Any infor-  
15                   mation concerning emerging trends and chang-  
16                   ing patterns with respect to online child safety  
17                   and the commission of child sexual exploitation  
18                   and abuse.

19                   “(2) AVOIDING DUPLICATION.—For purposes of  
20                   subparagraphs (D) through (G) of paragraph (1), in  
21                   the case of any report submitted under that para-  
22                   graph after the initial report, a provider shall only  
23                   be required to submit new or updated information  
24                   described in those subparagraphs.

1           “(3) LIMITATION.—Nothing in paragraph (1)  
2 shall require the disclosure of trade secrets or other  
3 proprietary information.

4           “(4) PUBLICATION.—

5                 “(A) IN GENERAL.—The Attorney General  
6 and the Chair of the Federal Trade Commission  
7 shall publish the reports received under this  
8 subsection.

9                 “(B) REDACTION.—A provider may re-  
10 quest the redaction of any information that is  
11 law enforcement sensitive or otherwise not suit-  
12 able for public distribution, and the Attorney  
13 General and Chair of the Federal Trade Com-  
14 mission may, in their discretion, redact any  
15 such information, whether or not requested.”;

16           (2) in section 2258B—

17                 (A) in subsection (a)—

18                         (i) by striking “may not be brought in  
19 any Federal or State court”; and

20                         (ii) by striking “Except as provided in  
21 subsection (b), a civil claim or criminal  
22 charge” and inserting the following:

23                 “(1) LIMITED LIABILITY.—Except as provided  
24 in subsection (b), a civil claim or criminal charge de-

1 scribed in paragraph (2) may not be brought in any  
2 Federal or State court.

3 “(2) COVERED CLAIMS AND CHARGES.—A civil  
4 claim or criminal charge referred to in paragraph  
5 (1) is a civil claim or criminal charge”; and

6 (B) in subsection (b)(1), by inserting “or  
7 knowingly failed to comply with a requirement  
8 under section 2258A” after “misconduct”;

9 (3) in section 2258C—

10 (A) in subsection (a)(1), by inserting “use  
11 of the provider’s products, services, platforms,  
12 or networks to commit” after “stop the”;

13 (B) in subsection (b)—

14 (i) by striking “Any provider” and in-  
15 serting the following:

16 “(1) IN GENERAL.—Any provider”;

17 (ii) in paragraph (1), as so des-  
18 ignated, by striking “receives” and insert-  
19 ing “, in its sole discretion, obtains”; and

20 (iii) by adding at the end the fol-  
21 lowing:

22 “(2) LIMITATION ON SHARING WITH OTHER EN-  
23 TITIES.—A provider that obtains elements under  
24 subsection (a)(1) may not distribute those elements,  
25 or make those elements available, to any other enti-

1 ty, except for the sole and exclusive purpose of stop-  
2 ping the online sexual exploitation of children.”; and

3 (C) in subsection (c)—

4 (i) by striking “subsections” and in-  
5 serting “subsection”;

6 (ii) by striking “providers receiving”  
7 and inserting “a provider to obtain”;

8 (iii) by inserting “, or” after  
9 “NCMEC”; and

10 (iv) by inserting “use of the provider’s  
11 products, services, platforms, or networks  
12 to commit” after “stop the”;

13 (4) in section 2258E(6), by striking “electronic  
14 communication service provider” and inserting “elec-  
15 tronic communication service”;

16 (5) in section 2259B(a), by inserting “, any  
17 fine or penalty collected under section 2258A(e) or  
18 subparagraph (A) of section 7(g)(24) of the STOP  
19 CSAM Act of 2023 (except as provided in clauses (i)  
20 and (ii)(I) of subparagraph (B) of such section  
21 7(g)(24)),” after “2259A”; and

22 (6) by adding at the end the following:

1 **“§ 2260B. Liability for certain child exploitation of-**  
2 **fenses**

3 “(a) OFFENSE.—It shall be unlawful for a provider  
4 of an interactive computer service, as that term is defined  
5 in section 230 of the Communications Act of 1934 (47  
6 U.S.C. 230), that operates through the use of any facility  
7 or means of interstate or foreign commerce or in or affect-  
8 ing interstate or foreign commerce, through such service  
9 to knowingly—

10 “(1) host or store child pornography or make  
11 child pornography available to any person; or

12 “(2) otherwise knowingly promote or facilitate a  
13 violation of section 2251, 2251A, 2252, 2252A, or  
14 2422(b).

15 “(b) PENALTY.—A provider of an interactive com-  
16 puter service that violates subsection (a)—

17 “(1) subject to paragraph (2), shall be fined not  
18 more than \$1,000,000; and

19 “(2) if the offense involves a conscious or reck-  
20 less risk of serious personal injury or an individual  
21 is harmed as a direct and proximate result of the  
22 violation, shall be fined not more than \$5,000,000.

23 “(c) RULE OF CONSTRUCTION.—Nothing in this sec-  
24 tion shall be construed to apply to any action by a provider  
25 of an interactive computer service that is necessary to  
26 comply with a valid court order, subpoena, search warrant,

1 statutory obligation, or preservation request from law en-  
2 forcement.”.

3 (b) CLERICAL AMENDMENT.—The table of sections  
4 for chapter 110 of title 18, United States Code, is amend-  
5 ed by adding at the end the following:

“2260B. Liability for certain child exploitation offenses.”.

6 **SEC. 6. EXPANDING CIVIL REMEDIES FOR VICTIMS OF ON-**  
7 **LINE CHILD SEXUAL EXPLOITATION.**

8 Section 2255 of title 18, United States Code, is  
9 amended—

10 (1) in subsection (a)—

11 (A) by striking “a violation of section  
12 1589, 1590, 1591, 2241(e), 2242, 2243, 2251,  
13 2251A, 2252, 2252A, 2260, 2421, 2422, or  
14 2423 of this title” and inserting “a child exploi-  
15 tation violation or conduct relating to child ex-  
16 ploitation”;

17 (B) by inserting “or conduct” after “as a  
18 result of such violation”; and

19 (C) by striking “sue in any” and inserting  
20 “bring a civil action in the”; and

21 (2) by adding at the end the following:

22 “(d) DEFINITIONS.—In this section—

23 “(1) the term ‘child exploitation violation’  
24 means a violation of section 1589, 1590, 1591,  
25 1594(a) (involving a violation of section 1589, 1590,

1 or 1591), 1594(b) (involving a violation of section  
2 1589 or 1590), 1594(c), 2241, 2242, 2243, 2251,  
3 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423 of  
4 this title;

5 “(2) the term ‘conduct relating to child exploi-  
6 tation’ means—

7 “(A) with respect to a provider of an inter-  
8 active computer service or a software distribu-  
9 tion service operating through the use of any  
10 means or facility of interstate or foreign com-  
11 merce, or in or affecting interstate or foreign  
12 commerce, the intentional, knowing, reckless, or  
13 negligent promotion or facilitation of conduct  
14 that violates section 1591, 1594(c), 2251,  
15 2251A, 2252, 2252A, or 2422(b) of this title;  
16 and

17 “(B) with respect to a provider of an inter-  
18 active computer service operating through the  
19 use of any means or facility of interstate or for-  
20 eign commerce, or in or affecting interstate or  
21 foreign commerce, the intentional, knowing,  
22 reckless, or negligent hosting or storing of child  
23 pornography or making child pornography  
24 available to any person;

1           “(3) the term ‘interactive computer service’ has  
2           the meaning given that term in section 230(f) of the  
3           Communications Act of 1934 (47 U.S.C. 230(f));  
4           and

5           “(4) the term ‘software distribution service’  
6           means an online service, whether or not operated for  
7           pecuniary gain, from which individuals can purchase,  
8           obtain, or download software that—

9                   “(A) can be used by an individual to com-  
10                  municate with another individual, by any  
11                  means, to store, access, distribute, or receive  
12                  any visual depiction, or to transmit any live vis-  
13                  ual depiction; and

14                   “(B) was not developed by the software  
15                  distribution service.

16           “(e) RELATION TO SECTION 230 OF THE COMMU-  
17           NICATIONS ACT OF 1934.—Nothing in section 230 of the  
18           Communications Act of 1934 (47 U.S.C. 230) shall be  
19           construed to impair or limit any claim brought under this  
20           section for conduct relating to child exploitation.

21           “(f) RULE OF CONSTRUCTION.—Nothing in this sec-  
22           tion shall be construed to apply to any action by a provider  
23           of an interactive computer service that is necessary to  
24           comply with a valid court order, subpoena, search warrant,

1 statutory obligation, or preservation request from law en-  
2 forcement.”.

3 **SEC. 7. REPORTING AND REMOVAL OF PROSCRIBED VIS-**  
4 **UAL DEPICTIONS RELATING TO CHILDREN;**  
5 **ESTABLISHMENT OF CHILD ONLINE PROTEC-**  
6 **TION BOARD.**

7 (a) FINDINGS.—Congress finds the following:

8 (1) Over 40 years ago, the Supreme Court of  
9 the United States ruled in *New York v. Ferber*, 458  
10 U.S. 747 (1982), that child sexual abuse material  
11 (referred to in this subsection as “CSAM”) is a  
12 “category of material outside the protections of the  
13 First Amendment.” The Court emphasized that chil-  
14 dren depicted in CSAM are harmed twice: first  
15 through the abuse and exploitation inherent in the  
16 creation of the materials, and then through the con-  
17 tinued circulation of the imagery, which inflicts its  
18 own emotional and psychological injury.

19 (2) The Supreme Court reiterated this point 9  
20 years ago in *Paroline v. United States*, 572 U.S.  
21 434 (2014), when it explained that CSAM victims  
22 suffer “continuing and grievous harm as a result of  
23 [their] knowledge that a large, indeterminate num-  
24 ber of individuals have viewed and will in the future  
25 view images of the sexual abuse [they] endured.”

1           (3) In these decisions, the Supreme Court noted  
2           that the distribution of child sexual abuse material  
3           invades the privacy interests of the victims.

4           (4) The co-mingling online of CSAM with other,  
5           non-explicit depictions of the victims links the vic-  
6           tim’s identity with the images of their abuse. This  
7           further invades a victim’s privacy and disrupts their  
8           sense of security, thwarting what the Supreme Court  
9           has described as “the individual interest in avoiding  
10          disclosure of personal matters.”

