109TH CONGRESS
2D SESSION

S. _____

To modernize and expand the reporting requirements relating to child pornography, to expand cooperation in combating child pornography, to require convicted sex offenders to register online identifiers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

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

A BILL

To modernize and expand the reporting requirements relating to child pornography, to expand cooperation in combating child pornography, to require convicted sex offenders to register online identifiers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Stop the Online Exploitation of Our Children Act of 2006''.

SEC. 2. AMENDMENT OF REPORTING REQUIREMENTS.

(a) IN GENERAL.—Chapter 110 of title 18, United States Code, is amended by inserting after section 2257 the following:

"§ 2257A. Obligation to report child pornography by online service providers

''(a) DEFINITIONS.—

''(1) IN GENERAL.—In this section, section 2257B, and section 2257C—

''(A) the terms 'attorney for the government' and 'State' have the meanings given those terms in rule 1 of the Federal Rules of Criminal Procedure.

''(B) the term 'electronic communication service' has the meaning given that term in section 2510;

''(C) the term 'Internet' has the meaning given that term in section 231(e) of the Communications Act of 1934 (47 U.S.C. 231(e));

''(D) the term 'online service' includes any—

''(i) Internet content hosting service;

''(ii) domain name registration service;

''(iii) Internet search service;

"(iv) Internet social networking site, chat room, message board, or any other similar service using the Internet;

"(v) Internet service that provides e-mail, instant messaging, or any other similar service using the Internet;

"(vi) electronic communication service;

"(vii) Internet service provider (including any wireless carrier that provides Internet access);

"(viii) Internet image or video sharing service; and

"(ix) remote computing service; and

"(E) the term 'remote computing service' has the meaning given that term in section 2711.

"(2) CONSTRUCTION.—The inclusion of any type of service in the list under paragraph (1)(D) may not be construed to mean that such type of service is not an electronic communication service or a remote computing service.

"(b) DUTY TO REPORT.—

"(1) IN GENERAL.—Whoever, while engaged in providing an online service to the public through a

facility or means of interstate or foreign commerce, obtains actual knowledge of any facts or circumstances described in paragraph (2) shall, as soon as reasonably possible, make a report of such facts or circumstances to the CyberTipline of the National Center for Missing and Exploited Children, or any successor to the CyberTipline operated by such center.

''(2) FACTS OR CIRCUMSTANCES.—The facts or circumstances described in this paragraph are any facts or circumstances that appear to indicate a violation of—

''(A) section 2251, 2251A, 2252, 2252A, 2252B, or 2260 that involves child pornography or;

''(B) section 1466A.

''(c) CONTENTS OF REPORT.—

''(1) IN GENERAL.—To the extent available to an online service provider, each report under subsection (b)(1) shall include the following information:

''(A) INFORMATION ABOUT THE INVOLVED INDIVIDUAL.—Information relating to the Internet identity of any individual who appears to have violated a Federal law in the manner

described in subsection (b)(2), including the screen name, user identification name, e-mail address, website address, and uniform resource locator.

''(B) HISTORICAL REFERENCE.—Information relating to when any apparent child pornography was uploaded, transmitted, reported to, or discovered by the online service provider, including a date and time stamp and time zone.

''(C) GEOGRAPHIC LOCATION INFORMATION.—Information relating to the geographic location of the involved individual, hosting website, or uniform resource locator, including the street address, telephone number, area code, zip code, and any Internet Protocol address.

''(D) IMAGES OF APPARENT CHILD PORNOGRAPHY.—Any image of any apparent child pornography relating to the incident such report is regarding.

''(E) COMPANY CONTACT INFORMATION.—Accurate contact information for the online service provider making the report, including the address, telephone number, facsimile num-

ber, e-mail address of, and individual point of contact for, such online service provider.

''(2) ADDITIONAL INFORMATION.—

''(A) IN GENERAL.—A report under subsection (b)(1) may include information or material developed or discovered by an online service provider, in addition to the information required under paragraph (1) of this subsection.

''(B) NOT REQUIRED.—An online service provider shall not be required to include any additional information described in subparagraph (A) in a report under subsection (b)(1).

''(d) FORWARDING OF REPORT TO LAW ENFORCEMENT.—

''(1) IN GENERAL.—The National Center for Missing and Exploited Children shall forward each report made under subsection (b)(1) to any appropriate law enforcement agency designated by the Attorney General under subsection (e)(2).

''(2) STATE AND LOCAL LAW ENFORCEMENT.—The National Center for Missing and Exploited Children may forward any report made under subsection (b)(1) to an appropriate official of a State or political subdivision of a State for the purpose of enforcing State criminal law.

''(3) FOREIGN LAW ENFORCEMENT.—The National Center for Missing and Exploited Children may forward any report made under subsection (b)(1) to any appropriate foreign law enforcement agency designated by the Attorney General under subsection (e)(3), subject to the conditions established by the Attorney General under subsection (e)(3).

''(e) ATTORNEY GENERAL RESPONSIBILITIES.—

''(1) IN GENERAL.—The Attorney General shall enforce this section.

