

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—118th Cong., 1st Sess.

S. 474

To amend title 18, United States Code, to strengthen reporting to the CyberTipline related to online sexual exploitation of children, to modernize liabilities for such reports, to preserve the contents of such reports for 1 year, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mrs. BLACKBURN (for herself and Mr. OSSOFF)

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Revising Existing Pro-
5 cedures On Reporting via Technology Act” or the “RE-
6 PORT Act”.

7 **SEC. 2. LIMITED LIABILITY MODERNIZATION.**

8 (a) AMENDMENTS.—Section 2258B of title 18,
9 United States Code, is amended—

1 (1) in the section heading, by striking “**pro-**
2 **viders or domain name registrars**” and in-
3 sserting “**the reporting, storage, and han-**
4 **dling of certain visual depictions of ap-**
5 **parent child pornography to the National**
6 **Center for Missing & Exploited Chil-**
7 **dren**”;

8 (2) in subsection (b)—

9 (A) in the matter preceding paragraph (1),
10 by inserting “or charge” after “a claim”; and

11 (B) in paragraph (2)(C), by striking “this
12 section,”; and

13 (3) by adding at the end the following:

14 “(d) LIMITED LIABILITY FOR NCMEC-CONTRACTED
15 VENDORS.—

16 “(1) IN GENERAL.—Except as provided in para-
17 graph (2), a civil claim or criminal charge may not
18 be brought in any Federal or State court against a
19 vendor contractually retained and designated by
20 NCMEC to support the duties of NCMEC under
21 section 404(b)(1)(K) of the Juvenile Justice and De-
22 linquency Prevention Act of 1974 (34 U.S.C.
23 11293(b)(1)(K)).

1 “(2) INTENTIONAL, RECKLESS, OR OTHER MIS-
2 CONDUCT.—Paragraph (1) shall not apply to a claim
3 or charge if the vendor—

4 “(A) engaged in—

5 “(i) intentional misconduct; or

6 “(ii) negligent conduct; or

7 “(B) acted, or failed to act—

8 “(i) with actual malice;

9 “(ii) with reckless disregard to a sub-
10 stantial risk of causing injury without legal
11 justification; or

12 “(iii) for a purpose unrelated to the
13 performance of any responsibility or func-
14 tion—

15 “(I) set forth in paragraph (1);

16 or

17 “(II) pursuant to sections
18 2258A, 2258C, 2702, or 2703.

19 “(3) VENDOR CYBERSECURITY REQUIRE-
20 MENTS.—With respect to any visual depiction pro-
21 vided pursuant to the duties of NCMEC under sec-
22 tion 404(b)(1)(K) of the Juvenile Justice and Delin-
23 quency Prevention Act of 1974 (34 U.S.C.
24 11293(b)(1)(K)) that is stored or transferred by a
25 vendor contractually retained and designated by

1 NCMEC to support such duties of NCMEC, a ven-
2 dor shall—

3 “(A) secure such visual depiction in a
4 manner that is consistent with the most recent
5 version of the Cybersecurity Framework devel-
6 oped by the National Institute of Standards
7 and Technology, or any successor thereto;

8 “(B) minimize the number of employees
9 that may be able to obtain access to such visual
10 depiction;

11 “(C) employ end-to-end encryption for data
12 storage and transfer functions, or an equivalent
13 technological standard;

14 “(D) undergo an independent annual cy-
15 bersecurity audit to determine whether such vis-
16 ual depiction is secured as required under sub-
17 paragraph (A); and

18 “(E) promptly address all issues identified
19 by an audit described in subparagraph (D).

20 “(e) LIMITED LIABILITY FOR REPORTING APPARENT
21 CHILD PORNOGRAPHY BY AN INDIVIDUAL DEPICTED IN
22 THE CHILD PORNOGRAPHY AS A MINOR, OR A REP-
23 RESENTATIVE OF SUCH INDIVIDUAL.—

24 “(1) IN GENERAL.—Except as provided in para-
25 graph (2), a civil claim or criminal charge may not

1 be brought in any Federal or State court against an
2 individual depicted in child pornography as a minor,
3 or a representative of such individual, arising from
4 a report to the NCMEC CyberTipline by the indi-
5 vidual, or the representative of such individual, of
6 information that relates to the child pornography in
7 which the individual is depicted as a minor, includ-
8 ing a copy of the child pornography.

9 “(2) INTENTIONAL, RECKLESS, OR OTHER MIS-
10 CONDUCT.—Paragraph (1) shall not apply to a claim
11 or charge if the individual, or the representative of
12 such individual—

13 “(A) engaged in—

14 “(i) intentional misconduct;

15 “(ii) negligent conduct; or

16 “(iii) any activity which constitutes a
17 violation of section 2251; or

18 “(B) acted, or failed to act—

19 “(i) with actual malice; or

20 “(ii) with reckless disregard to a sub-
21 stantial risk of causing injury without legal
22 justification.