11          (5) The internet is awash with child sexual  
12          abuse material. In 2021, the CyberTipline, operated  
13          by the National Center for Missing & Exploited Chil-  
14          dren to combat online child sexual exploitation, re-  
15          ceived reports about 39,900,000 images and  
16          44,800,000 videos depicting child sexual abuse.

17          (6) Since 2017, Project Arachnid, operated by  
18          the Canadian Centre for Child Protection, has sent  
19          over 26,000,000 notices to online providers about  
20          CSAM and other exploitive material found on their  
21          platforms. According to the Canadian Centre, some  
22          providers are slow to remove the material, or take it  
23          down only for it to be reposted again a short time  
24          later.

1           (7) This legislation is needed to create an easy-  
2 to-use and effective procedure to get CSAM and  
3 harmful related imagery quickly taken offline and  
4 kept offline to protect children, stop the spread of il-  
5 legal and harmful content, and thwart the continued  
6 invasion of the victims' privacy.

7           (b) IMPLEMENTATION.—

8           (1) IMPLEMENTATION.—Except as provided in  
9 paragraph (2), not later than 1 year after the date  
10 of enactment of this Act, the Child Online Protec-  
11 tion Board established under subsection (d), shall  
12 begin operations, at which point providers shall  
13 begin receiving notifications as set forth in sub-  
14 section (c)(2).

15           (2) EXTENSION.—The Commission may extend  
16 the deadline under paragraph (1) by not more than  
17 180 days if the Commission provides notice of the  
18 extension to the public and to Congress.

19           (c) REPORTING AND REMOVAL OF PROSCRIBED VIS-  
20 UAL DEPICTIONS RELATING TO CHILDREN.—

21           (1) IN GENERAL.—If a provider receives a com-  
22 plete notification as set forth in paragraph (2)(A)  
23 that the provider is hosting a proscribed visual de-  
24 piction relating to a child, not later than 48 hours  
25 after such notification is received by the provider

1 (or, in the case of a small provider, not later than  
2 2 business days after such notification is received by  
3 the small provider) the provider shall—

4 (A)(i) remove the proscribed visual depic-  
5 tion relating to a child; and

6 (ii) notify the complainant that it has done  
7 so; or

8 (B) notify the complainant that the pro-  
9 vider—

10 (i) is unable to remove the proscribed  
11 visual depiction relating to a child using  
12 reasonable means; or

13 (ii) has determined that the notifica-  
14 tion is duplicative under paragraph  
15 (2)(C)(i).

16 (2) NOTIFICATION REQUIREMENTS.—

17 (A) IN GENERAL.—To be complete under  
18 this subsection, a notification must be a written  
19 communication to the designated reporting sys-  
20 tem of the provider (or, if the provider does not  
21 have a designated reporting system, a written  
22 communication that is served on the provider in  
23 accordance with subparagraph (F)) that in-  
24 cludes the following:

1 (i) An identification of, and informa-  
2 tion reasonably sufficient to permit the  
3 provider to locate, the alleged proscribed  
4 visual depiction relating to a child. Such  
5 information may include, at the option of  
6 the complainant, a copy of the alleged pro-  
7 scribed visual depiction relating to a child  
8 or the uniform resource locator where such  
9 proscribed visual depiction is located.

10 (ii) The complainant's name and con-  
11 tact information, to include a mailing ad-  
12 dress, telephone number, and an electronic  
13 mail address, except that, if the complain-  
14 ant is the victim depicted in the alleged  
15 proscribed visual depiction relating to a  
16 child, the complainant may elect to use an  
17 alias, including for purposes of the signed  
18 statement described in clause (v), and omit  
19 a mailing address.

20 (iii) If applicable, a statement indi-  
21 cating that the complainant has previously  
22 notified the provider about the alleged pro-  
23 scribed visual depiction relating to a child  
24 which may, at the option of the complain-

1 ant, include a copy of the previous notifica-  
2 tion.

3 (iv) A statement indicating that the  
4 complainant has a good faith belief that  
5 the information in the notification is accu-  
6 rate.

7 (v) A signed statement under penalty  
8 of perjury indicating that the notification  
9 is submitted by—

10 (I) the victim depicted in the al-  
11 leged proscribed visual depiction relat-  
12 ing to a child;

13 (II) an authorized representative  
14 of the victim depicted in the alleged  
15 proscribed visual depiction relating to  
16 a child; or

17 (III) a qualified organization.

18 (B) INCLUSION OF MULTIPLE VISUAL DE-  
19 PITIONS IN SAME NOTIFICATION.—A notifica-  
20 tion may contain information about more than  
21 one proscribed visual depiction relating to a  
22 child, but shall only be effective with respect to  
23 each proscribed visual depiction relating to a  
24 child included in the notification to the extent

1           that the notification includes sufficient informa-  
2           tion to identify and locate such visual depiction.

3           (C) LIMITATION ON DUPLICATIVE NOTIFI-  
4           CATIONS.—

5           (i) IN GENERAL.—After a complain-  
6           ant has submitted a notification to a pro-  
7           vider, the complainant may submit addi-  
8           tional notifications at any time only if the  
9           subsequent notifications involve—

10                   (I) a different proscribed visual  
11                   depiction relating to a minor;

12                   (II) the same proscribed visual  
13                   depiction relating to a minor that is in  
14                   a different location; or

15                   (III) recidivist hosting.

16           (ii) NO OBLIGATION.—A provider who  
17           receives any additional notifications that  
18           do not comply with clause (i) shall not be  
19           required to take any additional action ex-  
20           cept—

21                   (I) as may be required with re-  
22                   spect to the original notification; and

23                   (II) to notify the complainant as  
24                   provided in paragraph (1)(B)(ii).

1 (D) INCOMPLETE OR MISDIRECTED NOTI-  
2 FICATION.—

3 (i) REQUIREMENT TO CONTACT COM-  
4 PLAINANT REGARDING INSUFFICIENT IN-  
5 FORMATION.—

6 (I) REQUIREMENT TO CONTACT  
7 COMPLAINANT.—If a notification that  
8 is submitted to a provider under this  
9 subsection does not contain sufficient  
10 information under subparagraph  
11 (A)(i) to identify or locate the visual  
12 depiction that is the subject of the no-  
13 tification but does contain the com-  
14 plainant contact information described  
15 in subparagraph (A)(ii), the provider  
16 shall, not later than 48 hours after re-  
17 ceiving the notification (or, in the case  
18 of a small provider, not later than 2  
19 business days after such notification  
20 is received by the small provider), con-  
21 tact the complainant via electronic  
22 email address to obtain such informa-  
23 tion.

24 (II) EFFECT OF COMPLAINANT  
25 PROVIDING SUFFICIENT INFORMA-

1 TION.—If the provider is able to con-  
2 tact the complainant and obtain suffi-  
3 cient information to identify or locate  
4 the visual depiction that is the subject  
5 of the notification, the provider shall  
6 then proceed as set forth in paragraph  
7 (1), except that the applicable time-  
8 frames described in such paragraph  
9 shall commence on the day the pro-  
10 vider receives the information needed  
11 to identify or locate the visual depic-  
12 tion.

13 (III) EFFECT OF COMPLAINANT  
14 INABILITY TO PROVIDE SUFFICIENT  
15 INFORMATION.—If the provider is able  
16 to contact the complainant but does  
17 not obtain sufficient information to  
18 identify or locate the visual depiction  
19 that is the subject of the notification,  
20 the provider shall so notify the com-  
21 plainant not later than 48 hours after  
22 the provider determines that it is un-  
23 able to identify or locate the visual de-  
24 piction (or, in the case of a small pro-  
25 vider, not later than 2 business days

1 after the small provider makes such  
2 determination), after which no further  
3 action by the provider is required and  
4 receipt of the notification shall not be  
5 considered in determining whether the  
6 provider has actual knowledge of any  
7 information described in the notifica-  
8 tion.

9 (IV) EFFECT OF COMPLAINANT  
10 FAILURE TO RESPOND.—If the com-  
11 plainant does not respond to the pro-  
12 vider’s attempt to contact the com-  
13 plainant under this clause within 14  
14 days of such attempt, no further ac-  
15 tion by the provider is required and  
16 receipt of the notification shall not be  
17 considered in determining whether the  
18 provider has actual knowledge of any  
19 information described in the notifica-  
20 tion.

21 (ii) TREATMENT OF INCOMPLETE NO-  
22 TIFICATION WHERE COMPLAINANT CANNOT  
23 BE CONTACTED.—If a notification that is  
24 submitted to a provider under this sub-  
25 section does not contain sufficient informa-

1           tion under subparagraph (A)(i) to identify  
2           or locate the visual depiction that is the  
3           subject of the notification and does not  
4           contain the complainant contact informa-  
5           tion described in subparagraph (A)(ii) (or  
6           if the provider is unable to contact the  
7           complainant using such information), no  
8           further action by the provider is required  
9           and receipt of the notification shall not be  
10          considered in determining whether the pro-  
11          vider has actual knowledge of any informa-  
12          tion described in the notification.

13                   (iii) TREATMENT OF NOTIFICATION  
14                   NOT SUBMITTED TO DESIGNATED REPORT-  
15                   ING SYSTEM.—If a provider has a des-  
16                   ignated reporting system, and a complain-  
17                   ant submits a notification under this sub-  
18                   section to the provider without using such  
19                   system, the provider shall not be consid-  
20                   ered to have received the notification.

21                   (E) OPTION TO CONTACT COMPLAINANT  
22                   REGARDING THE PROSCRIBED VISUAL DEPIC-  
23                   TION INVOLVING A MINOR.—

24                           (i) CONTACT WITH COMPLAINANT.—If  
25                   the provider believes that the proscribed

1 visual depiction involving a minor ref-  
2 erenced in the notification does not meet  
3 the definition of such term as provided in  
4 subsection (r)(10), the provider may, not  
5 later than 48 hours after receiving the no-  
6 tification (or, in the case of a small pro-  
7 vider, not later than 2 business days after  
8 such notification is received by the small  
9 provider), contact the complainant via elec-  
10 tronic mail address to so indicate.