''(2) DESIGNATION OF FEDERAL AGENCIES.—The Attorney General shall designate promptly the Federal law enforcement agency or agencies to which a report shall be forwarded under subsection (d)(1).

''(3) DESIGNATION OF FOREIGN AGENCIES.—The Attorney General shall promptly—

''(A) designate the foreign law enforcement agencies to which a report may be forwarded under subsection (d)(3); and

''(B) establish the conditions under which such a report may be forwarded to such agencies.

''(f) FAILURE TO REPORT.—

''(1) KNOWING AND WILLFUL FAILURE.—An online service provider that knowingly and willfully fails to make a report required under subsection (b)(1) shall be fined—

''(A) in the case of an initial knowing and willful failure to make a report, not more than $150,000; and

''(B) in the case of any second or subsequent knowing and willful failure to make a report, not more than $300,000.

''(2) NEGLIGENT FAILURE.—An online service provider that negligently fails to make a report required under subsection (b)(1) shall be subject to a civil penalty of—

''(A) in the case of an initial negligent failure to make a report, not more than $50,000; and

''(B) in the case of any second or subsequent negligent failure to make a report, not more than $100,000.

''(g) PROTECTION OF PRIVACY.—Nothing in this section shall be construed to require an online service provider to—

''(1) monitor any user, subscriber, or customer of that provider;

''(2) the content of any communication of any person described in paragraph (1); or

''(3) affirmatively seek facts or circumstances described in subsection (b)(2).

''(h) CONDITIONS OF DISCLOSURE OF INFORMATION CONTAINED WITHIN REPORT.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a law enforcement agency that receives a report under subsection (d) shall not disclose any information contained in that report.

''(2) PERMITTED DISCLOSURES.—A law enforcement agency may disclose information in a report received under subsection (d)—

''(A) to an attorney for the government for use in the performance of the official duties of that attorney;

''(B) to such officers and employees of that law enforcement agency, as may be necessary in the performance of their investigative and recordkeeping functions;

''(C) to such other government personnel (including personnel of a State or subdivision of a State) as are determined to be necessary by an attorney for the government to assist the attorney in the performance of the official duties

of the attorney in enforcing Federal criminal law; or

''(D) if the report discloses a violation of State criminal law, to an appropriate official of a State or subdivision of a State for the purpose of enforcing such State law.

''(i) EVIDENCE PRESERVATION.—

''(1) IN GENERAL.—An online service provider shall store any image and other information relating to the facts or circumstances of any incident reported under subsection (b)(1) for not less than 180 days after the date that the report is transmitted to the National Center for Missing and Exploited Children through the CyberTipline, or for such longer period of time as may be requested by the National Center for Missing and Exploited Children or a law enforcement agency.

''(2) DESTRUCTION OF EVIDENCE.—An online service provider shall not destroy any data that, to the online service provider's knowledge, relates to an incident reported under subsection (b)(1) during the 180-day period beginning on the date that report is transmitted to the National Center for Missing and Exploited Children through the CyberTipline, or for such longer period of time as may be requested by

the National Center for Missing and Exploited Children or a law enforcement agency.

"§ 2257B. Use of images to combat child pornography

"(a) IN GENERAL.—The National Center for Missing and Exploited Children is authorized to provide elements of any image it receives through its CyberTipline to an online service provider for the sole and exclusive purpose of permitting that online service provider to stop the further transmission of that image. Such elements may include unique identification numbers generated from the data contained in the image file and other technology that serves to identify and stop the transmission of child pornography.

"(b) USE BY ONLINE SERVICE PROVIDERS.—Any online service provider that receives an image element from the National Center for Missing and Exploited Children under this section may use such element only for the purposes described in this section, provided that such use shall not relieve the online service provider from its reporting obligations under section 2257A.

"§ 2257C. Limitations on liability

"(a) NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), a civil claim or criminal charge

against the National Center for Missing and Exploited Children, including any director, officer, employee, or agent of such center, arising from the performance of the CyberTipline responsibilities or functions of such center, as described in this section, section 2257A or 2257B of this title, or section 404 of the Missing Children's Assistance Act (42 U.S.C. 5773), or from the effort of such center to identify child victims may not be brought in any Federal or State court.

''(2) INTENTIONAL, RECKLESS, OR OTHER MISCONDUCT.—Paragraph (1) shall not apply to a claim or charge if the National Center for Missing and Exploited Children, or a director, officer, employee, or agent of such center—

''(A) engaged in intentional misconduct; or

''(B) acted, or failed to act—

''(i) with actual malice;

''(ii) with reckless disregard to a substantial risk of causing injury without legal justification; or

''(iii) for a purpose unrelated to the performance of any responsibility or function under this section, section 2257A or 2257B of this title, or section 404 of the

Missing Children's Assistance Act (42 U.S.C. 5773).

''(3) ORDINARY BUSINESS ACTIVITIES.—Paragraph (1) shall not apply to an act or omission relating to an ordinary business activity, including general administration or operations, the use of motor vehicles, or personnel management.

''(b) ONLINE SERVICE PROVIDERS.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), a civil claim or criminal charge against an online service provider, including any director, officer, employee, or agent of such online service provider, arising from the performance of the reporting responsibilities of such online service provider under this section, section 2257A, or section 2257B may not be brought in any Federal or State court.

