



Eliminating Abusive and Rampant Neglect of Interactive Technologies Act (“EARN IT Act”) S. 3398

The National Center for Missing & Exploited Children (NCMEC) supports passage of the EARN IT Act to strengthen and amplify our nation’s response to the escalating volume and devastating nature of child sexual abuse material distributed and circulated on the internet.

NCMEC’s Experience Combatting Online Child Sexual Abuse Material

NCMEC operates the CyberTipline, which serves as a centralized reporting mechanism for members of the public and electronic service providers to report child sexual exploitation, including the distribution of child pornography. Every day, NCMEC receives tens of thousands of CyberTipline reports relating to the sexual abuse, rape, and enticement of children. In 2019, NCMEC received over 16.9 million reports, containing over 69 million images, videos, and other content related to child sexual exploitation. In the first six months of 2020 alone, NCMEC received over 12 million CyberTipline reports.

The EARN IT Act

The EARN IT Act will facilitate creation of best practices to prevent, reduce, and respond to online child sexual abuse material; enable online companies to be held civilly liable and subject to state prosecution if they violate child pornography laws; enhance reporting to NCMEC’s CyberTipline; and modernize language to ensure these crimes are referred to as child sexual abuse, rather than child pornography.

The EARN IT Act will achieve these goals through four core legislative provisions:

1. Creation of an expert Commission composed of representatives from government agencies, law enforcement, prosecutors, academia, survivors/nonprofits, and technology companies. Commission will compile advisory best practices relating to preventing, reducing, and responding to online child sexual exploitation. Best practices will be voluntary, not mandatory or binding, and will serve to guide companies that wish to implement measures to protect children from sexual exploitation online.
2. Amendment to the Communications Decency Act to enable interactive service providers to be subject to Federal and State civil liability and State criminal liability under child pornography laws.
3. Replace “child pornography” with “child sexual abuse material” throughout the U.S. criminal code.
4. Enhance NCMEC’s CyberTipline to require reporting of child sex trafficking and online enticement, streamline reporting, and enable information-sharing to respond to child sexual abuse material; provide for \$1 million/year in DOJ funding for tech solutions to combat online child sexual abuse.



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EARN IT Act: Creation of an Expert Commission

The first component of the EARN IT Act is the creation of a 19-member National Commission on Online Child Sexual Exploitation Prevention to compile recommended best practices to prevent, reduce, and respond to online child sexual exploitation (CSE). The Commission is composed of the members listed below who will serve a 5-year term. The 16 non-agency members will be appointed equally by the Senate majority/minority and House Speaker/minority.

- Attorney General (or representative)
- Secretary of Homeland Security (or representative)
- Chairman of Federal Trade Commission (or representative)
- 4 with experience in investigating online CSE (2 prosecutorial/2 law enforcement)
- 4 survivors of online CSE or non-governmental service providers for CSE survivors
- 2 with experience in consumer protection, civil liberties, civil rights, or privacy
- 2 with experience in computer science/software engineering (cryptography, data security, artificial intelligence) in a non-governmental capacity
- 4 ISP employees (2 with experience in child safety at an ISP with over 30 million monthly U.S. users; 2 with experience in child safety at an ISP with less than 10 million monthly U.S. users)

The Commission will meet, hold hearings, and review information to create recommended best practices on the following matters that will be issued 18 months after the Commission is created:

- Preventing, identifying, disrupting, and reporting online CSE
- Coordinating with non-profits and other ISPs to preserve, remove, and report online CSE
- Retaining online CSE content and related user identification/location data
- Receiving and triaging online CSE reports, including self-reporting
- Implementing standard rating and categorization system to identify type/severity of CSE
- Training and supporting content moderators who review online CSE
- Preparing and issuing transparency reports relating to efforts to prevent/disrupt online CSE
- Coordinating with voluntary initiatives among ISPs
- Employing age rating/age gating to reduce online CSE
- Offering parental control products so customers can limit content that is accessible to children
- Contractual/operational practices to ensure contractors/affiliates comply with best practices



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EARN IT Act: Amendment to the CDA

The second component of the EARN IT Act is an amendment to the Communications Decency Act (34 U.S.C. 230) that will enable ISP providers to be subject to Federal and State civil liability and State criminal liability relating to child sexual exploitation.

This provision provides for three exceptions to the immunity provided under the CDA:

1. Civil claims brought against an ISP under 18 U.S.C. § 2255 if the underlying claim violates 18 U.S.C. §§ 2252 or 2252A. These two criminal statutes narrowly address the sexual exploitation of minors and child pornography.
2. Criminal charges brought against an ISP under State law regarding the advertisement, promotion, presentation, distribution, or solicitation of child sexual abuse material.
3. Civil claims brought against an ISP under State law regarding the advertisement, promotion, presentation, distribution, or solicitation of child sexual abuse material.



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EARN IT Act: Revisions to the CyberTipline and Funding to Fight Online Child Sexual Exploitation

The fourth component of the EARN IT Act is a series of enhancements to NCMEC’s CyberTipline to require reporting of child sex trafficking and online enticement, streamlined reporting, and information-sharing to curtail child sexual exploitation, as well as the provision for \$1M in DOJ funding for tech solutions to combat online child sexual exploitation.

18 U.S.C. §§ 2258A-C will be revised with the following enhancements:

- Mandatory reporting to the CyberTipline when an internet service provider (ISP) obtains knowledge of apparent child sex trafficking or the apparent online enticement of a child on their systems or platforms
- Encourage ISPs to report available information relating to the identity and/or location of a child who is being victimized
- Permit sharing of information relating to child sexual exploitation among NCMEC, other nonprofits working to combat the online sexual exploitation of children, and ISPs
- Extend the time that an ISP must preserve contents of a CyberTipline report from 90 to 180 days, which will provide more time for law enforcement to investigate these crimes and work to rescue a child at risk
- Provide \$1 million in federal funding for development of tech solutions to enhance efforts to combat online child sexual exploitation



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EARN IT Act: Replacing “child pornography” with “child sexual abuse material” in U.S. criminal code

The third component of the EARN IT Act is the technical replacement of the term “child pornography” with “child sexual abuse material” throughout the U.S. criminal code. This change in terminology would signify the true criminality of the recording, dissemination, and possession of material memorializing the sexual abuse of children and would formalize the terminology currently used by a majority of child protection non-profit organizations, law enforcement agencies, and survivors and their families around the world.

Additional background for this legislative terminology change includes the following items:

- The term child sexual abuse material recognizes and validates the actual circumstances of a child’s abuse and the trauma and harm inflicted on them by the filming of the abuse and the distribution of abusive images/videos by offenders online.
- Images and videos of the rape and sexual abuse of children are crime scene photos, and the statutory term should reflect the actual crime, rather than the euphemistic reference to pornography, which connotes legal sexual activity. Removing the term pornography from the legal definition conveys that the child victim has no consent, control, or choice relating to their sexual victimization or the recording and dissemination of materials documenting their abuse.
- The media and other public accounts of child sexual abuse often minimize the impact of child sexual abuse images by referring to them as depicting “kiddie porn” or “sex with a child.” These colloquial terms culturally normalize the abuse and can desensitize others to think of the abuse as “just pictures.” By changing the term to child sexual abuse material, the legal system will accurately describe these images as illegal contraband and more fully convey the deeply damaging trauma inflicted on children by the circulation of their abusive images.