11 (ii) FAILURE TO RESPOND.—If the  
12 complainant does not respond to the pro-  
13 vider within 14 days after receiving the no-  
14 tification, no further action by the provider  
15 is required and receipt of the notification  
16 shall not be considered in determining  
17 whether the provider has actual knowledge  
18 of any information described in the notifi-  
19 cation.

20 (iii) COMPLAINANT RESPONSE.—If the  
21 complainant responds to the provider with-  
22 in 14 days after receiving the notification,  
23 the provider shall then proceed as set forth  
24 in paragraph (1), except that the applica-  
25 ble timeframes described in such para-

1 graph shall commence on the day the pro-  
2 vider receives the complainant's response.

3 (F) SERVICE OF NOTIFICATION WHERE  
4 PROVIDER HAS NO DESIGNATED REPORTING  
5 SYSTEM; PROCESS WHERE COMPLAINANT CAN-  
6 NOT SERVE PROVIDER.—

7 (i) NO DESIGNATED REPORTING SYS-  
8 TEM.—If a provider does not have a des-  
9 ignated reporting system, a complainant  
10 may serve the provider with a notification  
11 under this subsection to the provider in the  
12 same manner that petitions are required to  
13 be served under subsection (g)(4).

14 (ii) COMPLAINANT CANNOT SERVE  
15 PROVIDER.—If a provider does not have a  
16 designated reporting system and a com-  
17 plainant cannot reasonably serve the pro-  
18 vider with a notification as described in  
19 clause (i), the complainant may bring a pe-  
20 tition under subsection (g)(1) without serv-  
21 ing the provider with the notification.

22 (G) RECIDIVIST HOSTING.—If a provider  
23 engages in recidivist hosting of a proscribed vis-  
24 ual depiction relating to a child, in addition to  
25 any action taken under this section, a complain-

1 ant may submit a report concerning such recidi-  
2 vist hosting to the CyberTipline operated by the  
3 National Center for Missing and Exploited Chil-  
4 dren, or any successor to the CyberTipline oper-  
5 ated by the National Center for Missing and  
6 Exploited Children.

7 (H) PRESERVATION.—A provider that re-  
8 ceives a complete notification under this sub-  
9 section shall preserve the information in such  
10 notification in accordance with the requirements  
11 of sections 2713 and 2258A(h) of title 18,  
12 United States Code. For purposes of this sub-  
13 paragraph, the period for which providers shall  
14 be required to preserve information in accord-  
15 ance with such section 2258A(h) may be ex-  
16 tended in 90-day increments on written request  
17 by the complainant or order of the Board.

18 (I) NON-DISCLOSURE.—Except as other-  
19 wise provided in subsection (g)(19)(C), for 180  
20 days following receipt of a notification under  
21 this subsection, a provider may not disclose the  
22 existence of the notification to any person or  
23 entity except to an attorney for purposes of ob-  
24 taining legal advice, the Board, the Commis-  
25 sion, a law enforcement agency described in

1           subparagraph (A), (B), or (C) of section  
2           2258A(g)(3) of title 18, United States Code,  
3           the National Center for Missing and Exploited  
4           Children, or as necessary to respond to legal  
5           process. Nothing in the preceding sentence shall  
6           be construed to infringe on the provider's abil-  
7           ity to communicate general information about  
8           terms of service violations.

9           (d) ESTABLISHMENT OF CHILD ONLINE PROTEC-  
10          TION BOARD.—

11           (1) IN GENERAL.—There is established in the  
12          Federal Trade Commission a Child Online Protec-  
13          tion Board, which shall administer and enforce the  
14          requirements of subsection (e) in accordance with  
15          this section.

16           (2) OFFICERS AND STAFF.—The Board shall be  
17          composed of 3 full-time Child Online Protection Of-  
18          ficers who shall be appointed by the Commission in  
19          accordance with paragraph (5)(A). A vacancy on the  
20          Board shall not impair the right of the remaining  
21          Child Online Protection Officers to exercise the  
22          functions and duties of the Board.

23           (3) CHILD ONLINE PROTECTION ATTORNEYS.—  
24          Not fewer than 2 full-time Child Online Protection

1 Attorneys shall be hired to assist in the administra-  
2 tion of the Board.

3 (4) TECHNOLOGICAL ADVISER.—One or more  
4 technological advisers may be hired to assist with  
5 the handling of digital evidence and consult with the  
6 Child Online Protection Officers on matters con-  
7 cerning digital evidence and technological issues.

8 (5) QUALIFICATIONS.—

9 (A) OFFICERS.—

10 (i) IN GENERAL.—Each Child Online  
11 Protection Officer shall be an attorney  
12 duly licensed in at least 1 United States  
13 jurisdiction who has not fewer than 7 years  
14 of legal experience concerning child sexual  
15 abuse material and technology-facilitated  
16 crimes against children.

17 (ii) EXPERIENCE.—Two of the Child  
18 Online Protection Officers shall have sub-  
19 stantial experience in the evaluation, litiga-  
20 tion, or adjudication of matters relating to  
21 child sexual abuse material or technology-  
22 facilitated crimes against children.

23 (B) ATTORNEYS.—Each Child Online Pro-  
24 tection Attorney shall be an attorney duly li-  
25 censed in at least 1 United States jurisdiction

1           who has not fewer than 3 years of substantial  
2           legal experience concerning child sexual abuse  
3           material and technology-facilitated crimes  
4           against children.

5           (C) TECHNOLOGICAL ADVISER.—A techno-  
6           logical adviser shall have at least one year of  
7           specialized experience with digital forensic anal-  
8           ysis.

9           (6) COMPENSATION.—

10          (A) CHILD ONLINE PROTECTION OFFI-  
11          CERS.—

12           (i) DEFINITION.—In this subpara-  
13           graph, the term “senior level employee of  
14           the Federal Government” means an em-  
15           ployee, other than employee in the Senior  
16           Executive Service, the position of whom is  
17           classified above GS–15 of the General  
18           Schedule.

19           (ii) PAY RANGE.—Each Child Online  
20           Protection Officer shall be compensated at  
21           a rate of pay that is not less than the min-  
22           imum, and not more than the maximum,  
23           rate of pay payable for senior level employ-  
24           ees of the Federal Government, including  
25           locality pay, as applicable.

1 (B) CHILD ONLINE PROTECTION ATTOR-  
2 NEYS.—Each Child Online Protection Attorney  
3 shall be compensated at a rate of pay that is  
4 not more than the maximum rate of pay pay-  
5 able for level 10 of GS–15 of the General  
6 Schedule, including locality pay, as applicable.

7 (C) TECHNOLOGICAL ADVISER.—A techno-  
8 logical adviser of the Board shall be com-  
9 pensated at a rate of pay that is not more than  
10 the maximum rate of pay payable for level 10  
11 of GS–14 of the General Schedule, including lo-  
12 cality pay, as applicable.

13 (7) VACANCY.—If a vacancy occurs in the posi-  
14 tion of Child Online Protection Officer, the Commis-  
15 sion shall act expeditiously to appoint an Officer for  
16 that position.

17 (8) SANCTION OR REMOVAL.—Subject to sub-  
18 section (e)(2), the Chair of the Commission or the  
19 Commission may sanction or remove a Child Online  
20 Protection Officer.

21 (9) ADMINISTRATIVE SUPPORT.—The Commis-  
22 sion shall provide the Child Online Protection Offi-  
23 cers and Child Online Protection Attorneys with nec-  
24 essary administrative support, including techno-  
25 logical facilities, to carry out the duties of the Offi-

1 cers and Attorneys under this section. The Depart-  
2 ment of Justice may provide equipment and guid-  
3 ance on the storage and handling of proscribed vis-  
4 ual depictions relating to children.

5 (10) LOCATION OF BOARD.—The offices and fa-  
6 cilities of the Child Online Protection Officers and  
7 Child Online Protection Attorneys shall be located at  
8 the headquarters or other office of the Commission.

9 (e) AUTHORITY AND DUTIES OF THE BOARD.—

10 (1) FUNCTIONS.—

11 (A) OFFICERS.—Subject to the provisions  
12 of this section and applicable regulations, the  
13 functions of the Officers of the Board shall be  
14 as follows:

15 (i) To render determinations on peti-  
16 tions that may be brought before the Offi-  
17 cers under this section.

18 (ii) To ensure that petitions and re-  
19 sponses are properly asserted and other-  
20 wise appropriate for resolution by the  
21 Board.

22 (iii) To manage the proceedings before  
23 the Officers and render determinations  
24 pertaining to the consideration of petitions  
25 and responses, including with respect to

1 scheduling, discovery, evidentiary, and  
2 other matters.

3 (iv) To request, from participants and  
4 nonparticipants in a proceeding, the pro-  
5 duction of information and documents rel-  
6 evant to the resolution of a petition or re-  
7 sponse.

8 (v) To conduct hearings and con-  
9 ferences.

10 (vi) To facilitate the settlement by the  
11 parties of petitions and responses.

12 (vii) To impose fines as set forth in  
13 subsection (g)(24).

14 (viii) To provide information to the  
15 public concerning the procedures and re-  
16 quirements of the Board.

17 (ix) To maintain records of the pro-  
18 ceedings before the Officers, certify official  
19 records of such proceedings as needed,  
20 and, as provided in subsection (g)(19)(A),  
21 make the records in such proceedings  
22 available to the public.

23 (x) To carry out such other duties as  
24 are set forth in this section.

1           (xi) When not engaged in performing  
2           the duties of the Officers set forth in this  
3           section, to perform such other duties as  
4           may be assigned by the Chair of the Com-  
5           mission or the Commission.

6           (B) ATTORNEYS.—Subject to the provi-  
7           sions of this section and applicable regulations,  
8           the functions of the Attorneys of the Board  
9           shall be as follows:

10           (i) To provide assistance to the Offi-  
11           cers of the Board in the administration of  
12           the duties of those Officers under this sec-  
13           tion.

14           (ii) To provide assistance to complain-  
15           ants, providers, and members of the public  
16           with respect to the procedures and require-  
17           ments of the Board.

18           (iii) When not engaged in performing  
19           the duties of the Attorneys set forth in this  
20           section, to perform such other duties as  
21           may be assigned by the Commission.