''(2) INTENTIONAL, RECKLESS, OR OTHER MISCONDUCT.—Paragraph (1) shall not apply to a claim if the online service provider, or a director, officer, employee, or agent of that online service provider—

''(A) engaged in intentional misconduct; or

''(B) acted, or failed to act—

''(i) with actual malice;

"(ii) with reckless disregard to a substantial risk of causing injury without legal justification; or

"(iii) for a purpose unrelated to the performance of any responsibility or function under this section, section 2257A, or section 2257B.

"(3) ORDINARY BUSINESS ACTIVITIES.—Paragraph (1) shall not apply to an act or omission relating to an ordinary business activity of an online service provider, including general administration or operations, the use of motor vehicles, or personnel management.".

(b) CONFORMING AMENDMENTS.—

(1) REPEAL OF SUPERCEDED PROVISION.—Section 227 of the Crime Control Act of 1990 (42 U.S.C. 13032) is repealed.

(2) TABLE OF SECTIONS.—The table of sections for chapter 110 of title 18, United States Code, is amended by inserting after the item relating to section 2257 the following:

"2257A. Obligation to report child pornography by online service providers.
"2257B. Use of images to combat child pornography.
"2257C. Limitations on liability.".

SEC. 3. ENCOURAGING FOREIGN COUNTRIES TO COMBAT CHILD PORNOGRAPHY AND CHILD EXPLOITATION.

The United States Trade Representative, the Attorney General of the United States, and the head of any other relevant Federal agency shall take appropriate action to encourage foreign governments to—

(1) stop the production and transmission of child pornography in the country of such government; and

(2) cooperate with law enforcement agencies in the United States, including Federal agencies and Internet Crimes Against Children Task Forces, to combat the creation and transmission of child pornography.

SEC. 4. AUTHORIZATION OF FUNDS TO COMBAT CHILD PORNOGRAPHY.

There are authorized to be appropriated to the Attorney General $20,375,000 for grants to Internet Crimes Against Children Task Force.

SEC. 5. REGISTRATION OF ONLINE IDENTIFIERS OF SEX OFFENDERS.

(a) IN GENERAL.—Section 114(a) of the Sex Offender Registration and Notification Act (42 U.S.C. 16914(a)) is amended—

(1) by redesignating paragraph (7) as paragraph (8); and

(2) by inserting after paragraph (6) the following:

''(7) Any e-mail address, instant message address, or other similar Internet identifier used by the sex offender to communicate over the Internet.''.

(b) UPDATING OF INFORMATION.—Section 113(c) of the Sex Offender Registration and Notification Act (42 U.S.C. 16913(c)) is amended by inserting ''e-mail address, instant message address, or other similar Internet identifier used by the sex offender to communicate over the Internet,'' before ''or student status''.

(c) FAILURE TO REGISTER ONLINE IDENTIFIERS.—Section 2250 of title 18, United States Code, is amended—

(1) in subsection (b), by inserting ''or (d)'' after ''subsection (a)''; and

(2) by adding at the end the following:

''(d) FAILURE TO REGISTER ONLINE IDENTIFIERS.—

''(1) IN GENERAL.—It shall be unlawful for any person who is required to register under the Sex Offender Registration and Notification Act (42 U.S.C. 16901 et seq.) to fail to provide an e-mail address,

instant message address, or other similar Internet identifier used by that person to communicate over the Internet to the appropriate official for inclusion in the sex offender registry, as required under that Act.

''(2) PENALTY.—Any person who violates paragraph (1) shall be fined under this title, imprisoned not more than 10 years, or both.''.

SEC. 6. USE OF THE INTERNET AS AN AGGRAVATING FACTOR.

(a) IN GENERAL.—Chapter 110 of title 18, United States Code, is amended by adding at the end the following:

''§ 2260B. Use of the Internet as an aggravating factor

''(a) IN GENERAL.—It shall be unlawful for any person to—

''(1) commit a violation of section 1466A, 1470, 2251, 2251A, 2252, 2252A, 2252B, or 2260 that does not require, as an element of such violation, the use of the Internet; and

''(2) use the Internet to commit the violation described in paragraph (1).

''(b) PENALTY.—

''(1) IN GENERAL.—Any person who violates subsection (a) shall be imprisoned for 10 years.

''(2) CONSECUTIVE SENTENCE.—A term of imprisonment imposed under this section shall be consecutive to the sentence of imprisonment for any other offense.''.

(b) TABLE OF SECTIONS.—The table of sections for chapter 110 of title 18, United States Code, is amended by adding at the end the following:

''2260B. Use of the Internet as an aggravating factor.''.

SEC. 7. REMOVAL OF OFFENDERS FROM SOCIAL NETWORKING SITES.

Any online service provider (as that term is defined in section 2257A of title 18, United States Code, as added by this Act) that is a social networking site shall implement effective measures to remove any web page hosted by that provider that is associated with any identifier listed in section 114(a) of the Sex Offender Registration and Notification Act (42 U.S.C. 16914(a)), as amended by this Act.