23 “(3) MINIMIZING ACCESS.—With respect to any
24 child pornography reported to the NCMEC
25 CyberTipline by an individual depicted in the child

1 pornography as a minor, or a representative of such
2 individual, NCMEC shall minimize access to the
3 child pornography and ensure the appropriate dele-
4 tion of the child pornography, as set forth in section
5 2258D.

6 “(4) DEFINITION.—For purposes of this sub-
7 section, the term ‘representative’, with respect to an
8 individual depicted in child pornography—

9 “(A) means—

10 “(i) the parent or legal guardian of
11 the individual, if the individual is under 18
12 years of age;

13 “(ii) the legal guardian or other per-
14 son appointed by a court to represent the
15 individual;

16 “(iii) a legal representative retained
17 by the individual;

18 “(iv) a representative of the estate of
19 the individual; or

20 “(v) a person who is a mandated re-
21 porter under section 226(a)(1) of the Vic-
22 tims of Child Abuse Act of 1990 (34
23 U.S.C. 20341(a)(1)); and

1 “(B) does not include a person who en-
2 gaged in any activity which constitutes a viola-
3 tion of section 2251.”.

4 (b) APPLICABILITY.—The amendments made by sub-
5 section (a) shall apply with respect to a civil claim or
6 criminal charge that is filed on or after the date of enact-
7 ment of this Act.

8 (c) TABLE OF SECTIONS AMENDMENT.—The table of
9 sections for chapter 110 of title 18, United States Code,
10 is amended by striking the item relating to section 2258B
11 and inserting the following:

 “2258B. Limited liability for the reporting, storage, and handling of certain vis-
 ual depictions of apparent child pornography to the National
 Center for Missing & Exploited Children.”.

12 **SEC. 3. PRESERVATION OF REPORTS TO CYBERTIPLINE RE-**
13 **LATED TO ONLINE SEXUAL EXPLOITATION OF**
14 **CHILDREN.**

15 Section 2258A(h) of title 18, United States Code, is
16 amended—

17 (1) in paragraph (1), by striking “90 days” and
18 inserting “1 year”; and

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

20 “(5) EXTENSION OF PRESERVATION.—A pro-
21 vider of a report to the CyberTipline under sub-
22 section (a)(1) may voluntarily preserve the contents
23 provided in the report (including any comingled con-
24 tent described in paragraph (2)) for longer than 1

1 year after the submission to the CyberTipline for the
2 purpose of reducing the proliferation of online child
3 sexual exploitation or preventing the online sexual
4 exploitation of children.

5 “(6) METHOD OF PRESERVATION.—Not later
6 than 1 year after the date of enactment of this para-
7 graph, a provider of a report to the CyberTipline
8 under subsection (a)(1) shall preserve materials
9 under this subsection in a manner that is consistent
10 with the most recent version of the Cybersecurity
11 Framework developed by the National Institute of
12 Standards and Technology, or any successor there-
13 to.”.

14 **SEC. 4. STRENGTHENING OF DUTY TO REPORT APPARENT**
15 **VIOLATIONS TO CYBERTIPLINE RELATED TO**
16 **ONLINE EXPLOITATION OF CHILDREN.**

17 (a) AMENDMENTS.—Section 2258A of title 18,
18 United States Code, is amended—

19 (1) in subsection (a)(2)(A), by inserting “, of
20 section 1591 (if the violation involves a minor), or
21 of 2422(b)” after “child pornography”; and

22 (2) in subsection (e)—

23 (A) in paragraph (1), by striking
24 “\$150,000” and inserting “\$850,000 in the
25 case of a provider with not less than

1 100,000,000 monthly active users or \$600,000
2 in the case of a provider with less than
3 100,000,000 monthly active users”; and

4 (B) in paragraph (2), by striking
5 “\$300,000” and inserting “\$1,000,000 in the
6 case of a provider with not less than
7 100,000,000 monthly active users or \$850,000
8 in the case of a provider with less than
9 100,000,000 monthly active users”.

10 (b) GUIDELINES.—Not later than 180 days after the
11 date of enactment of this Act, the National Center for
12 Missing & Exploited Children may issue guidelines, as ap-
13 propriate, to providers required or permitted to take ac-
14 tions described in section 2258A(a)(1)(B) of title 18,
15 United States Code, on the relevant identifiers for content
16 that may indicate sex trafficking of children, as described
17 in section 1591 of that title, or enticement, as described
18 in section 2422(b) of that title.