22           (C) DESIGNATED SERVICE AGENTS.—The  
23           Board may maintain a publicly available direc-  
24           tory of service agents designated to receive serv-  
25           ice of petitions filed with the Board.

1 (2) INDEPENDENCE IN DETERMINATIONS.—

2 (A) IN GENERAL.—The Board shall render  
3 the determinations of the Board in individual  
4 proceedings independently on the basis of the  
5 records in the proceedings before it and in ac-  
6 cordance with the provisions of this section, ju-  
7 dicial precedent, and applicable regulations of  
8 the Commission.

9 (B) PERFORMANCE APPRAISALS.—Not-  
10 withstanding any other provision of law or any  
11 regulation or policy of the Commission, any per-  
12 formance appraisal of an Officer or Attorney of  
13 the Board may not consider the substantive re-  
14 sult of any individual determination reached by  
15 the Board as a basis for appraisal except to the  
16 extent that result may relate to any actual or  
17 alleged violation of an ethical standard of con-  
18 duct.

19 (3) DIRECTION BY COMMISSION.—Subject to  
20 paragraph (2), the Officers and Attorneys shall, in  
21 the administration of their duties, be under the su-  
22 pervision of the Chair of the Commission.

23 (4) INCONSISTENT DUTIES BARRED.—An Offi-  
24 cer or Attorney of the Board may not undertake any

1 duty that conflicts with the duties of the Officer or  
2 Attorney in connection with the Board.

3 (5) RECUSAL.—An Officer or Attorney of the  
4 Board shall recuse himself or herself from participa-  
5 tion in any proceeding with respect to which the Of-  
6 ficer or Attorney, as the case may be, has reason to  
7 believe that he or she has a conflict of interest.

8 (6) EX PARTE COMMUNICATIONS.—Except as  
9 may otherwise be permitted by applicable law, any  
10 party or interested owner involved in a proceeding  
11 before the Board shall refrain from ex parte commu-  
12 nications with the Officers of the Board and the  
13 Commission relevant to the merits of such pro-  
14 ceeding before the Board.

15 (7) JUDICIAL REVIEW.—Actions of the Officers  
16 and the Commission under this section in connection  
17 with the rendering of any determination are subject  
18 to judicial review as provided under subsection  
19 (g)(28).

20 (f) CONDUCT OF PROCEEDINGS OF THE BOARD.—

21 (1) IN GENERAL.—Proceedings of the Board  
22 shall be conducted in accordance with this section  
23 and regulations established by the Commission  
24 under this section, in addition to relevant principles  
25 of law.

1           (2) RECORD.—The Board shall maintain  
2 records documenting the proceedings before the  
3 Board.

4           (3) CENTRALIZED PROCESS.—Proceedings be-  
5 fore the Board shall—

6                 (A) be conducted at the offices of the  
7 Board without the requirement of in-person ap-  
8 pearances by parties or others;

9                 (B) take place by means of written submis-  
10 sions, hearings, and conferences carried out  
11 through internet-based applications and other  
12 telecommunications facilities, except that, in  
13 cases in which physical or other nontestimonial  
14 evidence material to a proceeding cannot be fur-  
15 nished to the Board through available tele-  
16 communications facilities, the Board may make  
17 alternative arrangements for the submission of  
18 such evidence that do not prejudice any party  
19 or interested owner; and

20                 (C) be conducted and concluded in an ex-  
21 peditious manner without causing undue preju-  
22 dice to any party or interested owner.

23           (4) REPRESENTATION.—

24                 (A) IN GENERAL.—A party or interested  
25 owner involved in a proceeding before the Board

1           may be, but is not required to be, represented  
2           by—

3                   (i) an attorney; or

4                   (ii) a law student who is qualified  
5           under applicable law governing representa-  
6           tion by law students of parties in legal pro-  
7           ceedings and who provides such represen-  
8           tation on a pro bono basis.

9           (B) REPRESENTATION OF VICTIMS.—

10                   (i) IN GENERAL.—A petition involving  
11           a victim under the age of 16 at the time  
12           the petition is filed shall be filed by an au-  
13           thorized representative, qualified organiza-  
14           tion, or a person described in subpara-  
15           graph (A).

16                   (ii) NO REQUIREMENT FOR QUALI-  
17           FIED ORGANIZATIONS TO HAVE CONTACT  
18           WITH, OR KNOWLEDGE OF, VICTIM.—A  
19           qualified organization may submit a notifi-  
20           cation to a provider or file a petition on be-  
21           half of a victim without regard to whether  
22           the qualified organization has contact with  
23           the victim or knows the identity, location,  
24           or contact information of the victim.

1 (g) PROCEDURES TO CONTEST A FAILURE TO RE-  
2 MOVE A PROSCRIBED VISUAL DEPICTION RELATING TO  
3 A CHILD OR A NOTIFICATION REPORTING A PROSCRIBED  
4 VISUAL DEPICTION RELATING TO A CHILD.—

5 (1) PROCEDURE TO CONTEST A FAILURE TO  
6 REMOVE.—

7 (A) COMPLAINANT PETITION.—A com-  
8 plainant may file a petition to the Board claim-  
9 ing that, as applicable—

10 (i) the complainant submitted a com-  
11 plete notification to a provider concerning  
12 a proscribed visual depiction relating to a  
13 child, and that—

14 (I) the provider—

15 (aa) did not remove the pro-  
16 scribed visual depiction relating  
17 to a child within the timeframe  
18 required under subsection  
19 (c)(1)(A)(i); or

20 (bb) incorrectly claimed  
21 that—

22 (AA) the visual depic-  
23 tion at issue could not be lo-  
24 cated or removed through  
25 reasonable means;

1 (BB) the notification  
2 was incomplete; or

3 (CC) the notification  
4 was duplicative under sub-  
5 section (c)(2)(C)(i); and

6 (II) did not file a timely petition  
7 to contest the notification with the  
8 Board under paragraph (2); or

9 (ii) a provider is hosting a proscribed  
10 visual depiction relating to a child, does  
11 not have a designated reporting system,  
12 and the complainant was unable to serve a  
13 notification on the provider under this sub-  
14 section despite reasonable efforts.

15 (B) ADDITIONAL CLAIM.—As applicable, a  
16 petition filed under subparagraph (A) may also  
17 claim that the proscribed visual depiction relat-  
18 ing to a child at issue in the petition involves  
19 recidivist hosting.

20 (C) TIMEFRAME.—

21 (i) IN GENERAL.—A petition under  
22 this paragraph shall be considered timely if  
23 it is filed within 30 days of the applicable  
24 start date, as defined under clause (ii).

1 (ii) APPLICABLE START DATE.—For  
2 purposes of clause (i), the term “applicable  
3 start date” means—

4 (I) in the case of a petition under  
5 subparagraph (A)(i) claiming that the  
6 visual depiction was not removed or  
7 that the provider made an incorrect  
8 claim relating to the visual depiction  
9 or notification, the day that the pro-  
10 vider’s option to file a petition has ex-  
11 pired under paragraph (2)(B); and

12 (II) in the case of a petition  
13 under subparagraph (A)(ii) related to  
14 a notification that could not be  
15 served, the last day of the 2-week pe-  
16 riod that begins on the day on which  
17 the complainant first attempted to  
18 serve a notification on the provider in-  
19 volved.

20 (D) IDENTIFICATION OF VICTIM.—Any pe-  
21 tition filed to the Board by the victim or an au-  
22 thorized representative of the victim shall in-  
23 clude the victim’s legal name. A petition filed to  
24 the Board by a qualified organization may, but  
25 is not required to, include the victim’s legal

1 name. Any petition containing the victim’s legal  
2 name shall be filed under seal. The victim’s  
3 legal name shall be redacted from any docu-  
4 ments served on the provider and interested  
5 owner or made publicly available.

6 (E) FAILURE TO REMOVE VISUAL DEPIC-  
7 TIONS IN TIMELY MANNER.—A complainant  
8 may file a petition under subparagraph (A)(i)  
9 claiming that a visual depiction was not re-  
10 moved even if the visual depiction was removed  
11 prior to the petition being filed, so long as the  
12 petition claims that the visual depiction was not  
13 removed within the timeframe specified in sub-  
14 section (c)(1).

15 (2) PROCEDURE TO CONTEST A NOTIFICA-  
16 TION.—

17 (A) PROVIDER PETITION.—If a provider  
18 receives a complete notification as described in  
19 subsection (c)(2) through its designated report-  
20 ing system or in accordance with subsection  
21 (c)(2)(F)(i), the provider may file a petition to  
22 the Board claiming that the provider has a  
23 good faith belief that, as applicable—

24 (i) the visual depiction that is the sub-  
25 ject of the notification does not constitute

1 a proscribed visual depiction relating to a  
2 child;

3 (ii) the notification is frivolous or was  
4 submitted with an intent to harass the pro-  
5 vider or any person;

6 (iii) the alleged proscribed visual de-  
7 piction relating to a child cannot reason-  
8 ably be located by the provider;

9 (iv) for reasons beyond the control of  
10 the provider, the provider cannot remove  
11 the proscribed visual depiction relating to a  
12 child using reasonable means; or

13 (v) the notification was duplicative  
14 under subsection (c)(2)(C)(i).

15 (B) TIMEFRAME.—

16 (i) IN GENERAL.—Subject to clauses  
17 (ii) and (iii), a petition contesting a notifi-  
18 cation under this paragraph shall be con-  
19 sidered timely if it is filed by a provider  
20 not later than 14 days after the day on  
21 which the provider receives the notification  
22 or the notification is made complete under  
23 subsection (c)(2)(D)(i).

24 (ii) NO DESIGNATED REPORTING SYS-  
25 TEM.—Subject to clause (iii), if a provider

1 does not have a designated reporting sys-  
2 tem, a petition contesting a notification  
3 under this paragraph shall be considered  
4 timely if it is filed by a provider not later  
5 than 7 days after the day on which the  
6 provider receives the notification or the no-  
7 tification is made complete under sub-  
8 section (c)(2)(D)(i).

9 (iii) SMALL PROVIDERS.—In the case  
10 of a small provider, each of the timeframes  
11 applicable under clauses (i) and (ii) shall  
12 be increased by 48 hours.

13 (C) TEMPORARY REMOVAL OF ALLEGED  
14 PROSCRIBED VISUAL DEPICTION RELATING TO A  
15 CHILD.—

16 (i) IN GENERAL.—If a provider files a  
17 petition to the Board contesting a notifica-  
18 tion solely on the basis of the reason de-  
19 scribed in subparagraph (A)(i), the pro-  
20 vider shall disable public and user access  
21 to the alleged proscribed visual depiction  
22 relating to a child that is the subject of the  
23 notification prior to the submission of the  
24 petition and during the pendency of the  
25 adjudication, including judicial review as

1 provided in subsection (g)(28). Such peti-  
2 tion shall include a statement, under the  
3 penalty of perjury, that public and user ac-  
4 cess to the alleged proscribed visual depic-  
5 tion relating to a child has been disabled.

6 (ii) EFFECT OF FAILURE TO RE-  
7 MOVE.—

8 (I) IN GENERAL.—If a provider  
9 fails to comply with clause (i), the  
10 Board may—

11 (aa) dismiss the petition  
12 with prejudice; and

13 (bb) refer the matter to the  
14 Attorney General.

15 (II) EFFECT OF DISMISSAL.—If  
16 a provider's petition is dismissed  
17 under clause (I)(aa), the complainant  
18 may bring a petition under paragraph  
19 (1) as if the provider did not file a pe-  
20 tition within the timeframe specified  
21 in subparagraph (B).

22 (iii) EFFECT ON TIMING.—The Board  
23 shall prioritize the issuance of a determina-  
24 tion concerning any petition subject to this  
25 subparagraph to the extent possible with-

1 out causing undue prejudice to any party  
2 or interested owner.

3 (3) COMMENCEMENT OF PROCEEDING.—

4 (A) IN GENERAL.—In order to commence  
5 a proceeding under this section, a petitioning  
6 party shall, subject to such additional require-  
7 ments as may be prescribed in regulations es-  
8 tablished by the Commission, file a petition  
9 with the Board, that includes a statement of  
10 claims and material facts in support of each  
11 claim in the petition. A petition may set forth  
12 more than one claim. A petition shall also in-  
13 clude information establishing that it has been  
14 filed within the applicable timeframe.

15 (B) REVIEW OF PETITIONS BY CHILD ON-  
16 LINE PROTECTION ATTORNEYS.—Child Online  
17 Protection Attorneys may review petitions to  
18 assess whether they are complete. The Board  
19 may permit a petitioning party to refile a defec-  
20 tive petition. The Attorney may assist the peti-  
21 tioning party in making any corrections.

22 (C) DISMISSAL.—The Board may dismiss,  
23 with or without prejudice, any petition that fails  
24 to comply with subparagraph (A).

1           (4) SERVICE OF PROCESS REQUIREMENTS FOR  
2           PETITIONS.—

3           (A) IN GENERAL.—For purposes of peti-  
4           tions under paragraphs (1) and (2), the peti-  
5           tioning party shall, at or before the time of fil-  
6           ing a petition, serve a copy on the other party.  
7           A corporation, partnership, or unincorporated  
8           association that is subject to suit in courts of  
9           general jurisdiction under a common name shall  
10          be served by delivering a copy of the petition to  
11          its service agent, if one has been so designated.

12          (B) MANNER OF SERVICE.—

13           (i) SERVICE BY NONDIGITAL  
14           MEANS.—Service by nondigital means may  
15           be any of the following:

16           (I) Personal, including delivery to  
17           a responsible person at the office of  
18           counsel.

19           (II) By priority mail.

20           (III) By third-party commercial  
21           carrier for delivery within 3 days.

22           (ii) SERVICE BY DIGITAL MEANS.—  
23           Service of a paper may be made by sending  
24           it by any digital means, including through  
25           a provider’s designated reporting system.

1 (iii) WHEN SERVICE IS COM-  
2 PLETED.—Service by mail or by commer-  
3 cial carrier is complete 3 days after the  
4 mailing or delivery to the carrier. Service  
5 by digital means is complete on filing or  
6 sending, unless the party making service is  
7 notified that the paper was not received by  
8 the party served.

9 (C) PROOF OF SERVICE.—A petition filed  
10 under paragraph (1) or (2) shall contain—

11 (i) an acknowledgment of service by  
12 the person served;

13 (ii) proof of service consisting of a  
14 statement by the person who made service  
15 certifying—

16 (I) the date and manner of serv-  
17 ice;

18 (II) the names of the persons  
19 served; and

20 (III) their mail or electronic ad-  
21 dresses, facsimile numbers, or the ad-  
22 dresses of the places of delivery, as  
23 appropriate for the manner of service;  
24 or

1 (iii) a statement indicating that serv-  
2 ice could not reasonably be completed.

3 (D) ATTORNEYS FEES AND COSTS.—Ex-  
4 cept as otherwise provided in this subsection, all  
5 parties to a petition shall bear their own attor-  
6 ney fees and costs.

7 (5) SERVICE OF OTHER DOCUMENTS.—Docu-  
8 ments submitted or relied upon in a proceeding,  
9 other than the petition, shall be served in accordance  
10 with regulations established by the Commission.

11 (6) NOTIFICATION OF RIGHT TO OPT OUT.—In  
12 order to effectuate service on a responding party,  
13 the petition shall notify the responding party of their  
14 right to opt out of the proceeding before the Board,  
15 and the consequences of opting out and not opting  
16 out, including a prominent statement that by not  
17 opting out the respondent—

18 (A) loses the opportunity to have the dis-  
19 pute decided by a court created under article  
20 III of the Constitution of the United States;  
21 and

22 (B) waives the right to a jury trial regard-  
23 ing the dispute.

24 (7) OPT-OUT PROCEDURE.—Within 1 week of  
25 completion of service of the petition under para-

1 graph (4), 1 or more Officers of the Board shall  
2 hold a conference to explain that the responding  
3 party has a right to opt out of the proceeding before  
4 the Board, and describe the consequences of opting  
5 out and not opting out as described in paragraph  
6 (6). A responding party shall have a period of 30  
7 days, beginning on the date of conference, in which  
8 to provide written notice of such choice to the peti-  
9 tioning party and the Child Online Protection  
10 Board. If the responding party does not submit an  
11 opt-out notice to the Child Online Protection Board  
12 within that 30-day period, the proceeding shall be  
13 deemed an active proceeding and the responding  
14 party shall be bound by the determination in the  
15 proceeding. If the responding party opts out of the  
16 proceeding during that 30-day period, the pro-  
17 ceeding shall be dismissed without prejudice.

18 (8) SCHEDULING.—Upon receipt of a complete  
19 petition and at the conclusion of the opt out proce-  
20 dure described in paragraph (7), the Board shall  
21 issue a schedule for the future conduct of the pro-  
22 ceeding. A schedule issued by the Board may be  
23 amended by the Board in the interests of justice.

24 (9) CONFERENCES.—One or more Officers of  
25 the Board may hold a conference to address case

1 management or discovery issues in a proceeding,  
2 which shall be noted upon the record of the pro-  
3 ceeding and may be recorded or transcribed.

4 (10) PARTY SUBMISSIONS.—A proceeding of the  
5 Board may not include any formal motion practice,  
6 except that, subject to applicable regulations and  
7 procedures of the Board—

8 (A) the parties to the proceeding and an  
9 interested owner may make requests to the  
10 Board to address case management and dis-  
11 covery matters, and submit responses thereto;  
12 and

13 (B) the Board may request or permit par-  
14 ties and interested owners to make submissions  
15 addressing relevant questions of fact or law, or  
16 other matters, including matters raised sua  
17 sponte by the Officers of the Board, and offer  
18 responses thereto.

19 (11) DISCOVERY.—

20 (A) IN GENERAL.—Discovery in a pro-  
21 ceeding shall be limited to the production of rel-  
22 evant information and documents, written inter-  
23 rogatories, and written requests for admission,  
24 as provided in regulations established by the  
25 Commission, except that—

1 (i) upon the request of a party, and  
2 for good cause shown, the Board may ap-  
3 prove additional relevant discovery, on a  
4 limited basis, in particular matters, and  
5 may request specific information and docu-  
6 ments from parties in the proceeding, con-  
7 sistent with the interests of justice;

8 (ii) upon the request of a party or in-  
9 terested owner, and for good cause shown,  
10 the Board may issue a protective order to  
11 limit the disclosure of documents or testi-  
12 mony that contain confidential informa-  
13 tion;

14 (iii) after providing notice and an op-  
15 portunity to respond, and upon good cause  
16 shown, the Board may apply an adverse in-  
17 ference with respect to disputed facts  
18 against a party or interested owner who  
19 has failed to timely provide discovery mate-  
20 rials in response to a proper request for  
21 materials that could be relevant to such  
22 facts; and

23 (iv) an interested owner shall only  
24 produce or receive discovery to the extent  
25 it relates to whether the visual depiction at

1           issue constitutes a proscribed visual depic-  
2           tion relating to a child.

3           (B) PRIVACY.—Any alleged proscribed vis-  
4           ual depiction relating to a child received by the  
5           Board or the Commission as part of a pro-  
6           ceeding shall be filed under seal and shall re-  
7           main in the care, custody, and control of the  
8           Board or the Commission. For purposes of dis-  
9           covery, the Board or Commission shall make  
10          the proscribed visual depiction relating to a  
11          child reasonably available to the parties and in-  
12          terested owner but shall not provide copies. The  
13          privacy protections described in section 3509(d)  
14          of title 18, United States Code, shall apply to  
15          the Board, Commission, provider, complainant,  
16          and interested owner.

17          (12) RESPONSES.—The responding party may  
18          refute any of the claims or factual assertions made  
19          by the petitioning party, and may also claim that the  
20          petition was not filed in the applicable timeframe or  
21          is barred under subsection (h). If a complainant is  
22          the petitioning party, a provider may claim in re-  
23          sponse that the notification was incomplete and  
24          could not be made complete under subsection

1 (c)(2)(D)(i). The petitioning party may refute any  
2 responses submitted by the responding party.

3 (13) INTERESTED OWNER.—An individual noti-  
4 fied under paragraph (19)(C)(ii) may, within 14  
5 days of being so notified, file a motion to join the  
6 proceeding for the limited purpose of claiming that  
7 the visual depiction at issue does not constitute a  
8 proscribed visual depiction relating to a child. The  
9 Board shall serve the motion on both parties. Such  
10 motion shall include a factual basis and a signed  
11 statement, submitted under penalty of perjury, indi-  
12 cating that the individual produced or created the  
13 visual depiction at issue. The Board shall dismiss  
14 any motion that does not include the signed state-  
15 ment or that was submitted by an individual who did  
16 not produce or create the visual depiction at issue.  
17 If the motion is granted, the interested owner may  
18 also claim that the notification and petition were  
19 filed with an intent to harass the interested owner.  
20 Any party may refute the claims and factual asser-  
21 tions made by the interested owner.

22 (14) EVIDENCE.—The Board may consider the  
23 following types of evidence in a proceeding, and such  
24 evidence may be admitted without application of for-  
25 mal rules of evidence:

1           (A) Documentary and other nontestimonial  
2 evidence that is relevant to the petitions or re-  
3 sponses in the proceeding.

4           (B) Testimonial evidence, submitted under  
5 penalty of perjury in written form or in accord-  
6 ance with paragraph (15), limited to statements  
7 of the parties and nonexpert witnesses, that is  
8 relevant to the petitions or responses in a pro-  
9 ceeding, except that, in exceptional cases, expert  
10 witness testimony or other types of testimony  
11 may be permitted by the Board for good cause  
12 shown.

13           (15) HEARINGS.—Unless waived by all parties,  
14 the Board shall conduct a hearing to receive oral  
15 presentations on issues of fact or law from parties  
16 and witnesses to a proceeding, including oral testi-  
17 mony, subject to the following:

18           (A) Any such hearing shall be attended by  
19 not fewer than two of the Officers of the Board.

20           (B) The hearing shall be noted upon the  
21 record of the proceeding and, subject to sub-  
22 paragraph (C), may be recorded or transcribed  
23 as deemed necessary by the Board.

1 (C) A recording or transcript of the hear-  
2 ing shall be made available to any Officer of the  
3 Board who is not in attendance.

4 (16) VOLUNTARY DISMISSAL.—

5 (A) BY PETITIONING PARTY.—Upon the  
6 written request of a petitioning party, the  
7 Board shall dismiss the petition, with or with-  
8 out prejudice.

9 (B) BY RESPONDING PARTY OR INTER-  
10 ESTED OWNER.—Upon written request of a re-  
11 sponding party or interested owner, the Board  
12 shall dismiss any responses to the petition, and  
13 shall consider all claims and factual assertions  
14 in the petition to be true.

15 (17) FACTUAL FINDINGS.—Subject to para-  
16 graph (11)(A)(iii), the Board shall make factual  
17 findings based upon a preponderance of the evi-  
18 dence.

19 (18) DETERMINATIONS.—

20 (A) NATURE AND CONTENTS.—A deter-  
21 mination rendered by the Board in a proceeding  
22 shall—

23 (i) be reached by a majority of the  
24 Board;

1 (ii) be in writing, and include an ex-  
2 planation of the factual and legal basis of  
3 the determination; and

4 (iii) include a clear statement of all  
5 fines, costs, and other relief awarded.

6 (B) DISSENT.—An Officer of the Board  
7 who dissents from a decision contained in a de-  
8 termination under subparagraph (A) may ap-  
9 pend a statement setting forth the grounds for  
10 that dissent.

11 (19) PUBLICATION AND DISCLOSURE.—

12 (A) PUBLICATION.—Each final determina-  
13 tion of the Board shall be made available on a  
14 publicly accessible website, except that the final  
15 determination shall be redacted to protect con-  
16 fidential information that is the subject of a  
17 protective order under paragraph (11)(A)(ii) or  
18 information protected pursuant to paragraph  
19 (11)(B) and any other information protected  
20 from public disclosure under the Federal Trade  
21 Commission Act or any other applicable provi-  
22 sion of law.

23 (B) FREEDOM OF INFORMATION ACT.—All  
24 information relating to proceedings of the  
25 Board under this section is exempt from disclo-

1           sure to the public under section 552(b)(3) of  
2           title 5, except for determinations, records, and  
3           information published under subparagraph (A).  
4           Any information that is disclosed under this  
5           subparagraph shall have redacted any informa-  
6           tion that is the subject of a protective order  
7           under paragraph (11)(A)(ii) or protected pursu-  
8           ant to paragraph (11)(B).

9                   (C) EFFECT OF PETITION ON NON-DISCL-  
10           SURE PERIOD.—

11                   (i) Submission of a petition extends  
12           the non-disclosure period under subsection  
13           (c)(2)(I) for the pendency of the pro-  
14           ceeding. The provider may submit an ob-  
15           jection to the Board that nondisclosure is  
16           contrary to the interests of justice. The  
17           complainant may, but is not required to,  
18           respond to the objection. The Board should  
19           sustain the objection unless there is reason  
20           to believe that the circumstances in section  
21           3486(a)(6)(B) of title 18, United States  
22           Code, exist and outweigh the interests of  
23           justice.

24                   (ii) If the Board sustains an objection  
25           to the nondisclosure period, the provider or

1 the Board may notify the apparent owner  
2 of the visual depiction in question about  
3 the proceeding, and include instructions on  
4 how the owner may move to join the pro-  
5 ceeding under paragraph (13).

6 (iii) If applicable, the nondisclosure  
7 period expires 120 after the Board's deter-  
8 mination becomes final, except it shall ex-  
9 pire immediately upon the Board's deter-  
10 mination becoming final if the Board finds  
11 that the visual depiction is not a pro-  
12 scribed visual depiction relating to a  
13 minor.

14 (iv) The interested owner of a visual  
15 depiction may not bring any legal action  
16 against any party related to the proscribed  
17 visual depiction relating to a child until the  
18 Board's determination is final. Once the  
19 determination is final, the owner of the vis-  
20 ual depiction may pursue any legal relief  
21 available under the law, subject to sub-  
22 sections (h), (k), and (l).

23 (20) RESPONDING PARTY'S DEFAULT.—If the  
24 Board finds that service of the petition on the re-  
25 sponding party could not reasonably be completed,

1 or the responding party has failed to appear or has  
2 ceased participating in a proceeding, as dem-  
3 onstrated by the responding party's failure, without  
4 justifiable cause, to meet one or more deadlines or  
5 requirements set forth in the schedule adopted by  
6 the Board, the Board may enter a default deter-  
7 mination, including the dismissal of any responses  
8 asserted by the responding party, as follows and in  
9 accordance with such other requirements as the  
10 Commission may establish by regulation:

11 (A) The Board shall require the petitioning  
12 party to submit relevant evidence and other in-  
13 formation in support of the petitioning party's  
14 claims and, upon review of such evidence and  
15 any other requested submissions from the peti-  
16 tioning party, shall determine whether the ma-  
17 terials so submitted are sufficient to support a  
18 finding in favor of the petitioning party under  
19 applicable law and, if so, the appropriate relief  
20 and damages, if any, to be awarded.

21 (B) If the Board makes an affirmative de-  
22 termination under subparagraph (A), the Board  
23 shall prepare a proposed default determination,  
24 and shall provide written notice to the respond-  
25 ing party at all addresses, including email ad-

1 dresses, reflected in the records of the pro-  
2 ceeding before the Board, of the pendency of a  
3 default determination by the Board and of the  
4 legal significance of such determination. Such  
5 notice shall be accompanied by the proposed de-  
6 fault determination and shall provide that the  
7 responding party has a period of 30 days, be-  
8 ginning on the date of the notice, to submit any  
9 evidence or other information in opposition to  
10 the proposed default determination.

11 (C) If the responding party responds to the  
12 notice provided under subparagraph (B) within  
13 the 30-day period provided in such subpara-  
14 graph, the Board shall consider responding par-  
15 ty's submissions and, after allowing the peti-  
16 tioning party to address such submissions,  
17 maintain, or amend its proposed determination  
18 as appropriate, and the resulting determination  
19 shall not be a default determination.

20 (D) If the respondent fails to respond to  
21 the notice provided under subparagraph (B),  
22 the Board shall proceed to issue the default de-  
23 termination. Thereafter, the respondent may  
24 only challenge such determination to the extent  
25 permitted under paragraph (28).

1           (21) PETITIONING PARTY OR INTERESTED  
2 OWNER'S FAILURE TO PROCEED.—If a petitioning  
3 party or interested owner who has joined the pro-  
4 ceeding fails to proceed, as demonstrated by the fail-  
5 ure, without justifiable cause, to meet one or more  
6 deadlines or requirements set forth in the schedule  
7 adopted by the Board, the Board may, upon pro-  
8 viding written notice to the petitioning party or in-  
9 terested owner and a period of 30 days, beginning  
10 on the date of the notice, to respond to the notice,  
11 and after considering any such response, issue a de-  
12 termination dismissing the claims made by the peti-  
13 tioning party or interested owner. The Board may  
14 order the petitioning party to pay attorneys' fees  
15 and costs under paragraph (26)(B), if appropriate.  
16 Thereafter, the petitioning party may only challenge  
17 such determination to the extent permitted under  
18 paragraph (28).

19           (22) REQUEST FOR RECONSIDERATION.—A  
20 party or interested owner may, within 30 days after  
21 the date on which the Board issues a determination  
22 under paragraph (18), submit to the Board a writ-  
23 ten request for reconsideration of, or an amendment  
24 to, such determination if the party or interested  
25 owner identifies a clear error of law or fact material

1 to the outcome, or a technical mistake. After pro-  
2 viding the other parties an opportunity to address  
3 such request, the Board shall either deny the request  
4 or issue an amended determination.

5 (23) REVIEW BY COMMISSION.—If the Board  
6 denies a party or interested owner a request for re-  
7 consideration of a determination under paragraph  
8 (22), the party or interested owner may, within 30  
9 days after the date of such denial, request review of  
10 the determination by the Commission in accordance  
11 with regulations established by the Commission.  
12 After providing the other party or interested owner  
13 an opportunity to address the request, the Commis-  
14 sion shall either deny the request for review, or re-  
15 mand the proceeding to the Board for reconsider-  
16 ation of issues specified in the remand and for  
17 issuance of an amended determination. Such amend-  
18 ed determination shall not be subject to further con-  
19 sideration or review, other than under paragraph  
20 (28).

21 (24) FAVORABLE RULING ON COMPLAINANT PE-  
22 TITION.—

23 (A) IN GENERAL.—If the Board grants a  
24 complainant's petition filed under this section,

1           notwithstanding any other law, the Board  
2           shall—

3                   (i) order the provider to immediately  
4                   remove the proscribed visual depiction re-  
5                   lating to a child, and to permanently delete  
6                   all copies of the visual depiction known to  
7                   and under the control of the provider un-  
8                   less the Board orders the provider to pre-  
9                   serve the visual depiction;

10                  (ii) impose a fine of \$50,000 per pro-  
11                  scribed visual depiction relating to a child  
12                  covered by the determination, but if the  
13                  Board finds that—

14                           (I) the provider removed the pro-  
15                           scribed visual depiction relating to a  
16                           child after the period set forth in sub-  
17                           section (c)(1)(A)(i), but before the  
18                           complainant filed a petition, such fine  
19                           shall be \$25,000;

20                           (II) the provider has engaged in  
21                           recidivist hosting for the first time  
22                           with respect to the proscribed visual  
23                           depiction relating to a child in ques-  
24                           tion, such fine shall be \$100,000 per

1           proscribed visual depiction relating to  
2           a child; or

3                   (III) the provider has engaged in  
4           recidivist hosting of the proscribed  
5           visual depiction relating to a child in  
6           question 2 or more times, such fine  
7           shall be \$200,000 per proscribed vis-  
8           ual depiction relating to a child;

9                   (iii) order the provider to pay reason-  
10          able costs to the complainant; and

11                   (iv) refer any matters involving inten-  
12          tional or willful conduct by a provider with  
13          respect to a proscribed visual depiction re-  
14          lating to a child, or recidivist hosting, to  
15          the Attorney General for prosecution under  
16          any applicable laws.

17                   (B) PROVIDER PAYMENT OF FINE AND  
18          COSTS.—Notwithstanding any other law, the  
19          Board shall direct a provider to promptly pay  
20          fines and costs imposed under subparagraph  
21          (A) as follows:

22                           (i) If the petition was filed by a vic-  
23          tim, such fine and costs shall be paid to  
24          the victim.

1 (ii) If the petition was filed by an au-  
2 thorized representative of a victim—

3 (I) 30 percent of such fine shall  
4 be paid to the authorized representa-  
5 tive and 70 percent of such fine paid  
6 to the victim; and

7 (II) costs shall be paid to the au-  
8 thorized representative.

9 (iii) If the petition was filed by a  
10 qualified organization—

11 (I) the fine shall be paid to the  
12 Child Pornography Victims Reserve as  
13 provided in section 2259B of title 18,  
14 United States Code; and

15 (II) costs shall be paid to the  
16 qualified organization.

17 (25) EFFECT OF DENIAL OF PROVIDER PETI-  
18 TION.—

19 (A) IN GENERAL.—If the Board denies a  
20 provider's petition to contest a notification filed  
21 under paragraph (2), it shall order the provider  
22 to immediately remove the proscribed visual de-  
23 piction relating to a child, and to permanently  
24 delete all copies of the visual depiction known  
25 to and under the control of the provider unless

1 the Board orders the provider to preserve the  
2 visual depiction.

3 (B) REFERRAL FOR FAILURE TO REMOVE  
4 MATERIAL.—If a provider does not remove and,  
5 if applicable, permanently delete a proscribed  
6 visual depiction relating to a child within 48  
7 hours of the Board issuing a determination  
8 under subparagraph (A), or not later than 2  
9 business days of the Board issuing a determina-  
10 tion under subparagraph (A) concerning a small  
11 provider, the Board shall refer the matter to  
12 the Attorney General for prosecution under any  
13 applicable laws.

14 (C) COSTS FOR FRIVOLOUS PETITION.—If  
15 the Board finds that a provider filed a petition  
16 under paragraph (2) for a harassing or im-  
17 proper purpose or without reasonable basis in  
18 law or fact, the Board shall order the provider  
19 to pay the reasonable costs of the complainant.

20 (26) EFFECT OF DENIAL OF COMPLAINANT'S  
21 PETITION OR FAVORABLE RULING ON PROVIDER'S  
22 PETITION.—

23 (A) RESTORATION.—If the Board grants a  
24 provider's petition filed under paragraph (2) or  
25 if the Board denies a petition filed by the com-

1           plainant under paragraph (1), the provider may  
2           restore access to any visual depiction that was  
3           at issue in the proceeding.

4           (B) COSTS FOR INCOMPLETE OR FRIVO-  
5           LOUS NOTIFICATION AND HARASSMENT.—If, in  
6           granting or denying a petition as described in  
7           subparagraph (A), the Board finds that the no-  
8           tification contested in the petition could not be  
9           made complete under subsection (c)(2)(D), is  
10          frivolous, or is duplicative under subsection  
11          (c)(2)(C)(i), the Board may order the complain-  
12          ant to pay costs to the provider and any inter-  
13          ested owner, which shall not exceed a total of  
14          \$10,000, or, if the Board finds that the com-  
15          plainant filed the notification with an intent to  
16          harass the provider or any person, a total of  
17          \$15,000.

18          (27) CIVIL ACTION; OTHER RELIEF.—

19          (A) IN GENERAL.—Whenever any provider  
20          or complainant fails to comply with a final de-  
21          termination of the Board issued under para-  
22          graph (18), the Department of Justice may  
23          commence a civil action in a district court of  
24          the United States to enforce compliance with  
25          such determination.

1 (B) SAVINGS CLAUSE.—Nothing in this  
2 section shall be construed to limit the authority  
3 of the Commission or Department of Justice  
4 under any other provision of law.

5 (28) CHALLENGES TO THE DETERMINATION.—

6 (A) BASES FOR CHALLENGE.—Not later  
7 than 45 days after the date on which the Board  
8 issues a determination or amended determina-  
9 tion in a proceeding, or not later than 45 days  
10 after the date on which the Board completes  
11 any process of reconsideration or the Commis-  
12 sion completes a review of the determination,  
13 whichever occurs later, a party may seek an  
14 order from a district court, located where the  
15 provider or complainant conducts business or  
16 resides, vacating, modifying, or correcting the  
17 determination of the Board in the following  
18 cases:

19 (i) If the determination was issued as  
20 a result of fraud, corruption, misrepresen-  
21 tation, or other misconduct.

22 (ii) If the Board exceeded its author-  
23 ity or failed to render a determination con-  
24 cerning the subject matter at issue.

1 (iii) In the case of a default deter-  
2 mination or determination based on a fail-  
3 ure to prosecute, if it is established that  
4 the default or failure was due to excusable  
5 neglect.

6 (B) PROCEDURE TO CHALLENGE.—

7 (i) NOTICE OF APPLICATION.—Notice  
8 of the application to challenge a determina-  
9 tion of the Board shall be provided to all  
10 parties to the proceeding before the Board,  
11 in accordance with the procedures applica-  
12 ble to service of a motion in the court  
13 where the application is made.

14 (ii) STAYING OF PROCEEDINGS.—For  
15 purposes of an application under this para-  
16 graph, any judge who is authorized to  
17 issue an order to stay the proceedings in  
18 an any other action brought in the same  
19 court may issue an order, to be served with  
20 the notice of application, staying pro-  
21 ceedings to enforce the award while the  
22 challenge is pending.

23 (29) FINAL DETERMINATION.—A determination  
24 of the Board shall be final on the date that all op-  
25 portunities for a party or interested owner to seek

1 reconsideration or review of a determination under  
2 paragraph (22) or (23), or for a party to challenge  
3 the determination under paragraph (28), have ex-  
4 pired or are exhausted.

5 (h) EFFECT OF PROCEEDING.—

6 (1) SUBSEQUENT PROCEEDINGS.—The issuance  
7 of a final determination by the Board shall preclude  
8 the filing by any party of any subsequent petition  
9 that is based on the notification at issue in the final  
10 determination. This paragraph shall not limit the  
11 ability of any party to file a subsequent petition  
12 based on any other notification.

13 (2) DETERMINATION.—Except as provided in  
14 paragraph (1), the issuance of a final determination  
15 by the Board, including a default determination or  
16 determination based on a failure to prosecute, shall  
17 not preclude relitigation of any factual matter in any  
18 subsequent legal action or proceeding before any  
19 court, tribunal, or the Board, and any determination  
20 of the Board may not be cited or relied upon as legal  
21 precedent in any such legal action or proceeding ex-  
22 cept that—

23 (A) no party or interested owner may re-  
24 litigate any allegation, factual claim, or re-  
25 sponse that was properly asserted and consid-

1           ered by the Board in any subsequent proceeding  
2           before the Board involving the same parties or  
3           interested owner and the same proscribed visual  
4           depiction relating to a minor; and

5                   (B) a finding by the Board that a visual  
6           depiction constitutes a proscribed visual depic-  
7           tion relating to a child may not be relitigated  
8           in any civil proceeding brought by an interested  
9           owner.

10           (3) OTHER MATERIALS IN PROCEEDING.—A  
11          submission or statement of a party, interested  
12          owner, or witness made in connection with a pro-  
13          ceeding before the Board, including a proceeding  
14          that is dismissed, may not serve as the basis of any  
15          action or proceeding before any court or tribunal ex-  
16          cept for any legal action related to perjury or for  
17          conduct described in subsection (k)(2). A statement  
18          of a party, interested owner, or witness may be re-  
19          ceived as evidence, in accordance with applicable  
20          rules, in any subsequent legal action or proceeding  
21          before any court, tribunal, or the Board.

22           (4) FAILURE TO ASSERT RESPONSE.—Except  
23          as provided in paragraph (1), the failure or inability  
24          to assert any allegation, factual claim, or response in  
25          a proceeding before the Board shall not preclude the

1       assertion of that response in any subsequent legal  
2       action or proceeding before any court, tribunal, or  
3       the Board.

4       (i) ADMINISTRATION.—The Commission may issue  
5       regulations in accordance with section 553 of title 5,  
6       United States Code, to implement this section.

7       (j) STUDY.—

8               (1) IN GENERAL.—Not later than 3 years after  
9       the date on which Child Online Protection Board  
10       issues the first determination under this section, the  
11       Commission shall conduct, and report to Congress  
12       on, a study that addresses the following:

13                       (A) The use and efficacy of the Child On-  
14       line Protection Board in expediting the removal  
15       of proscribed visual depictions relating to chil-  
16       dren and resolving disputes concerning said vis-  
17       ual depictions, including the number of pro-  
18       ceedings the Child Online Protection Board  
19       could reasonably administer with current allo-  
20       cated resources.

21                       (B) Whether adjustments to the authority  
22       of the Child Online Protection Board are nec-  
23       essary or advisable, including with respect to  
24       permissible claims, responses, fines, costs, and  
25       joinder by interested parties;

1           (C) Whether the Child Online Protection  
2           Board should be permitted to expire, be ex-  
3           tended, or be expanded.

4           (D) Such other matters as the Commission  
5           believes may be pertinent concerning the Child  
6           Online Protection Board.

7           (2) CONSULTATION.—In conducting the study  
8           and completing the report required under paragraph  
9           (1), the Commission shall, to the extent feasible,  
10          consult with complainants, victims, and providers to  
11          include their views on the matters addressed in the  
12          study and report.

13          (k) LIMITED LIABILITY.—

14           (1) IN GENERAL.—Except as provided in para-  
15          graph (2), a civil claim or criminal charge against  
16          the Board, a provider, a complainant, interested  
17          owner, or representative under subsection (f)(4), for  
18          distributing, receiving, accessing, or possessing a  
19          proscribed visual depiction relating to a child for the  
20          sole and exclusive purpose of complying with the re-  
21          quirements of this section, or for the sole and exclu-  
22          sive purpose of seeking or providing legal advice in  
23          order to comply with this section, may not be  
24          brought in any Federal or State court.

1           (2) INTENTIONAL, RECKLESS, OR OTHER MIS-  
2 CONDUCT.—Paragraph (1) shall not apply to a claim  
3 against the Board, a provider, a complainant, inter-  
4 ested owner, or representative under subsection  
5 (f)(4)—

6                   (A) for any conduct unrelated to compli-  
7 ance with the requirements of this section;

8                   (B) if the Board, provider, complainant,  
9 interested owner, or representative under sub-  
10 section (f)(4) (as applicable)—

11                         (i) engaged in intentional misconduct;

12                         or

13                         (ii) acted, or failed to act—

14                                 (I) with actual malice; or

15                                 (II) with reckless disregard to a  
16 substantial risk of causing physical in-  
17 jury without legal justification; or

18                   (C) in the case of a claim against a com-  
19 plainant, if the complainant falsely claims to be  
20 a victim, an authorized representative of a vic-  
21 tim, or a qualified organization.

22           (3) MINIMIZING ACCESS.—The Board, a pro-  
23 vider, a complainant, an interested owner, or a rep-  
24 resentative under subsection (f)(4) shall—

1 (A) minimize the number of individuals  
2 that are provided access to any alleged, con-  
3 tested, or actual proscribed visual depictions re-  
4 lating to a child under this section;

5 (B) ensure that any alleged, contested, or  
6 actual proscribed visual depictions relating to a  
7 child are transmitted and stored in a secure  
8 manner and are not distributed to or accessed  
9 by any individual other than as needed to im-  
10 plement this section; and

11 (C) ensure that all copies of any proscribed  
12 visual depictions relating to a child are perma-  
13 nently deleted upon a request from the Board,  
14 Commission, or the Federal Bureau of Inves-  
15 tigation.

16 (l) PROVIDER IMMUNITY FROM CLAIMS BASED ON  
17 REMOVAL OF VISUAL DEPICTION.—A provider shall not  
18 be liable to any person for any claim based on the pro-  
19 vider’s good faith removal of any alleged proscribed visual  
20 depiction relating to a child pursuant to a notification  
21 under this section, regardless of whether the visual depic-  
22 tion is found to be a proscribed visual depiction relating  
23 to a child by the Board.

24 (m) CONTINUED APPLICABILITY OF FEDERAL,  
25 STATE, AND TRIBAL LAW.—

1           (1) IN GENERAL.—This Act shall not be con-  
2           strued to impair, supersede, or limit a provision of  
3           Federal, State, or Tribal law.

4           (2) NO PREEMPTION.—Nothing in this Act  
5           shall prohibit a State or Tribal government from  
6           adopting and enforcing a provision of law governing  
7           child sex abuse material that is at least as protective  
8           of the rights of a victim as this section.

9           (n) DISCOVERY.—Nothing in this Act affects dis-  
10          covery, a subpoena or any other court order, or any other  
11          judicial process otherwise in accordance with Federal or  
12          State law.

13          (o) RULE OF CONSTRUCTION.—Nothing in this sec-  
14          tion shall be construed to relieve a provider from any obli-  
15          gation imposed on the provider under section 2258A of  
16          title 18, United States Code.

17          (p) FUNDING.—There are authorized to be appro-  
18          priated such sums as may be necessary to pay the costs  
19          incurred by the Commission under this section, including  
20          the costs of establishing and maintaining the Board and  
21          its facilities.

22          (q) SUNSET.—Except for subsections (a), (h), (k),  
23          (l), (m), (n), (o), and (r), this section shall expire 5 years  
24          after the date on which the Child Online Protection Board  
25          issues its first determination under this section.

1 (r) DEFINITIONS.—In this section:

2 (1) BOARD.—The term “Board” means the  
3 Child Online Protection Board established under  
4 subsection (e).

5 (2) CHILD SEXUAL ABUSE MATERIAL.—The  
6 term “child sexual abuse material” has the meaning  
7 provided in section 2256(8) of title 18, United  
8 States Code.

9 (3) COMMISSION.—The term “Commission”  
10 means the Federal Trade Commission.

11 (4) COMPLAINANT.—The term “complainant”  
12 means—

13 (A) the victim appearing in the proscribed  
14 visual depiction relating to a child;

15 (B) an authorized representative of the vic-  
16 tim appearing in the proscribed visual depiction  
17 relating to a child; or

18 (C) a qualified organization.

19 (5) DESIGNATED REPORTING SYSTEM.—The  
20 term “designated reporting system” means a digital  
21 means of submitting a notification to a provider  
22 under this subsection that is publicly and promi-  
23 nently available, easily accessible, and easy to use.

24 (6) HOST.—The term “host” means to store or  
25 make a visual depiction available or accessible to the

1 public or any users through digital means or on a  
2 system or network controlled or operated by or for  
3 a provider.

4 (7) IDENTIFIABLE PERSON.—The term “identi-  
5 fiable person” means a person who is recognizable  
6 as an actual person by the person’s face, likeness, or  
7 other distinguishing characteristic, such as a unique  
8 birthmark or other recognizable feature.

9 (8) INTERESTED OWNER.—The term “inter-  
10 ested owner” means an individual who has joined a  
11 proceeding before the Board under subsection  
12 (g)(13).

13 (9) PARTY.—The term “party” means the com-  
14 plainant or provider.

15 (10) PROSCRIBED VISUAL DEPICTION RELATING  
16 TO A CHILD.—The term “proscribed visual depiction  
17 relating to a child” means child sexual abuse mate-  
18 rial or a related exploitative visual depiction.

19 (11) PROVIDER.—The term “provider” means a  
20 provider of an interactive computer service, as that  
21 term is defined in section 230 of the Communica-  
22 tions Act of 1934 (47 U.S.C. 230), and for purposes  
23 of subsections (k) and (l), includes any director, offi-  
24 cer, employee, or agent of such provider.

1           (12) QUALIFIED ORGANIZATION.—The term  
2 “qualified organization” means an organization de-  
3 scribed in section 501(c)(3) of the Internal Revenue  
4 Code of 1986 that is exempt from tax under section  
5 501(a) of that Code that works to address child sex-  
6 ual abuse material and to support victims of child  
7 sexual abuse material.

8           (13) RECIDIVIST HOSTING.—The term “recidi-  
9 vist hosting” means, with respect to a provider, that  
10 the provider removes a proscribed visual depiction  
11 relating to a child pursuant to a notification or de-  
12 termination under this subsection, and then subse-  
13 quently hosts a visual depiction that has the same  
14 hash value or other technical identifier as the visual  
15 depiction that had been so removed.

16           (14) RELATED EXPLOITIVE VISUAL DEPIC-  
17 TION.—The term “related exploitive visual depic-  
18 tion” means a visual depiction of an identifiable per-  
19 son of any age where the visual depiction does not  
20 constitute child sexual abuse material but is pub-  
21 lished and associated with child sexual abuse mate-  
22 rial depicting that person.

23           (15) SMALL PROVIDER.—The term “small pro-  
24 vider” means a provider that, for the most recent

1 calendar year, averaged less than 10,000,000 active  
2 users on a monthly basis in the United States.

3 (16) VICTIM.—

4 (A) IN GENERAL.—The term “victim”  
5 means an individual of any age who is depicted  
6 in child sexual abuse material while under 18  
7 years of age.

8 (B) ASSUMPTION OF RIGHTS.—In the case  
9 of a victim who is under 18 years of age, in-  
10 competent, incapacitated, or deceased, the legal  
11 guardian of the victim or representative of the  
12 victim’s estate, another family member, or any  
13 other person appointed as suitable by a court,  
14 may assume the victim’s rights to submit a no-  
15 tification or file a petition under this section,  
16 but in no event shall an individual who pro-  
17 duced or conspired to produce the child sexual  
18 abuse material depicting the victim be named as  
19 such representative or guardian.

20 (17) VISUAL DEPICTION.—The term “visual de-  
21 piction” has the meaning provided in section  
22 2256(5) of title 18, United States Code.

23 **SEC. 8. SEVERABILITY.**

24 If any provision of this Act, an amendment made by  
25 this Act, or the application of such provision or amend-

1 ment to any person or circumstance is held to be unconsti-  
2 tutional, the remainder of this Act and the amendments  
3 made by this Act, and the application of the provision or  
4 amendment to any other person or circumstance, shall not  
5 be affected.

○